



**PUMPS**

**COMPRESSORS**

**GENUINE PARTS**

**SERVICE**

**Brands**

Sundyne

Marelli

Sunflo

Ansimag

HMD/Kontro

## TERMS AND CONDITIONS OF SALE

This quotation is subject to all terms and conditions on the face and reverse side hereof and supersedes Buyer's proposed terms and conditions, if any. This quotation shall become a contract only (a) when signed and delivered by Buyer to Sundyne, LLC within thirty (30) days from date hereof and accepted by Sundyne at its Arvada, Colorado office as evidenced by written or telegraphic confirmation by Sundyne to Buyer, or (b) any conduct of Buyer which recognizes the existence of a contract pertaining to the subject matter hereof.

This quotation contains the entire agreement of the parties and all proposals, negotiations, representations or agreements made or entered into, prior to or contemporaneously with this quotation are excluded whether oral or in writing. Prices set forth in this quotation are based upon the terms and conditions set forth herein.

ANY TERMS PROPOSED IN BUYER'S ACCEPTANCE OF THIS QUOTATION WHICH ADD TO, VARY FROM, OR CONFLICT WITH THE TERMS HEREOF ARE HEREBY OBJECTED TO AND REJECTED AND SHALL NOT CONSTITUTE ANY PART OF ANY CONTRACT RESULTING FROM THIS QUOTATION. ANY SUCH PROPOSED TERMS SHALL HAVE NO FORCE OR EFFECT AND THE TERMS HEREIN SHALL CONSTITUTE THE COMPLETE AND EXCLUSIVE STATEMENT OF THE TERMS AND CONDITIONS OF ANY CONTRACT RESULTING FROM THIS QUOTATION AND MAY BE MODIFIED ONLY BY WRITTEN INSTRUMENT EXECUTED BY THE AUTHORIZED REPRESENTATIVES OF BOTH PARTIES.

1. Prices are ex works unless otherwise specified. Purchase prices are stated in United States dollars and payment shall be in United States currency. Invoice terms are net 30 days unless otherwise specified. Sundyne reserves the right to modify or withdraw credit terms at any time without notice and to require guarantees, security, or payment in advance in the amount of the credit involved.
2. Prices do not include sales, use, excise or any similar tax. Any tax or other governmental charge upon the production, sales, shipment or use of the product which Sundyne is required to pay or collect from Buyer shall be paid by Buyer to Sundyne unless Buyer furnishes Sundyne with a tax exemption certificate acceptable to the applicable taxing authority. Buyer shall be responsible for obtaining any necessary governmental clearances, including import and foreign exchange licenses, which may be required by any government other than the government of the United States.

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3. Sundyne shall not be liable for any failure to perform its obligations under any contract resulting from this quotation when such failure arises directly or indirectly from or is contributed to by any acts of God, acts of Buyer, acts of civil or military authority, priorities, fire, strikes or other labor disputes, accidents, floods, epidemics, war riot delays in transportation, lack of or inability to obtain raw materials, components, labor, fuel or supplies, or other circumstances beyond Sundyne's reasonable control whether similar or dissimilar to the foregoing.
4. Shipping dates are given to the best of Sundyne's knowledge based upon conditions existing at the time any contract resulting from this quotation is entered into and specifications contained therein. Sundyne will, in good faith, endeavor to ship by the estimated shipping date but shall not be responsible for any delay or any damage arising from failure to ship on the estimated shipping date. If Buyer fails to furnish shipping instructions, Sundyne will select what is, in its opinion, the most satisfactory routing for the shipment. If Buyer is to pick up products and has not done so within seven (7) days after notification that they are ready for shipment, Sundyne may ship the products via commercial carrier (best way). Any prepayment by Sundyne for freight charges shall be for the account of Buyer and shall be paid by Buyer with and in addition to the purchase price.
5. Title to the products and risk of loss with respect thereto shall pass to Buyer upon delivery thereof by Sundyne to a common carrier.
6. If Buyer has not made a claim to Sundyne within thirty (30) days after receipt of the products, or within ninety (90) days after shipment from Sundyne's facility, whichever shall first occur, the products shall be considered accepted and conforming to contract requirements.
7. Sundyne warrants to Buyer for a period of 18 months from the date of shipment or 12 months from placement into service, whichever first occurs, that any product delivered under any contract resulting from this quotation will at the time of shipment be free from defects in material and workmanship. If, within said warranty period, any such product is found, by Sundyne following its examination, to be defective in material or workmanship, Sundyne's sole obligation under this warranty will be to repair or replace such defective product at its option and expense (excluding freight, duties, taxes). Sundyne does not warrant any products, accessories, or components not manufactured by Sundyne, but to the extent possible agrees to provide Buyer with the benefits of the manufacturer's warranty, if any. Sundyne shall not be liable for damage to or wear of products caused in whole or in part by abnormal conditions, improper application, improper lubrication, failure to provide proper inlet conditions or flow, corrosives, abrasives, foreign objects, or other causes external to the Sundyne product.

THE FOREGOING WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY INCLUDING, BUT NOT BY WAY OF LIMITATION, ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE.

8. In the event Buyer claims that Sundyne has breached any of its obligations under any contract resulting from this quotation, whether in warranty or otherwise, Sundyne may request and require return of the product and refund the Buyer's purchase price upon Sundyne's receipt of the returned product. If Sundyne so requests the return of the product, the product shall be redelivered to Sundyne in accordance with Sundyne's return policies and instructions and at Sundyne's expense.

In the event Sundyne elects to require return of the product, Sundyne shall absolutely have no further obligation to Buyer under any contract resulting from this quotation except to refund such purchase price upon redelivery of the product.

THE REMEDIES PROVIDED FOR IN THIS AND THE PRECEDING PARAGRAPH SHALL CONSTITUTE THE SOLE RECOURSE OF BUYER AGAINST SUNDYNE FOR BREACH OF ANY OF SUNDYNE'S OBLIGATIONS UNDER ANY CONTRACT RESULTING FROM THIS QUOTATION, WHETHER THE CLAIM IS MADE IN TORT, CONTRACT OR IN ADMIRALTY, INCLUDING CLAIMS BASED ON WARRANTY, NEGLIGENCE, OR OTHERWISE.

NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL SUNDYNE BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, NOR SHALL SUNDYNE'S LIABILITY FOR ANY CLAIMS OR DAMAGE ARISING OUT OF OR CONNECTED WITH ANY CONTRACT RESULTING FROM THIS QUOTATION, OR THE MANUFACTURE, SALE, DELIVERY OR USE OF THE PRODUCT, EXCEED THE PURCHASE PRICE OF THE PRODUCT.

9. In the event (1) Buyer modifies any product sold pursuant to any contract resulting from this quotation without the express written consent of Sundyne; (2) Buyer fails to implement any changes in the product directed by Sundyne; or (3) any product to be furnished under any contract resulting from this quotation is made in accordance with drawings, samples or manufacturing specifications provided or designated by Buyer, Buyer agrees to indemnify and hold harmless Sundyne from any and all claims, demands, actions or causes of action, costs or expenses incurred thereby whether in contract, tort or admiralty.
10. In the event any product to be furnished under any contract resulting from this quotation is to be made in accordance with drawings, samples or manufacturing specifications provided or designated by Buyer, Buyer agrees to indemnify and hold Sundyne harmless from any and all damages, costs and expenses arising from a claim that such product furnished to Buyer by Sundyne, or the use thereof, infringes any Letters Patent, foreign or domestic, and Buyer agrees at its own expense to undertake the defense of any suit against Sundyne brought upon such claim or claims. In the event any product to be furnished under any contract resulting from this quotation is not for a U.S. Government application and is not to be made in accordance with drawings, samples or manufacturing specifications provided or designated by Buyer, but rather is the design of Sundyne, Sundyne agrees to hold Buyer and its customers harmless against

any damages awarded by a court of final jurisdiction in any suit for infringement of any United States Letters Patent by reason of the sale or use of such product as furnished by Sundyne under any contract resulting from this quotation. In the event any claim is asserted or threatened, as to which Buyer may seek indemnification hereunder, Sundyne shall have the sole right to contest, compromise, litigate, or otherwise dispose of said claim, including the right to substitute non-infringing products, and Buyer agrees to cooperate with Sundyne fully with respect thereto. The foregoing undertaking of Sundyne shall not apply unless Sundyne shall have been informed in writing immediately by Buyer of any charge or suit alleging such infringement and shall have been given the opportunity to assume the defense thereof, and further, such undertaking shall not apply if (i) the claimed infringement is settled without the consent of Sundyne, or (ii) the infringement results from the use of a product delivered hereunder which is (a) modified by Buyer or others without authorization by Sundyne, or (b) used in combination with a product not delivered by Sundyne where such infringement would not have occurred from the lone use of the product delivered under any contract resulting from this quotation.

11. Any contract resulting from this quotation shall be governed by the Uniform Commercial Code as adopted in the State of Colorado as effective and in force on the date hereof. Wherever a term defined by said Uniform Commercial Code is used herein, the definition contained in the Uniform Commercial Code shall govern, unless the quotation states otherwise. No action for breach of sale, any contract resulting from this quotation or any covenant or warranty arising therefrom, shall be brought more than one year after the cause of action has accrued.
12. Any contract resulting from this quotation may not be modified or rescinded except in writing signed by Sundyne and Buyer. If all or part of any contract resulting from this quotation is terminated by such modification or rescission, Buyer, in the absence of a contrary written agreement between Sundyne and Buyer, shall pay termination charges based upon costs determined by generally accepted accounting principles plus a reasonable profit, except that any products scheduled for completion within thirty (30) days of Buyer's request for termination or rescheduling will be accepted and paid for in full by Buyer. Buyer shall reimburse Sundyne for all costs incurred by Sundyne in the settling and payment of claims and administrative expenses incurred by Sundyne pursuant to any such termination.