

## KENNEDY INDUSTRIES, INC. REPAIR WARRANTY

**1. Warranty.** Except for software support services provided by Kennedy Industries, Inc. ("Kennedy"), all products (including parts and components) and repairs provided by Kennedy are warranted to be free of defects in material and workmanship for a period of one (1) year after the product is first used, or eighteen (18) months after the date of shipment, whichever period is less, provided that: (A) the repaired item(s) and/or product(s) is in the possession of the original user and has not been sold or transferred to, or is in the control of, a third-party; (B) the repaired item(s) and/or product(s) has been used properly for its intended purpose; (C) Buyer provides Kennedy with written notice of any defect within thirty (30) days from the earliest date on which the defect should reasonably have been discovered; (D) the defectively repaired item(s) and/or product(s) is returned to Kennedy in accordance with the terms of the "RETURN OF EQUIPMENT" section below, and (E) Buyer has complied with all its payment obligations to Kennedy for the parts and/or repairs in question. **ALL OTHER WARRANTIES, BOTH IMPLIED AND EXPRESS, ARE EXPRESSLY WAIVED, INCLUDING ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. NO OTHER EXPRESS OR IMPLIED, WRITTEN OR ORAL REPRESENTATIONS MADE BY KENNEDY'S EMPLOYEES, AGENTS OR REPRESENTATIVES CAN EXPAND THE SCOPE OF THIS WARRANTY OR BE RELIED UPON BY BUYER TO EXPAND THE SCOPE OF THIS WARRANTY UNLESS MADE IN WRITING AND SIGNED BY AN OFFICER OF KENNEDY. THIS WARRANTY IS NOT ASSIGNABLE OR TRANSFERABLE AND KENNEDY'S OBLIGATIONS HEREUNDER TERMINATE WHEN ANY PRODUCT IS TRANSFERRED OR SOLD TO ANY THIRD PARTY.**

**2. Warranty Violations.** All warranties are void if any of the following are found to have contributed to the product failure and/or defect:

- If the pump or product has been handling abrasive material;
- If the pump or product is installed in a well or sump, which is not sufficiently straight or plumb;
- If the pump or product is damaged from electrolysis, graphitization, corrosion or erosion;
- If air or vapor is allowed to enter the pump section of the product;
- If the pump or product is misaligned;
- If the pump or product is misused, operated outside of the parameters for which it was designed, or has not been installed utilizing pumping equipment installation practices per Hydraulic Institute standards; and/or
- Any other inappropriate Buyer action or inaction, such as mishandling and product abuse, improper storage, improper interfacing, operation outside of design limits, misapplication, improper repair, failure to provide necessary maintenance or unauthorized modification.

**3. No Warranty for Software Support Services.** Kennedy's Warranty does not extend to software support services. Such services are governed by Kennedy's Software Support Terms & Conditions. **KENNEDY DOES NOT WARRANT ITS WORK AND/OR SERVICES RELATING TO SOFTWARE SUPPORT IN ANY MANNER WHATSOEVER.**

**4. No Warranty for Third-Party Products.** Kennedy's Warranty extends only to products assembled by it. **KENNEDY DOES NOT INDEPENDENTLY WARRANT ANY MANUFACTURER'S PRODUCTS IN ANY FASHION. PRODUCTS, PARTS OR COMPONENTS SUPPLIED BY BUYER, ANY DISTRIBUTOR, SUPPLIER, MANUFACTURER OR ANY OTHER PARTY WHICH ARE NOT ASSEMBLED BY KENNEDY, ARE COVERED ONLY BY THE INDIVIDUAL WARRANTY OF SUCH OTHER PARTY. KENNEDY SHALL NOT BE LIABLE TO BUYER FOR ANY BREACH OF THOSE MANUFACTURER WARRANTIES. KENNEDY ALSO DOES NOT WARRANT ANY SOFTWARE PRODUCTS OR APPLICATIONS, WHETHER CREATED BY KENNEDY OR A THIRD PARTY.**

**5 Shipping Damage.** Upon receipt of any repaired items shipped to Buyer, Buyer must immediately check for any damage that may have occurred during the shipping process. To make a claim for shipping damage, Buyer must preserve all shipping materials (packaging, shipping containers, etc.) and documents and contact Kennedy's customer support within 24 hours or by the end of the next business day, whichever comes later, or all claims against Kennedy arising out of such damage are waived.

**6. Return of Equipment.** All Warranty repair work shall take place at Kennedy's Wixom, Michigan plant, unless otherwise agreed to in writing by Kennedy. All returns of defective products must be pre-authorized in writing by Kennedy. Products so returned shall be returned to Kennedy's Wixom, Michigan plant, with all shipping costs to be borne by Buyer. Kennedy assumes no liability for labor charges or other costs of any kind, whether direct or incidental to the adjustment, service, repairing, removal or replacement of any defective products, or for the expense of repairs made outside of Kennedy's warranty conditions. Kennedy is not responsible for providing and/or paying for the following services as they relate to a warranty claim on a repaired piece of equipment or its return and the following are the Buyer's responsibility unless otherwise negotiated and agreed to in writing by Kennedy:

- Removal of (warranty repaired) equipment/products;
- Installation of (warranty repaired) equipment/products; or
- Any transportation of equipment/products.

**7. Specifications.** Unless expressly stated otherwise, guarantees in the nature of performance specifications on a product manufactured by Kennedy, if any, are subject to laboratory tests corrected for field performance. Due to inaccuracies of field testing, if a conflict arises between the results of field testing conducted by or for the user, and laboratory tests corrected for field performance, the latter shall control. No equipment shall be furnished based on results of field testing, unless such tests are made in accordance with the engineering practice outlined in Section 6.1 through 6.12 (or successor provisions) of the American National Bulletin ANSI/AWWA E101, latest edition.

**8. Limitation of Liability. KENNEDY'S LIABILITY FOR DEFECTIVE PRODUCTS/SERVICES IS STRICTLY LIMITED TO THE REPAIR OR REPLACEMENT OF ANY SUCH DEFECTIVE PRODUCTS/SERVICES, AND NO OTHER CLAIMS OR DEMANDS WHATSOEVER SHALL BE IMPOSED ON KENNEDY, IRRESPECTIVE OF FAULT. ALL CLAIMS FOR OTHER DAMAGES, INCLUDING, BUT NOT LIMITED TO, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY AND SPECIAL DAMAGES, LOST PROFITS, DAMAGE TO REPUTATION, LOSS OF ASSOCIATED EQUIPMENT, COST OF SUBSTITUTE GOODS OR SERVICES, DOWNTIME, OR THE CLAIMS OF THIRD PARTIES, INCLUDING, WITHOUT LIMITATIONS, BUYER'S CUSTOMERS OR ANY PARTIES ALLEGING INTELLECTUAL PROPERTY RIGHTS IN THE PRODUCTS, ARE EXPRESSLY WAIVED.**

**9. Conflicting Terms.** Any terms and conditions contained in Buyer's purchase order or request for quotation which are different from, in addition to, or vary in any way from this Warranty shall not be binding upon Kennedy unless agreed to in a separate, issue specific, written agreement signed by a corporate officer of Kennedy.

**10. Jurisdiction, Venue and Arbitration.** This Warranty shall be governed by Michigan law and each provision herein must be interpreted in a manner which is valid thereunder. The Oakland County Circuit Court of the State of Michigan shall be the court of exclusive jurisdiction and venue over any disputes arising out of this Warranty, any such disputes must be commenced and maintained in the said Circuit Court, and Buyer expressly waives any right of removal to federal court pursuant to 28 U.S.C. §1441. Buyer waives and agrees not to assert as a defense in any such action, suit or proceeding any claim (A) that Buyer is not personally subject to the jurisdiction of the state and federal courts of Michigan; (B) that the venue of the action, suit or proceeding is improper; (C) that the action, suit or proceeding is brought in an inconvenient forum; or (D) that the subject matter of this Warranty may not be enforced in or by the state or federal courts of the state of Michigan. At the sole discretion and election of Kennedy, any claim or controversy arising out of or relating to this Warranty, or the alleged breach thereof, shall be resolved by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association, latest edition, and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. Buyer agrees that the resolution of any claim or controversy hereunder will necessitate the testimony by Kennedy's engineers and other employees, all of whom work at Kennedy's home office in Wixom, Michigan. Buyer agrees therefore that the most convenient forum for arbitration is in Oakland County, Michigan and that if Kennedy elects to arbitrate a claim or controversy relating to the foregoing Warranty, that said arbitration shall be conducted in Oakland County, Michigan.

**11. General Provisions.** (A) Buyer's rights, obligations and duties under this Warranty are not assignable without the prior written consent of Kennedy and any prohibited assignment shall be void, (B) Kennedy's failure to insist upon compliance with any provision of this Warranty on one or multiple occasions does not constitute a waiver of such provision(s), (C) Any notice or other communication required or permitted hereunder shall be sufficiently given if sent in writing by email and registered or certified mail, postage prepaid, to the other parties' last known corporate address, (D) The headings used herein are for convenience of reference only and in no way define, limit or describe any provision of this Warranty and may not be considered in the interpretation of this Warranty, and (E) If any provision of this Warranty is held by a court to be invalid, the remaining provisions shall continue in full force and effect without being invalidated; if any provision is modified by a court, it shall be modified so as to carry out the intent of this Warranty, and any provisions so modified shall be fully enforced as modified.

**12. Entire Agreement.** This Warranty is the entire warranty agreement between the parties. Buyer has not purchased the products or services at issue in reliance upon any promise, condition, or representation not contained within this Warranty, and this Warranty supersedes all prior and contemporaneous agreements, understandings and negotiations related to its subject matter. No waivers, modifications, amendments or changes to this Warranty shall be deemed effective unless in writing and signed by Buyer and a corporate officer of Kennedy.

(8/2017)