



## COUNCIL AGENDA ITEM COVER SHEET

**Meeting Type:** Council - Regular

**Meeting Date:** January 16, 2025

**Agenda Item Type:** New Business

**Staff Contact:** Scott Langford

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### STAFF REPORT

**AGENDA ITEM:**

Consideration to Award the Pump Station 4 – Reserve Pump to Xylem Water System USA, Inc. Flygt Products in the amount of \$16,525.00.

**BACKGROUND:**

The sewer system for the schools on Jenkins Road feed into pump station 4. To ensure that we have backup capability in the event of an emergency, the Town is purchasing a reserve pump for pump station 4. This enables the Town to do routine pump maintenance and repairs without the system having to operate on only one pump. Xylem is selling this to the Town directly. Xylem requires all outside vendors to add a set markup on their pumps; therefore the direct purchase from Xylem will be less than other vendors. This direct purchase along with the pump being compatible with the all the equipment at pump station 4 makes this a sole source procurement.

**FUNDING:**

General Funds – Public Works (505-43-54-2001).

**STAFF RECOMMENDATION:**

Staff requests awarding the Pump Station 4 – Reserve Pump to Xylem Water System USA, Inc. Flygt Products in the amount of \$16,525.00.

**ATTACHMENTS:**

Xylem Proposal

**PREVIOUS DISCUSSIONS:**

Budget meetings.





**Xylem Water Solutions USA, Inc.  
Flygt Products**

January 6, 2025

90 Horizon Drive  
Suwanee, GA 30024  
Tel (770) 932-4320  
Fax (770) 932-4321

City of Tyrone

Quote # 2024-ATL-0275 Alternate 1, Version 3  
Project Name: CITY OF TYRONE  
Job Name: Replacement

Xylem Water Solutions USA, Inc. is pleased to provide a quote for the following Flygt equipment.

| 3127.181-0100                   |   |
|---------------------------------|---|
| Qty                             | Description   |
| 1                               | Flygt Model NP-3127.060 4" volute Submersible pump equipped with a 460 Volt / 3 phase / 60 Hz 10 HP 1750 RPM motor, 488 impeller, 1 x 50 Ft. length of SUBCAB 4G6+2x1,5 submersible cable, FLS leakage detector, volute is prepared for Flush Valve |
| <b>Total Price \$ 15,840.00</b> |   |
| <b>Freight Charge \$ 685.00</b> |   |
| <b>Total Price \$ 16,525.00</b> |   |

**Terms & Conditions**

This order is subject to the Standard Terms and Conditions of Sale – Xylem Americas effective on the date the order is accepted which terms are available at <http://www.xyleminc.com/en-us/Pages/terms-conditions-of-sale.aspx> and incorporated herein by reference and made a part of the agreement between the parties.

**As of October 14, 2024, all orders must meet a minimum dollar value of \$1,200. Xylem reserves the right to refuse to process any order that does not meet the minimum order value requirement. Xylem will support order adjustments to meet the minimum order value threshold.**

- Purchase Orders:** Please make purchase orders out to: Xylem Water Solutions USA, Inc.
- Freight Terms:** 3 DAP - Delivered At Place 08 - Jobsite (per IncoTerms 2020)  
See Freight Payment (Delivery Terms) below.
- Taxes:** State, local and other applicable taxes are not included in this quotation.
- Back Charges:** Buyer shall not make purchases nor shall Buyer incur any labor that would result in a back charge to Seller without prior written consent of an authorized employee of Seller.
- Tariff Changes:** The prices quoted herein are based on the current tariff rates, duties, government charges, and trade regulations as of the date of this quote. If any new tariffs, duties, taxes, or similar charges are imposed, or any existing tariffs, duties, or charges are increased or modified by any government or regulatory authority



(collectively, "Tariff Changes"), and such Tariff Changes result in an increase in the cost of goods, Xylem reserves the right to adjust the pricing of the affected goods to reflect the increased costs.

**Shortages:**

Xylem will not be responsible for apparent shipment shortages or damages incurred in shipment that are not reported within two weeks from delivery to the jobsite. Damages should be noted on the receiving slip and the truck driver advised of the damages. Please contact our office as soon as possible to report damages or shortages so that replacement items can be shipped and the appropriate claims made.

**Validity:**

This Quote is valid for thirty (30) days.

**Time of Delivery:** currently in stock at our central warehouse located in Mississippi

**Terms of delivery:** Freight PP/Line Item

**Terms of payment:** 100% N60 after invoice date – upon acceptance of purchase order and credit review

**Please note:** If this is an FM Factory certified product it must be serviced by an EX/FM Flygt manufacture trained technician through an approved Xylem Flygt repair shop to retain qualifying status of product to retain the "EX/FM" designation.

Our current delivery lead-times are forecasted estimates only due to the outbreak of the COVID-19 virus pandemic and its global effects on commerce, supply chain, and logistics. Xylem will, however, use all commercially reasonable efforts to minimize any delivery delay impacts.

Thank you for the opportunity to provide this quotation. Please contact us if there are any questions.

Sincerely,



Kirsten Royals  
Senior Customer Support Coordinator

Cell: 404-831-4726  
kirsten.royals@xylem.com  
Fax: 770-932-4321





**Customer Acceptance**

This order is subject to the Standard Terms and Conditions of Sale – Xylem Americas effective on the date the order is accepted which terms are available at <http://www.xylem.com/en-us/Pages/terms-conditions-of-sale.aspx> and incorporated herein by reference and made a part of the agreement between the parties.

A signed copy of this Quote is acceptable as a binding contract.

**Purchase Orders:** Please make purchase orders out to: Xylem Water Solutions USA, Inc.

Quote #: 2024-ATL-0275 Alternate 1, Version 3  
Customer Name: City of Tyrone  
Job Name: Replacement  
Total Amount: \$ 15,840.00  
(excluding freight)

|                        |                               |
|------------------------|-------------------------------|
| Signature: _____       | Name: _____<br>(PLEASE PRINT) |
| Company/Utility: _____ | PO: _____                     |
| Address: _____         | Date: _____                   |
| _____                  | Phone: _____                  |
| _____                  | Email: _____                  |
| _____                  | Fax: _____                    |



## NP 3127 HT 3~ Adaptive 488

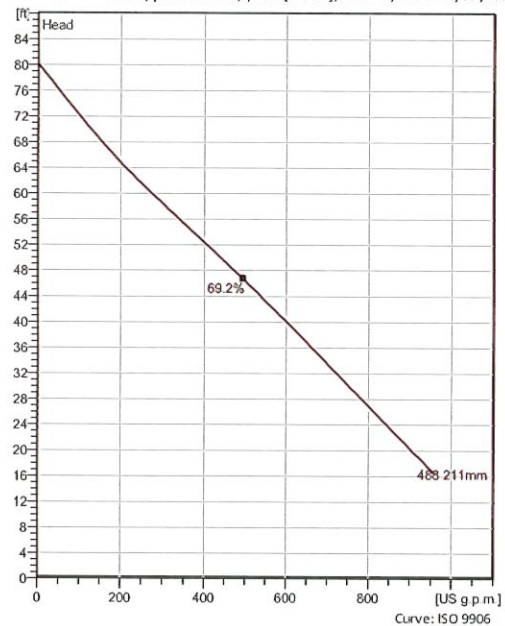
Patented self cleaning semi-open channel impeller, ideal for pumping in waste water applications. Modular based design with high adaptation grade.



### Technical specification



Curves according to: Water, pure Water, pure [100%], 39.2 °F, 62.42 lb/ft<sup>3</sup>, 1.6891E-5 ft<sup>2</sup>/s



Nominal (mean) data shown. Under- and over-performance from this data should be expected due to standard manufacturing tolerances. Please consult your local Flygt representative for performance guarantees.

### Configuration

|   |  |
|---|--|
| Motor number<br>N3127.060 21-12-4AL-W<br>10hp | Installation type<br>P - Semi permanent, Wet |
| Impeller diameter<br>211 mm                   | Discharge diameter<br>4 inch                 |

### Pump information

|                                     |
|-------------------------------------|
| Impeller diameter<br>211 mm         |
| Discharge diameter<br>4 inch        |
| Inlet diameter<br>100 mm            |
| Maximum operating speed<br>1745 rpm |
| Number of blades<br>2               |
| Max. fluid temperature<br>40 °C     |

### Material

|   |
|---|
| Impeller<br>Hard-Iron™                    |
| Stator housing material<br>Grey cast iron |

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# NP 3127 HT 3~ Adaptive 488

## Technical specification



### Motor - General

|   |                        |                         |                      |
|---|------------------------|-------------------------|----------------------|
| Motor number<br>N3127.060 21-12-4AL-W<br>10hp | Phases<br>3~           | Rated speed<br>1745 rpm | Rated power<br>10 hp |
| ATEX approved<br>No                           | Number of poles<br>4   | Rated current<br>13 A   | Stator variant<br>12 |
| Frequency<br>60 Hz                            | Rated voltage<br>460 V | Insulation class<br>H   | Type of Duty<br>S1   |
| Version code<br>060                           |                        |                         |                      |

### Motor - Technical

|                                 |                                       |  |                            |
|---------------------------------|---------------------------------------|--|----------------------------|
| Power factor - 1/1 Load<br>0.86 | Motor efficiency - 1/1 Load<br>86.5 % | Total moment of inertia<br>1.32 lb ft <sup>2</sup> | Starts per hour max.<br>30 |
| Power factor - 3/4 Load<br>0.84 | Motor efficiency - 3/4 Load<br>88.3 % | Starting current, direct starting<br>69.9 A        |                            |
| Power factor - 1/2 Load<br>0.77 | Motor efficiency - 1/2 Load<br>88.8 % | Starting current, star-delta<br>23.3 A             |                            |

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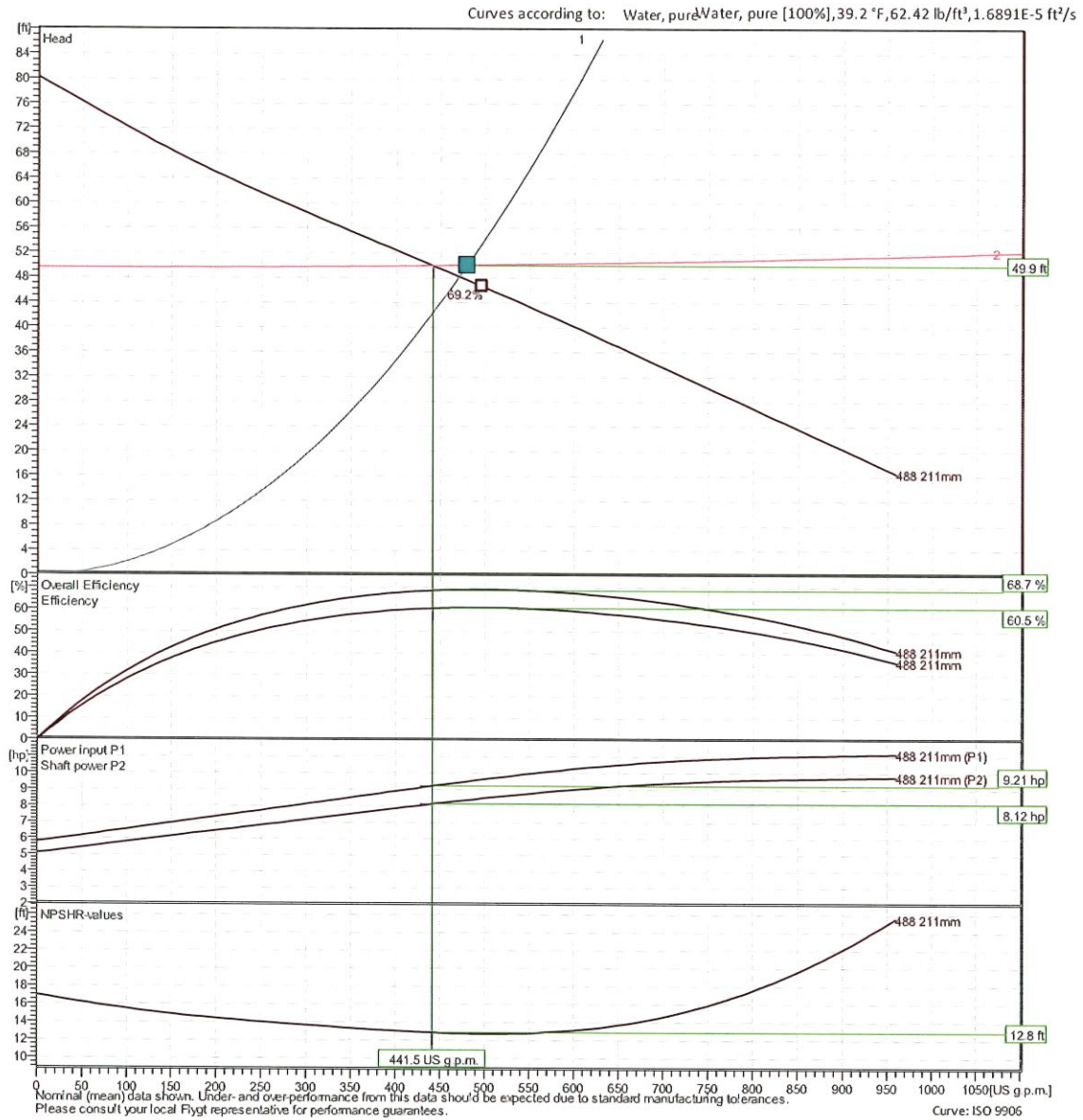
# NP 3127 HT 3~ Adaptive 488

Performance curve



## Duty point

Flow: 441 US g.p.m.      Head: 49.9 ft



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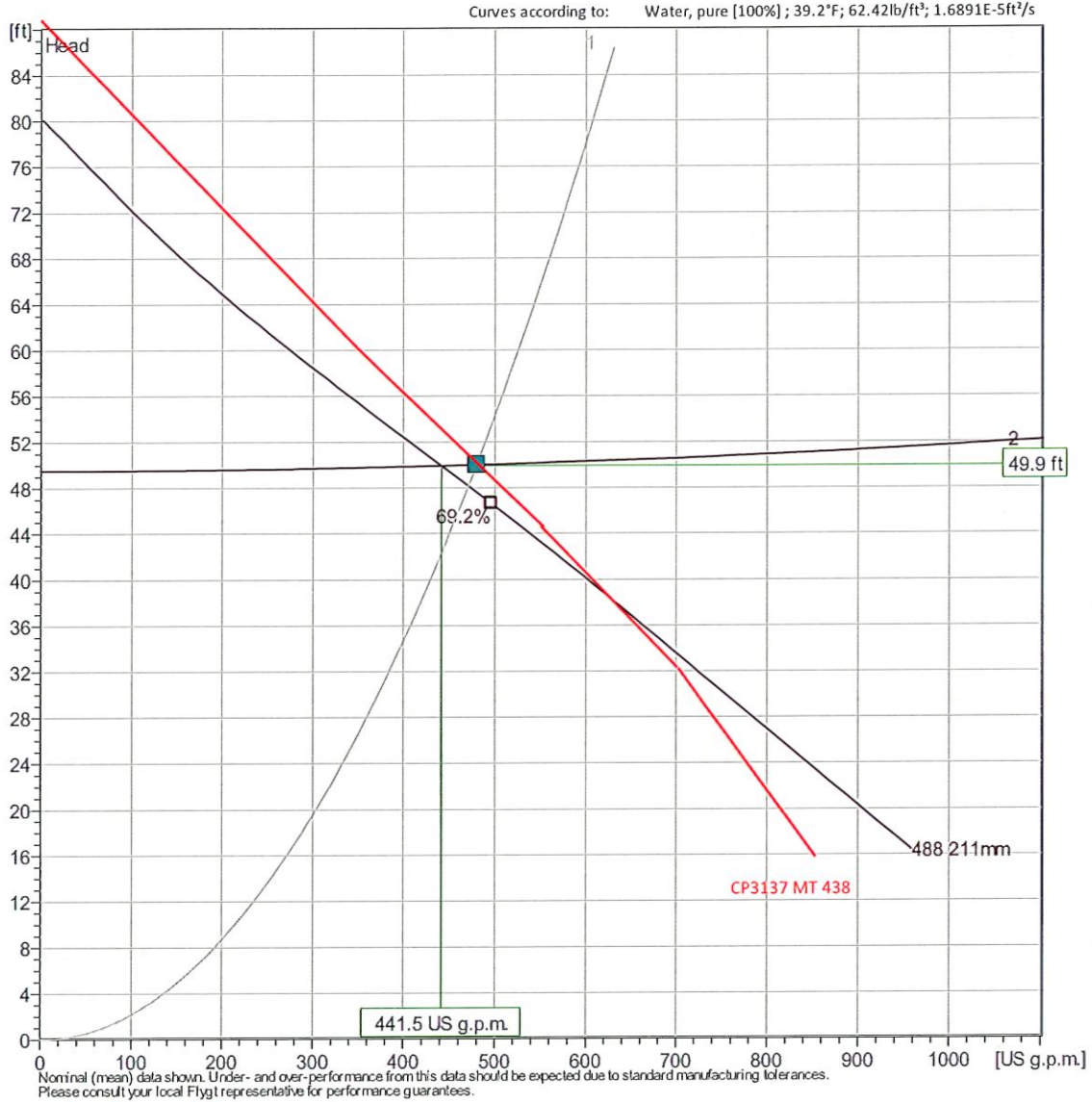
Dan Joyce

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# NP 3127 HT 3~ Adaptive 488

## Duty Analysis



### Operating characteristics

| Pumps / Systems | Flow      | Head | Shaft power | Flow      | Head | Shaft power | Hydr. eff. | Spec. Energy | NPSH <sub>re</sub> |
|-----------------|-----------|------|-------------|-----------|------|-------------|------------|--------------|--------------------|
|                 | US g.p.m. | ft   | hp          | US g.p.m. | ft   | hp          |            | kWh/US MG    |                    |
| 2               | 441       | 49.9 | 8.12        | 441       | 49.9 | 8.12        | 68.7 %     | 259          | 12.8               |
| 1               | 471       | 48.1 | 8.31        | 471       | 48.1 | 8.31        | 69.1 %     | 249          | 12.8               |

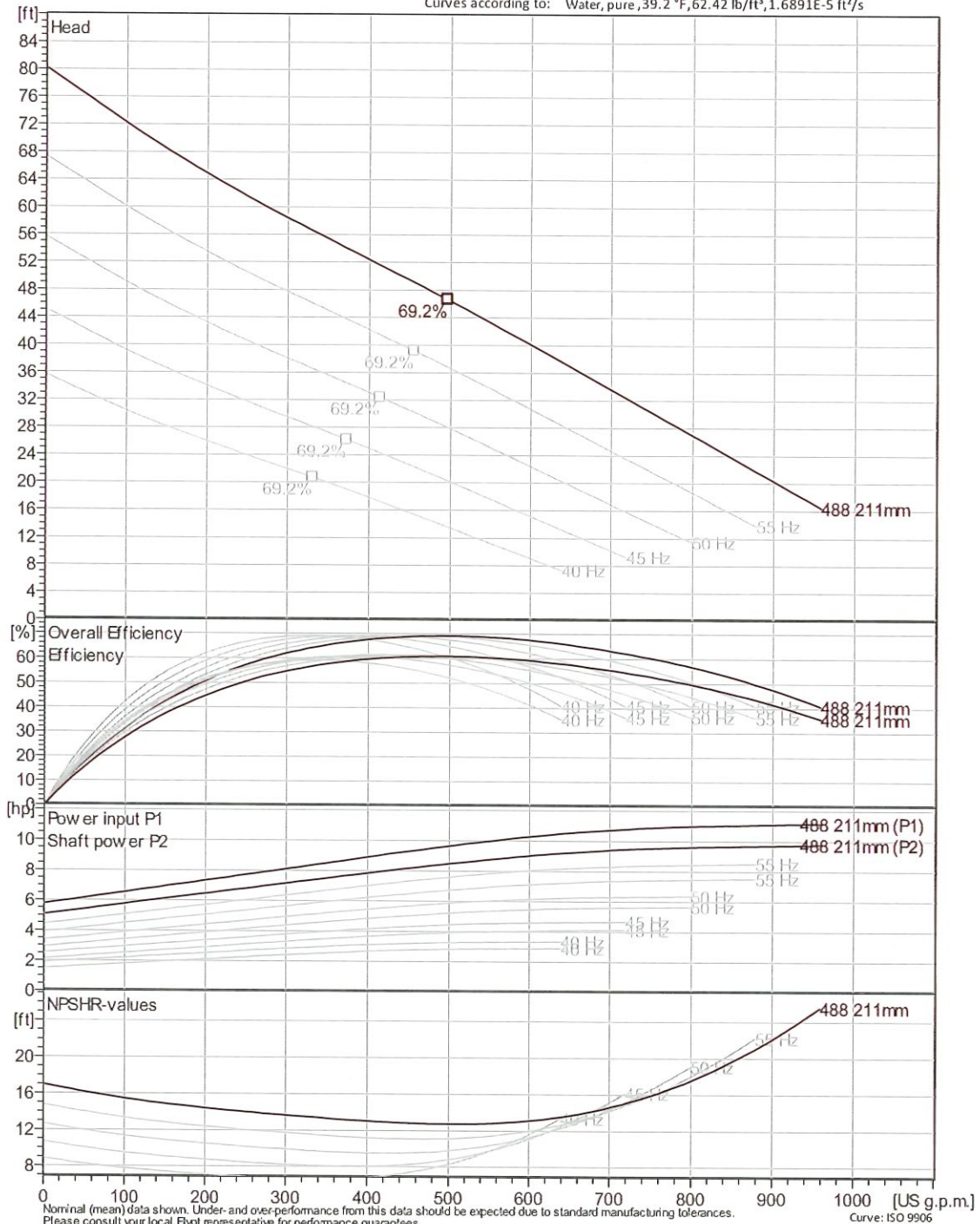
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 Last update: 7/17/2024

# NP 3127 HT 3~ Adaptive 488

VFD Curve



Curves according to: Water, pure, 39.2 °F, 62.42 lb/ft<sup>3</sup>, 1.6891E-5 ft<sup>2</sup>/s

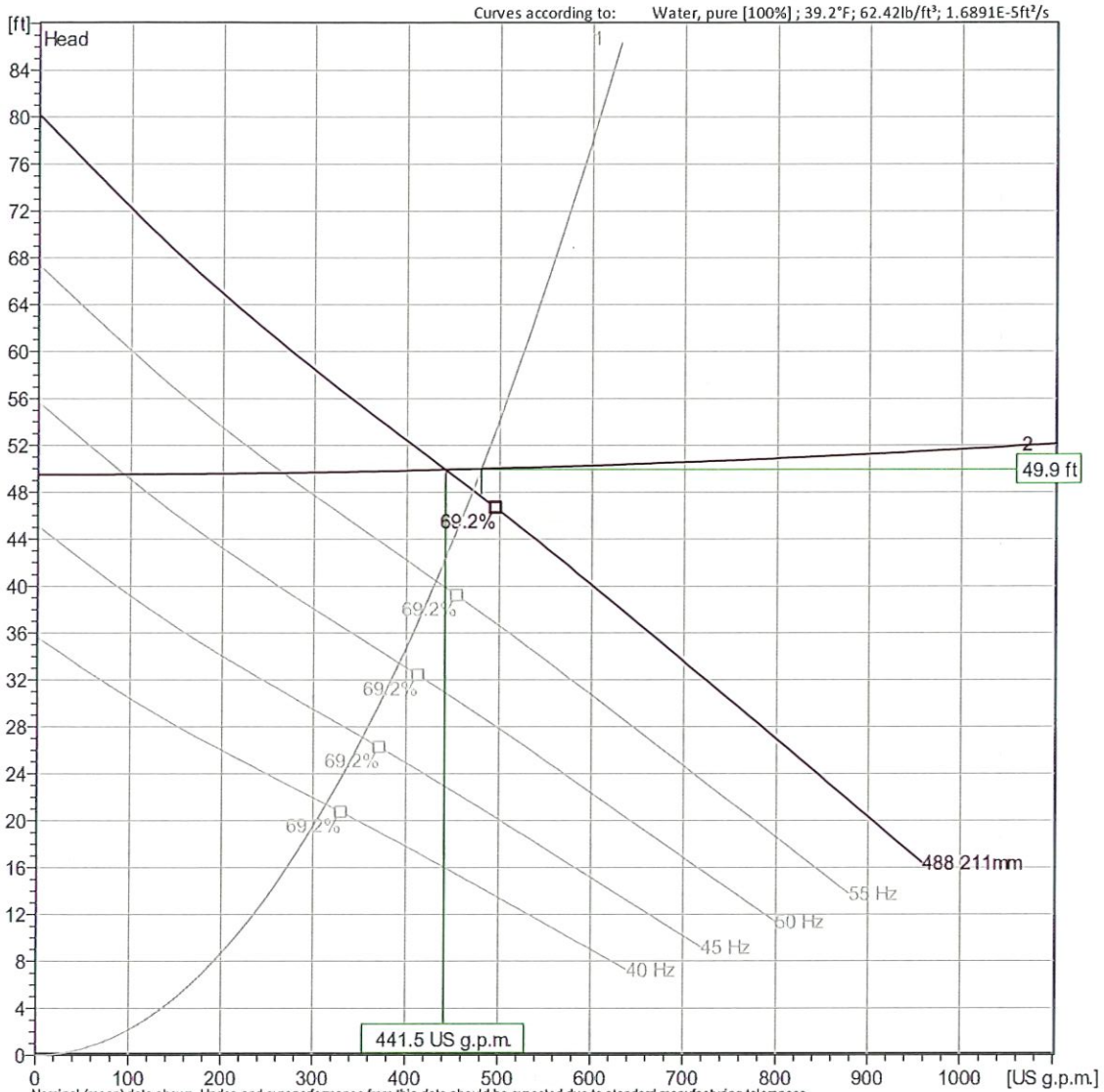


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# NP 3127 HT 3~ Adaptive 488

## VFD Analysis



Nominal (mean) data shown. Under- and over-performance from this data should be expected due to standard manufacturing tolerances. Please consult your local Flygt representative for performance guarantees.

### Operating Characteristics

| Pumps / Systems | Frequency | Flow      | Head | Shaft power | Flow      | Head | Shaft power | Hydr. eff. | Specific energy | NPSHr |
|-----------------|-----------|-----------|------|-------------|-----------|------|-------------|------------|-----------------|-------|
|                 |           | US g.p.m. | ft   | hp          | US g.p.m. | ft   | hp          |            | kW/US MG        |       |
| 2               | 60 Hz     | 441       | 49.9 | 8.12        | 441       | 49.9 | 8.12        | 68.7 %     | 259             | 12.8  |
| 2               | 55 Hz     | 265       | 49.7 | 5.46        | 265       | 49.7 | 5.46        | 61.1 %     | 288             | 11.9  |
| 2               | 50 Hz     | 92.8      | 49.5 | 3.39        | 92.8      | 49.5 | 3.39        | 34.2 %     | 519             | 11.4  |
| 2               | 45 Hz     |           |      |             |           |      |             |            |                 |       |

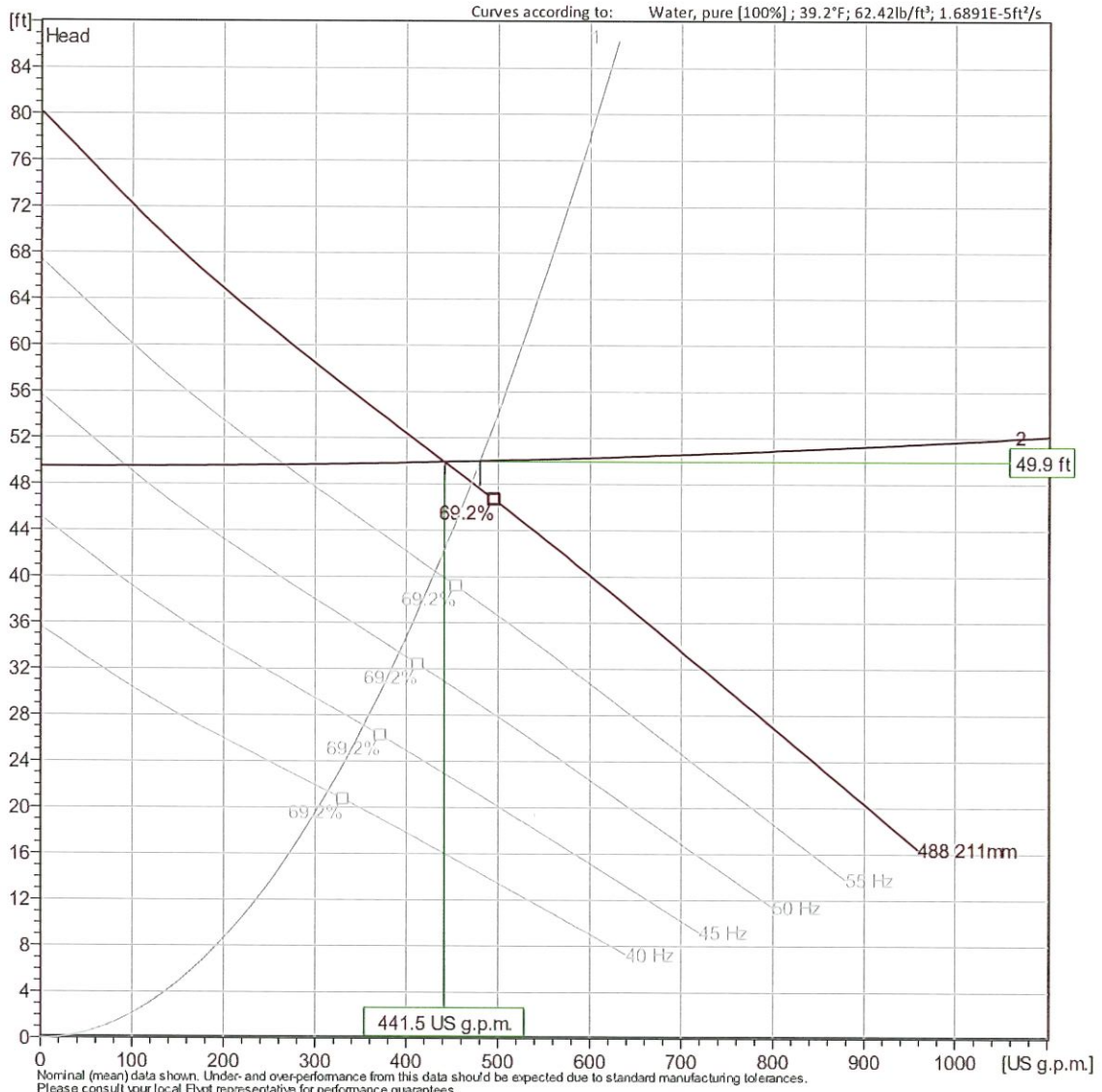
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# NP 3127 HT 3~ Adaptive 488

## VFD Analysis



### Operating Characteristics

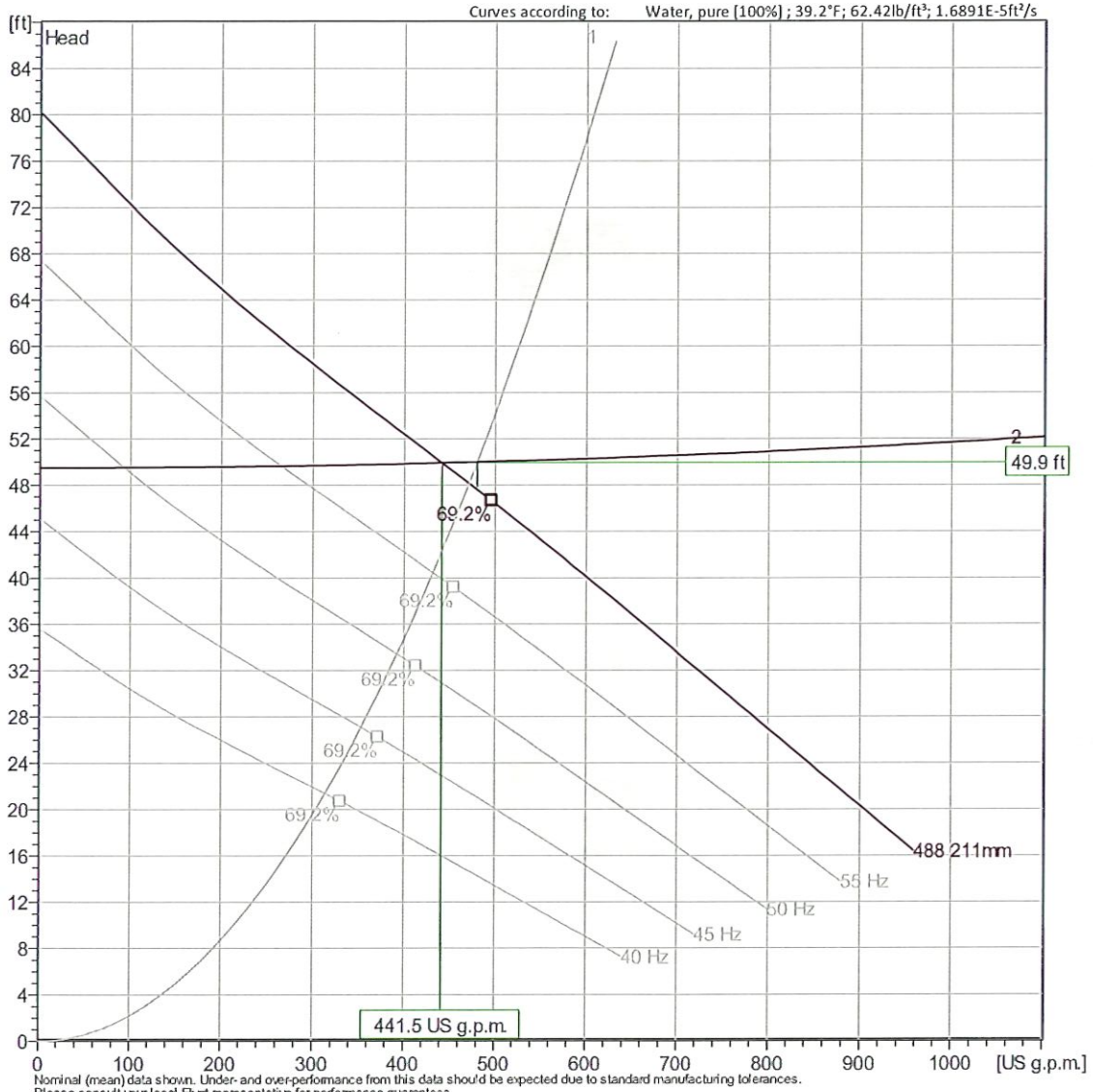
| Pumps / Systems | Frequency | Flow      | Head | Shaft power | Flow      | Head | Shaft power | Hydr. eff. | Specific energy | NPSH <sub>req</sub> |
|-----------------|-----------|-----------|------|-------------|-----------|------|-------------|------------|-----------------|---------------------|
|                 |           | US g.p.m. | ft   | hp          | US g.p.m. | ft   | hp          |            | kW/US MG        |                     |
| 2               | 40 Hz     |           |      |             |           |      |             |            |                 |                     |
| 1               | 60 Hz     | 471       | 48.1 | 8.31        | 471       | 48.1 | 8.31        | 69.1 %     | 249             | 12.8                |
| 1               | 55 Hz     | 432       | 40.5 | 6.4         | 432       | 40.5 | 6.4         | 69.1 %     | 208             | 11.1                |
| 1               | 50 Hz     | 393       | 33.4 | 4.81        | 393       | 33.4 | 4.81        | 69.1 %     | 172             | 9.53                |

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# NP 3127 HT 3~ Adaptive 488

## VFD Analysis



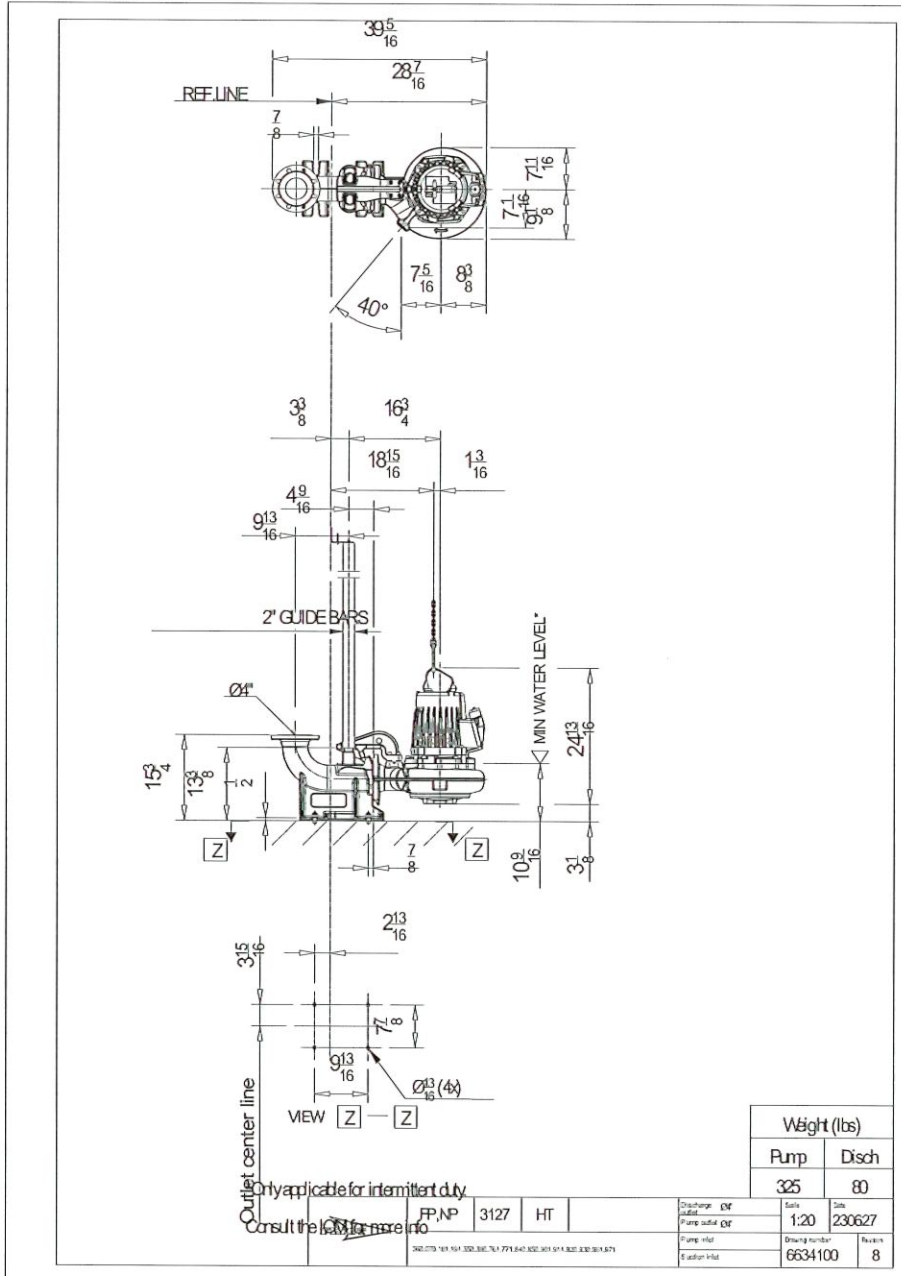
### Operating Characteristics

| Pumps / Systems | Frequency | Flow      | Head | Shaft power | Flow      | Head | Shaft power | Hydr. eff. | Specific energy | NPSH <sub>r</sub> |
|-----------------|-----------|-----------|------|-------------|-----------|------|-------------|------------|-----------------|-------------------|
|                 |           | US g.p.m. | ft   | hp          | US g.p.m. | ft   | hp          |            | kW/US MG        |                   |
| 1               | 45 Hz     | 353       | 27.1 | 3.5         | 353       | 27.1 | 3.5         | 69.1 %     | 140             | 8.05              |
| 1               | 40 Hz     | 314       | 21.4 | 2.46        | 314       | 21.4 | 2.46        | 69.1 %     | 114             | 6.67              |

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 Block:                                      Created on: 7/17/2024      Last update: 7/17/2024

# NP 3127 HT 3~ Adaptive 488

Dimensional drawing



| Weight (lbs)   |          |
|----------------|----------|
| Pump           | Disch    |
| 325            | 80       |
| Scale          | Scale    |
| 1:20           | 230627   |
| Drawing number | Revision |
| 6634100        | 8        |

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7/17/2024

**1. Agreement, Integration and Conflict of Terms.** "Proposal" means the Seller's quotation, proposal and/or sales form, including any special conditions expressly incorporated by reference, and these terms and conditions. "Seller" means the applicable affiliate of Xylem Inc. that is party to the Agreement. "Buyer" means the entity that is party to the Agreement with Seller. "Agreement" means the definitive agreement, comprised of the Proposal and any other documents expressly included or incorporated by reference will govern the Buyer and Seller relationship. Seller's Proposal is expressly conditioned on Buyer's acceptance of these terms and conditions. Any additional or different terms and conditions contained in Buyer's purchase order or other communication will have no effect on the Agreement unless specifically agreed to in writing by the parties; and Seller hereby objects, and any such proposed modifications will not constitute Seller's acceptance of any such modifications. Seller's commencement of performance or delivery will not be deemed or construed as acceptance of Buyer's additional or different terms and conditions. In the case of any conflict among the foregoing documents, these terms will take precedence with the exception of (i) price and delivery, which will be governed by the order acknowledgment (if any) and invoice; and (ii) the Warranty, which will be governed by Seller's product documentation. This Agreement supersedes all prior negotiations, representations, or agreements, either written or oral, between the parties and, further, can only be altered, modified or amended with the express written consent of Seller.

**2. Proposal, Withdrawal, Expiration.** Unless otherwise stated in writing, Proposals are valid for thirty (30) calendar days from the date of issuance, unless otherwise provided therein. Seller reserves the right to cancel or withdraw the Proposal at any time with or without notice or cause prior to acceptance by Buyer to the Proposal terms, or after Buyer's acceptance if Buyer fails to complete any actions required by the Proposal for Seller to proceed. Seller nevertheless reserves its right to accept any contractual documents

received from Buyer after this 30-day period.

**3. Prices.** Prices apply to the specific quantities stated in the Proposal. Prices include handling fees and standard packing according to Seller's specifications for delivery. Buyer will, as an additional charge, pay all costs and taxes for special packing requested by Buyer, including packing for exports. To the extent allowed under law, prices are subject to change without notice. The price for the goods does not include any applicable sales, use, excise, Goods and Services Tax, Value Added Tax, or similar tax, duties or levies. Buyer will have the responsibility for the payment of all such applicable taxes.

**4. Payment Terms.** Seller reserves the right to require payment in advance or C.O.D. and otherwise modify credit terms should Buyer's credit standing not meet Seller's acceptance. Unless different payment terms are expressly set forth in the applicable Proposal or order acknowledgment or Sales Policy Manual, goods will be invoiced upon shipment. Buyer's payment must be in Seller's local currency, as determined by Seller's office location to which the order has been submitted. Any payment amount made by Buyer via credit card will be subject to a 3.0% charge. Payment in full is due within thirty (30) days from the invoice date ("**Payment Due Date**"), unless otherwise stated in Seller's documentation. Any Buyer-requested delivery delay solely affects delivery date and will not in any way alter the original Payment Due Date. If Buyer fails to make payment when due, Buyer agrees that Seller may apply a service or finance charge of the lesser of (i) one and one-half percent (1.5%) per month (eighteen percent (18%) per annum), or (ii) the highest rate permitted by applicable law, on the unpaid balance of the invoice from and after the invoice due date. Buyer is responsible for all costs and expenses associated with any checks returned due to insufficient funds. All credit sales are subject to prior approval of Seller's credit department. Export shipments will require payment prior to shipment or an appropriate Letter of Credit. If, during the performance of the Agreement, the

financial responsibility or condition of Buyer is such that Seller in good faith deems Buyer insecure, Seller may: (a) request financial assurances; (b) suspend performance and will not be obligated to continue performance under the Agreement; (c) stop goods in transit and defer or decline to make delivery of goods, except upon receipt of satisfactory security or cash payments in advance; and/or (d) terminate the order per Article 11. Seller also retains any/all rights to enforce payment defaults to the full price of the work completed and in process. Upon default by Buyer in payment when due, if Buyer fails to immediately and without demand pay to Seller the entire amount in default for any and all shipments made to Buyer, irrespective of the applicable terms and/or contract under which those shipments were as a debt due to Seller, Seller may withhold all subsequent shipments until the full amount in default is settled. Acceptance by Seller of less than full payment will not be a waiver of any of its rights hereunder. Buyer may not assign or transfer this Agreement or any interest in it, or monies payable under it, without the prior written consent of Seller and any assignment made without this consent will be null and void.

**5. Title, Delivery, Risk of Loss, Delay.** Delivery dates are estimates, and time is not of the essence. Unless otherwise specified by Seller, delivery and transfer of risk of loss for shipments to Buyers that are not Related Party Buyers will be made Ex Works (Incoterms 2020), Seller's plant or Distribution Center. Title will pass when risk of loss transfers. If Seller is required to warehouse or store goods on behalf of Buyer, due to a Buyer delay or request (see Article 23), warehouse and storage fees will be applied and payable upon invoice, as will any required maintenance throughout the delay. Risk of loss for all stored goods will be borne by Buyer from the start of this period. Seller has no obligation to the Buyer to arrange insurance while Buyer's goods are in storage at named place, with all such responsibility and insurance to be borne by Buyer accordingly. Seller will not be responsible to Buyer for any loss, whether direct, indirect, incidental or consequential in nature, or for any loss of

profits or revenue, or liquidated damages, arising out of or relating to any failure of the goods to be delivered by the specified delivery date. In the absence of specific instructions, Seller will select the carrier. Buyer will reimburse Seller for the additional cost of its performance resulting from inaccurate or lack of delivery instructions, or by any act or omission on Buyer's part. Any such additional cost may include storage, insurance, protection, re-inspection and delivery expenses. Buyer further agrees that any payment due on delivery will be made on delivery into storage as though goods had been delivered in accordance with the order.

**"Related Party Buyers"** means Buyers, directly or indirectly, owned more than fifty percent (50%) by Xylem Inc. or under significant or joint control by Xylem Inc. For export shipments from the U.S.A. to Related Party Buyers, delivery and transfer of risk of loss for the goods will be DAP (Incoterms 2020), port of destination unless otherwise specified. Related Party Buyer will be importer of record for any customs clearance. For shipments to Related Party Buyers that are not export shipments from the U.S.A., delivery and transfer of risk of loss will be FCA (Incoterms 2020), Seller's plant or Distribution Center unless otherwise specified. For all Related Party Buyer transactions, title will pass to Buyer when risk of loss passes to Buyer.

Buyer grants to Seller a continuing security interest in and a lien upon the goods supplied by Seller under this Agreement and the proceeds thereof (including insurance proceeds), as security for the payment of all such amounts and the performance by Buyer of all of its obligations to Seller under the Agreement and all such other sales, and Buyer will have no right to sell, encumber or dispose of the goods. Buyer's respective insurance policy for any such Seller claim will include a waiver of subrogation in favor of Seller. Buyer will execute any and all financing statements and other documents and instruments and do and perform any and all other acts and things which Seller may consider necessary, desirable, or appropriate to establish, perfect or protect Seller's title, security interest and lien. In

addition, Buyer authorizes Seller and its agents and employees to execute any and all such documents and instruments and do and perform any and all such acts and things, at Buyer's expense, in Buyer's name and on its behalf. Such documents and instruments may also be filed without the signature of Buyer to the extent permitted by law.

**6. Warranty.** Except as provided above, for goods sold by Seller to Buyer(s) that are used by Buyer for personal, family or household purposes, Seller warrants the goods to Buyer on the terms of Seller's limited warranty available on Seller's website. For any other purpose, Seller warrants that the goods sold to Buyer under the Agreement (with the exception of software, membranes, seals, gaskets, elastomer materials, coatings and other "wear parts" or consumables all of which are not warranted except as otherwise provided in the Proposal) will be (i) built in accordance with the specifications referred to in the Proposal, if such specifications are expressly made a part of the Agreement, and (ii) free from defects in material and workmanship for a period of one (1) year from the date of installation or eighteen (18) months from the date of shipment (which date of shipment will not be greater than thirty (30) days after receipt of notice that the goods are ready to ship), whichever occurs first, unless a longer period is specified in the product documentation (the **"Warranty"**). For services, the warranty period will be three (3) months from the date the services are performed unless otherwise expressly set forth in the Proposal or sales form or order acknowledgment.

Seller will, at its option, either repair or replace any goods which fails to conform with the Warranty; provided, however, that under either option, Seller will not be obligated to remove the defective goods or install the replaced or repaired goods and Buyer will be responsible for all other costs, including service costs, shipping fees and expenses.

Buyer's failure to comply with Seller's repair or replacement advice will constitute a waiver of Buyer's rights and render all

warranties void. Any parts repaired or replaced by Seller under the Warranty are warranted only for the remaining balance of the warranty period. The Warranty is conditioned on Buyer giving written notice to Seller of any defects in material or workmanship of warranted goods within ten (10) days, or shorter period as dictated by the issue, of the date when any defects are first manifest. Seller will have no warranty obligations to Buyer with respect to any goods or parts of the goods that: (a) have been repaired by third parties other than Seller or without Seller's written approval; (b) have been subject to misuse, misapplication, neglect, alteration, accident, or physical damage; (c) have been used in a manner contrary to Seller's instructions for installation, operation and maintenance; (d) have been damaged from ordinary wear and tear, corrosion, or chemical attack; (e) have been damaged due to abnormal conditions, vibration, failure to properly prime, or operation without flow; (f) have been damaged due to a defective power supply or improper electrical protection; (g) have been damaged resulting from the use of accessory equipment not sold by Seller or not approved by Seller in connection with goods supplied by Seller hereunder; or (h) not sold by Seller or its authorized supplier. In any case of goods not manufactured by Seller, there is no warranty from Seller; however, Seller will extend to Buyer any warranty received from Seller's supplier of such goods.

**THE FOREGOING WARRANTY IS EXCLUSIVE AND IN LIEU OF ANY AND ALL OTHER EXPRESS OR IMPLIED WARRANTIES, GUARANTEES, CONDITIONS OR TERMS OF WHATEVER NATURE RELATING TO THE GOODS PROVIDED HEREUNDER, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WHICH ARE HEREBY EXPRESSLY DISCLAIMED AND EXCLUDED. BUYER'S EXCLUSIVE REMEDY AND SELLER'S AGGREGATE LIABILITY FOR BREACH OF ANY OF THE FOREGOING WARRANTIES ARE LIMITED**



**TO REPAIRING OR REPLACING THE GOODS AND WILL IN ALL CASES BE LIMITED TO THE AMOUNT PAID BY THE BUYER HEREUNDER.**

**7. Inspection.** Buyer will have the right to inspect the goods upon their receipt. When delivery is to Buyer's site or to a project site, Buyer will notify Seller in writing of any apparent shipment shortages, damages, or nonconformity of the goods within three (3) days from receipt by Buyer, unless a shorter period is required in Seller's Proposal. For all other deliveries, Buyer will notify Seller in writing of any nonconformity with this Agreement within fourteen (14) days from receipt by Buyer. Failure to give such applicable notice will constitute a waiver of Buyer's right to inspect and/or reject the goods for nonconformity and will be equivalent to an irrevocable acceptance of the goods by Buyer. Claims for loss of or damage to goods in transit must be made to the carrier, and not to Seller unless different terms are expressly set forth in Seller's Proposal

**8. SELLER'S LIMITATION OF LIABILITY. EXCEPT AS OTHERWISE PROVIDED BY LAW, IN NO EVENT WILL SELLER'S LIABILITY EXCEED THE AMOUNT PAID BY BUYER UNDER THIS AGREEMENT. SELLER WILL HAVE NO LIABILITY FOR LOSS OF PROFIT, LOSS OF ANTICIPATED SAVINGS OR REVENUE, LOSS OF INCOME, LOSS OF BUSINESS, LOSS OF PRODUCTION, LOSS OF OPPORTUNITY, LOSS OF REPUTATION, LIQUIDATED, INDIRECT, CONSEQUENTIAL, INCIDENTAL, PUNITIVE, TREBLE, OR EXEMPLARY DAMAGES. THE FOREGOING LIMITATIONS OF LIABILITY WILL BE EFFECTIVE WITHOUT REGARD TO SELLER'S ACTS OR OMISSIONS OR NEGLIGENCE OR STRICT LIABILITY IN PERFORMANCE OR NON-PERFORMANCE HEREUNDER.**

To the extent the Agreement provides a specified remedy for a default or breach, the given remedy will be Seller's sole liability and Buyer's sole and exclusive remedy for the default or breach to the exclusion of any and all other remedies that

may be available at law, in equity, or otherwise. The terms of this Article 8 survive expiry or termination of the Agreement and prevail over all other provisions contained in the Agreement.

**9. USED GOODS. USED GOODS ARE SOLD IN AN AS IS, WHERE IS CONDITION. SELLER MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, AS TO THE NATURE, QUALITY OR CONDITION OF THE GOODS, OR ITS SUITABILITY FOR ANY USE, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, UNLESS EXPRESSLY AGREED UPON IN WRITING BETWEEN THE PARTIES. SELLER WILL HAVE NO LIABILITY TO BUYER HEREUNDER OR IN CONNECTION WITH THE GOODS, INCLUDING WITHOUT LIMITATION, FOR LOSS OF PROFIT, LOSS OF INCOME, LOSS OF PRODUCTION, LOSS OF OPPORTUNITY, INDIRECT, CONSEQUENTIAL, INCIDENTAL, PUNITIVE OR EXEMPLARY DAMAGES.**

**10. Force Majeure.** Seller may cancel, terminate, or suspend this Agreement and Seller will have no liability for any failure to deliver or perform, or for any delay in delivering or performing any obligations, due to acts or omissions of Buyer and/or its contractors, or due to Force Majeure. "Force Majeure" means any event or circumstance beyond Seller's reasonable control, including but not limited to: (A) acts of God, such as natural disasters, drought, fire, flood, earthquake, tsunami; (B) war (declared or undeclared), riots, insurrection, rebellion, acts of the public enemy, acts of terrorism, sabotage, blockades, governmental authorities acts or inactions, embargoes; (C) disease, pandemics, epidemics; (D) currency restrictions; and (E) labor shortages or disputes, unavailability of components, materials, or parts, fuel, power, energy or transportation facilities; failures of suppliers or subcontractors to effect deliveries. In all such cases, the time for performance will be extended in an amount equal to the period necessary for

Seller to recover from the event, provided that Seller will, as soon as reasonably practicable after it has actual knowledge of the beginning of any excusable delay, notify Buyer of the delay and of the anticipated duration and consequence thereof; and, to the extent the Force Majeure impacts the pricing specified in the Proposal or Agreement, as the case may be, Seller will notify Buyer of the revised pricing and its basis. Should Buyer reject any such Force Majeure-related pricing increase, the parties will resolve in accordance with the Agreement's dispute resolution process. Seller will resume performance of its obligations hereunder with the least possible delay.

**11. Cancellation; Termination.** Except as otherwise provided in this Agreement, no order may be cancelled on special or made-to-order goods or unless otherwise requested in writing by either party and accepted in writing by the other. If a cancellation is requested by Buyer, Buyer will, within thirty (30) days of such cancellation, pay Seller a cancellation fee, which will include all costs and expenses incurred by Seller prior to the receipt of the request for cancellation including, but not limited to, all commitments to its suppliers, subcontractors and others, all fully burdened labor and overhead expended by Seller, plus a reasonable profit charge. Return of goods will be in accordance with Seller's most current Return Materials Authorization and subject to a minimum fifteen percent (15%) restocking fee, unless otherwise specified.

Notwithstanding anything to the contrary in the Agreement, if the commencement by or against Buyer of any voluntary or involuntary proceedings in bankruptcy or insolvency, or if Buyer will be adjudged bankrupt, make a general assignment for the benefit of its creditors, or if a receiver will be appointed on account of Buyer's insolvency, Seller may, upon providing Buyer notice that has immediate effect upon issuance, terminate the Agreement. If Buyer fails to make any payment when due under this Agreement, or if Buyer does not correct or, if immediate correction is not possible, commence and diligently

continue action to correct any default of Buyer to comply with any of the provisions or requirements of this Agreement within ten (10) calendar days after being notified in writing of such default by Seller, Seller may, by written notice to Buyer, without prejudice to any other rights or remedies which Seller may have, terminate its further performance of this Agreement. If any termination under this Article 11, Seller will be entitled to receive payment as if Buyer has cancelled the Agreement as per the preceding paragraph immediately and without notice as a debt due. Seller may nevertheless elect to complete its performance of this Agreement by any means it chooses. Buyer agrees to be responsible for any additional costs incurred by Seller in so doing. Upon termination of this Agreement, the rights, obligations and liabilities of the parties which will have arisen or been incurred under this Agreement prior to its termination will survive such termination.

**12. Drawings.** All drawings are the property of Seller. Seller does not supply detailed or shop working drawings of the goods; however, Seller will supply necessary installation drawings. The drawings and bulletin illustrations submitted with Seller's Proposal show general type, arrangement and approximate dimensions of the goods to be furnished for Buyer's information only and Seller makes no representation or warranty regarding their accuracy. Unless expressly stated to the contrary within the Proposal, all drawings, illustrations, specifications or diagrams form no part of this Agreement. Seller reserves the right to alter such details in design or arrangement of its goods which, in its judgment, constitute an improvement in construction, application or operation. After Buyer's acceptance of this Agreement, any changes in the type of goods, the arrangement of the goods, or application of the goods requested by Buyer will be made at Buyer's expense.

**13. Confidential Information.** Seller's designs, illustrations, drawings, specifications, technical data, catalogues, "know-how", economic or other business

or manufacturing information (collectively, "**Confidential Information**") disclosed to Buyer will be deemed proprietary and confidential to Seller. Buyer agrees not to disclose, use, or reproduce any Confidential Information without first having obtained Seller's written consent. Buyer's agreement to refrain from disclosing, using or reproducing Confidential Information will survive completion of the work under this Agreement. Buyer acknowledges that its improper disclosure of Confidential Information to any third party will result in Seller's suffering irreparable harm. Seller may also seek injunctive or equitable relief to prevent Buyer's unauthorized disclosure.

**14. Installation and Start-up.** Unless otherwise agreed to in writing by Seller, installation will be the sole responsibility of Buyer. Where start-up service is required with respect to the goods purchased hereunder, it must be performed by Seller's authorized personnel or agents; otherwise, the warranty is void. If Buyer has engaged Seller to provide an engineer for start-up advisory services such engineer will function in an advisory capacity only and Seller will have no responsibility for the quality of workmanship of the installation. In any event, Buyer understands and agrees that it will furnish, at Buyer's expense, all necessary foundations, supplies, labor and facilities that might be required to install and operate the goods.

**15. Specifications; Back-charges.** Changes in specifications requested by Buyer are subject to Seller's written approval. If such changes are approved, the price for the goods and the delivery schedule will be changed to reflect such changes. Buyer will not make purchases, nor will Buyer incur any labor that would result in a back charge to Seller without prior written consent of an authorized employee of Seller.

**16. Buyer's Warranty.** Buyer warrants the accuracy of any and all information relating to the details of its operating conditions, including influent quality, temperatures, pressures, and where applicable, the nature

of all hazardous materials. Seller can justifiably rely upon the accuracy of Buyer's information in its performance. Should Buyer's information prove inaccurate, Buyer agrees to reimburse Seller for any losses, liabilities, damages and expenses that Seller may have incurred as a result of any inaccurate information provided by Buyer to Seller.

**17. Product Recalls.** In cases where Buyer purchases for resale, Buyer will take all reasonable steps (including those measures prescribed by the Seller) to ensure: (a) all customers of the Buyer and authorized repairers who own or use affected goods are advised of every applicable recall campaign of which the Buyer is notified by the Seller; and (b) modifications notified to Buyer by Seller by means of service campaigns, recall campaigns, service programs or otherwise are made with respect to any goods sold or serviced by Buyer to its customers or authorized repairers. Should Buyer fail to perform any of the actions required under this obligation, Seller will have the right to obtain names and addresses of the Buyer's customers from Buyer and Seller will be entitled to get into direct contact with such customers.

**18. GOVERNING LAW.** THE TERMS OF THIS AGREEMENT AND ALL RIGHTS AND OBLIGATIONS HEREUNDER WILL BE GOVERNED BY THE LAWS OF THE JURISDICTION WHERE SELLER'S OFFICE IS LOCATED TO WHICH THIS ORDER HAS BEEN SUBMITTED (WITHOUT REFERENCE TO PRINCIPLES OF CONFLICTS OF LAWS). THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER WILL NOT BE GOVERNED BY THE 1980 U.N. CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS. THIS ARTICLE 18 WILL SURVIVE ANY TERMINATION, CANCELLATION, OR EXPIRATION OF THE AGREEMENT.

**19. DISPUTE RESOLUTION.** Prior to the commencement of any litigation, in the event of any dispute between the Buyer and Seller arising out of or in connection with the Agreement or the good or services

contemplated therein; Buyer and Seller agree to first make a good faith effort to resolve the dispute informally. The first attempt at dispute resolution shall be made by the technical project managers (or equivalent) of the parties. Should resolution not be reached within ten (10) business days, senior management of both parties will attempt to resolve the dispute. If the parties are still unable to resolve the dispute, the dispute will be sent to litigation. TO ENCOURAGE PROMPT AND EQUITABLE RESOLUTION OF ANY LITIGATION, EACH PARTY HEREBY IRREVOCABLY WAIVES ITS RIGHTS TO A TRIAL BY JURY IN ANY LITIGATION RELATED TO THIS AGREEMENT

**20. Export Regulation.** Seller's goods, including any software, documentation and any related technical data included with, or contained in, or utilized by such goods or deliverables, may be subject to applicable export laws and regulations, including United States Export Administration Regulations and Buyer will comply with all such applicable laws and regulations. In particular, the Buyer will not, and will not permit any third parties to, directly or indirectly, export, re-export or release any goods to any jurisdiction or country to which, or any party to whom, the export, re-export or release of any goods is prohibited by applicable law, regulation or rule. The Buyer will be responsible for any breach of this Article 20.

**21. Privacy and Customer Data.** Buyer acknowledges that Seller may collect and process personal data for the purposes outlined in the Agreement. Seller's data privacy policy is available at <https://www.xylem.com/en-us/support/privacy/>. Buyer acknowledges that it has read and understood Seller's privacy policy and agrees to the use of personal data outlined herein. The collection and use of personal data by Buyer is Buyer's responsibility. Some Seller goods are equipped with cloud communication capability resulting in these goods automatically transmitting, on an encrypted basis, data to Seller's X-Cloud. Unless otherwise specified in the

Agreement, Buyer agrees and authorizes Seller to indefinitely store any data collected from Seller goods ("**Customer Data**") on Seller's hardware, software, networking, storage, and related technology. Buyer grants Seller and Seller's affiliates a worldwide, royalty-free, non-exclusive, irrevocable right and license to access, store and use such Customer Data to: (a) provide services; (b) analyze and improve services; (c) analyze and improve any Seller or affiliate goods or software; and (d) for any other internal use, provided any such internal use is limited to using the Customer Data in an aggregated and anonymized manner that cannot be reconstituted as Buyer's Customer Data.

**22. Titles; Waiver; Severability.** The article titles are for reference only and will not limit or restrict the interpretation or construction of this Agreement. Seller's failure to insist, in any one or more instances, upon Buyer's performance of this Agreement, or to exercise any rights conferred, will not constitute a waiver or relinquishment of any such right or right to insist upon Buyer's performance in any other regard. The partial or complete invalidity of any one or more provisions of this Agreement will not affect the validity or continuing force and effect of any other provision.

**23. Changes.** Any requested change(s) to the work set forth in this Agreement, including to the delivery schedule, requires the parties to enter into a written change order that contains a description of the change(s) and all other applicable terms, including change in price, storage fees, and/or delivery schedule ("**Change Order**"). A Change Order may be requested by either party. For any Buyer-related change to the delivery schedule, including any due to a Buyer delay, the parties will enter into a Change Order and any such Change Order will state the revised delivery date(s), the revised Agreement price, storage and maintenance fees, and all other respective revisions. Seller will not be obliged to proceed with any change and no such change will be binding or have any effect

on Seller or this Agreement unless/until the parties enter into a Change Order; provided, however, that if Seller must store goods due to a buyer delay, all associated risk, expenses, and fee will nonetheless be borne by Buyer from the beginning of the delay period. Should Seller's ability to proceed with the work be altered by Buyer's delay in entering into a Change Order, Seller also will be entitled to assess late fees and suspend performance of all work for the period of delay.

