

# VAL-MATIC VALVE & MFG. CORP. TERMS OF SALE

## 1. EXCLUSIVE TERMS.

Val-Matic (Seller) will sell the goods described in this document upon the Terms and Conditions set forth below, which are made a part of this Sale. Seller's offer to sell is expressly conditioned on the acceptance without change or additions by the Buyer of Seller's Terms of Sale set forth herein. Seller's acceptance of any offer from Buyer is expressly conditioned upon the Buyer agreeing to Seller's Terms of Sale included herein. Any different, conflicting or additional terms or conditions in the Buyer's documents or referenced therein are deemed material and are expressly objected to and rejected hereby. These Terms of Sale cannot be modified, canceled, rescinded or waived except by written agreement signed by Seller and Buyer. If Buyer uses its own purchase order, acceptance, acknowledgment, confirmation or other form, such form shall be used for convenience only, and shall evidence Buyer's unconditional agreement to these Terms of Sale. Any additional or different terms appearing or referenced in such forms are objected to and shall not be binding upon Seller. All Orders are subject to review and acceptance, or correction at the home office. Any Orders containing errors will be corrected by Seller and resubmitted to Buyer for its acceptance or refusal.

## 2. PRICES.

- (a) Prices are firm for a period of 30 days following the date of this Order.
- (b) Terms are net due 30 days from date of invoice unless alternate terms are mutually agreed upon by seller & buyer prior to order placement. Any invoices not paid when due shall be charged a delinquency charge of 1-1/2% of the outstanding balance per month.
- (c) Prices do not include any applicable governmental taxes or other charges. Buyer shall pay any such taxes or other charges, plus penalties and expenses, if any, upon receipt of an Invoice from Seller. In lieu of payment of such taxes, Buyer shall provide Seller with a tax exemption certificate acceptable to the taxing authority.
- (d) Unless otherwise stated in this Order, all prices are EXW (Seller's home office), As defined in Incoterms 2010 as adopted by the International Chamber of Commerce.
- (e) Goods not manufactured by Seller will be invoiced at prices stated in the Order, subject to increases should any of Seller's suppliers increase prices of such goods.
- (f) Buyer shall reimburse Seller for all costs and expenses, including attorneys' fees and court costs, incurred in collecting any amounts due.
- (g) Buyer grants Seller a security interest in the goods to secure payments due from Buyer to Seller. Upon written demand of Seller, Buyer agrees to sign a financing statement to evidence such security interest. Seller shall have all of the rights and duties of a Secured Party, and Buyer shall have all of the rights and duties of a Debtor under the Uniform Commercial Code - Secured Transactions of Illinois.

## 3. COMPLETION - DELIVERY.

- (a) The proposed delivery date and performance schedule stated herein are Seller's best estimate and are not binding on Seller.
- (b) Seller shall have no liability to Buyer or any third party for any loss, damage, or expense from any delay or failure of performance due to any cause beyond the reasonable control of Seller, including, but not limited to: fire or other casualty; strike or labor difficulty; accident; war conditions; government regulation or restriction; shortages in transportation, power, labor or material; freight embargo; riot or civil commotion; default of Seller's supplier; or prohibitions or events which render performance difficult or impossible.
- (c) Upon giving notice to Buyer of a delay in accordance with the Illinois Uniform Commercial Code, Seller shall allocate all goods produced by Seller among the existing customers of Seller in proportion to Orders then received.
- (d) If Buyer requests a delay or suspension in completion or shipment of any part of the goods for any reason, Seller shall make a reasonable determination of any cost or scheduling impact of such delay and all such costs shall be billed to Buyer. Any delay period beyond 30 days after the original scheduled shipment date shall require Buyer to (1) take title and risk of loss of such goods, and (2) make arrangements for storage of such goods with the Seller or other party. In such case, Seller's invoice, which is customarily issued on shipment, shall be issued upon Seller's readiness to ship the goods.

## 4. TITLE AND DELIVERY.

Delivery of goods to a carrier by Seller F.O.B. Seller's home office, consigned to Buyer or its order, as Buyer may direct, shall be complete delivery to Buyer as well as delivery to Buyer of title, ownership and possession of the goods. Buyer assumes risk of loss, damage or shortage in transit and shall be responsible for pursuing all claims with the carrier or carriers' insurer. Buyer shall provide Seller with written notice of any shortage, loss, or damage within five days of receipt of the goods.

## 5. SERVICES PERFORMED.

If Buyer has requested Seller to service or repair any machinery or equipment, Buyer shall provide a safe area of sufficient size for Seller's employees, agents or contractors to perform the services. Buyer shall be responsible for the safety of all persons on, about, or adjacent to such areas. Buyer shall furnish to Seller all necessary work tools, equipment and supplies.

## 6. COOPERATION, CHANGES OR CANCELLATIONS.

- (a) Buyer shall cooperate with Seller and furnish any specifications, drawings, or information requested by Seller within a reasonable time after such request. Seller and its agents and employees are not obligated to treat as confidential any disclosure made by Buyer in connection with this or any other transactions with Seller.
- (b) Buyer shall not countermand, cancel, or change this Order or cause the work or shipment to be delayed or stopped except with the consent of, and upon terms agreed to by Seller. If Buyer cancels this Order, Seller shall have the right to discontinue work on this Order and receive full reimbursement for all costs incurred plus a reasonable profit.

## 7. RETURNS.

Product can be returned up to one year after shipment. The product should be unused and in like new condition. Acceptance of product at the factory requires a Return Goods Authorization (RGA). The RGA Number must be marked on the shipping label. Standard product is subject to a minimum return charge of 30%. Special product will be evaluated based on resale and/or salvage value. Product returned for refurbishing will be evaluated upon receipt. A refurbish quotation will be provided for acceptance prior to refurbishing.

## 8. PERFORMANCE BY SELLER.

If any proceedings are filed by Buyer or against Buyer in bankruptcy or insolvency, or for appointment of a receiver or trustee, or if Buyer makes an assignment for the benefit of creditors, Seller shall have the right to discontinue work on this Order and receive full reimbursement for all costs incurred plus a reasonable profit. If Seller, in its sole discretion, has reasonable grounds for insecurity as to Buyer's payment or performance, it may refuse to perform until it receives adequate written assurances of Buyer's payment or performance.

## 9. INSTALLATION.

Unless otherwise stated in this Order, Buyer shall install all goods, and Seller shall not be responsible for installation.

## 10. WARRANTY.

For a period of one year from date of shipment, Seller warrants that the goods manufactured

and the services performed by it under this Sale shall be free from defects in material and workmanship. Any goods sold that are not manufactured by Seller are warranted only to the extent Buyer may be able to enforce the warranty the manufacturer may make to Seller, but such goods are not warranted by Seller in any way.

NOTWITHSTANDING ANY PROVISION OF THIS OR ANY OF BUYER'S DOCUMENTS, THE WARRANTY CONTAINED IN THIS PARAGRAPH IS THE ONLY WARRANTY EXTENDED BY SELLER IN CONNECTION WITH ANY SALE BY IT AND IS EXTENDED TO BUYER ONLY AND NOT TO ANY SUCCESSIVE BUYERS, USERS, THIRD PARTIES, OR EMPLOYEES. THIS LIMITED WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

## 11. REMEDIES.

Written notice of a breach of warranty or other provision shall be given by Buyer to Seller at Seller's home office, within 30 days after Buyer discovers such breach or should have discovered such breach using reasonable care. Seller's obligations upon breach of warranty or other provision shall be limited, at Seller's election, to the repair or replacement of goods or crediting to Buyer of an amount not to exceed the purchase price of the goods. If notice of a breach of warranty or other provision is given by Buyer, Seller shall only be obligated to repair, replace or credit the purchase price for goods which examination by Seller or its representatives shall disclose to be defective under ordinary and normal use. Seller shall not be liable for payment of any consequential, incidental, indirect, special or tort damages of any kind including, but not limited to, any loss of profits even if Seller has been informed of the potential for such damages. No allowance shall be made for any expenses incurred by Buyer in repairing defective parts or supplying any missing parts, except upon the written consent of Seller. If Seller agrees to replace or repair a defective part, Buyer shall have the responsibility and bear the cost for procuring and providing all necessary dismantling, reassembling and handling facilities, and for freight and insurance for shipment of goods or parts to and from Seller.

## 12. BUYER RESPONSIBILITY - INDEMNITY.

- (a) Buyer shall provide adequate and efficient safeguards, work handling tools and safety devices necessary to provide a safe work place and to protect fully all personnel from bodily injury or death which otherwise may result from the installation, use, operation, setup or maintenance of the goods. Buyer shall comply with the Occupational Safety and Health Act, its regulations, and all other applicable federal, state and local codes and industry-accepted standards. Seller shall not be liable for the failure of Buyer to order, install, or use safeguards, work handling tools or safety devices. Buyer shall establish and require all persons who use, operate, setup or maintain the goods to use all proper safe operating procedures, including, but not limited to, procedures set forth in any manuals or instruction sheets relating to the goods. Buyer shall not remove or modify any devices, warning signs or manuals furnished with or installed upon or attached to the goods.
- (b) Buyer releases all claims and actions (including, but not limited to, any actions for injury to or death of any person or damage to property, and actions for indemnity or contribution) arising out of the manufacture, sale, use or operation of the goods which Buyer may have at any time against Seller, its agents or employees. Buyer shall indemnify and hold harmless Seller, its agents and employees from any loss, damage, expense (including reasonable attorneys' fees), claims, suits, judgment, or liabilities by reason of any injury to or death of any person or damage to any property, arising out of (1) any claimed or actual breach by Buyer of Buyer's obligations under paragraph 12 or (2) any acts primarily attributable to the conduct of Buyer, its employees or agents, including, but not limited to, negligent or reckless conduct, maintenance of the goods, additions to or modification of the goods, or use of the goods in an inappropriate manner.
- (c) Buyer shall notify Seller in writing, within 10 days after its occurrence, of any accident or malfunction involving any goods which result in injury to or death of persons, including Buyer's agents and employees, or damage to property, including Buyer's property, or the loss of its use. Buyer shall cooperate fully with Seller in investigating and determining the cause of any such accident or malfunction. It is agreed that failure to provide the required notice is very prejudicial to Seller, its investigation and defense and such failure to promptly notify shall release Seller of all obligations to Buyer arising from the occurrence.

## 13. PATENTS.

- (a) Seller will defend and save Buyer harmless from and against any loss or expense caused by any claimed infringement of any United States patent arising out of the purchase, sale or use of goods designed and manufactured by Seller so long as Buyer gives Seller prompt, written notice of any such claim of infringement and complete authority to direct its defense. Buyer releases any claim Buyer may have at any time against Seller for consequential damages or loss of profits to Buyer resulting from any suit regarding the use of the goods. Buyer shall give Seller such reasonable assistance in defense of any claimed infringement as it shall be able to give and shall not charge Seller for the cost of such assistance. If any part of the goods designed and manufactured by Seller are held to infringe any United States patent, and the use of the goods is enjoined, Seller shall, at its own expense, in lieu of all other liability, either procure for Buyer the right to continue using the goods, replace them with noninfringing goods, modify the goods so to become noninfringing, or return the purchase price. Seller's liability under this section shall be limited to the purchase price and the transportation and installation costs of the goods. Seller grants no license, express or implied, other than the right of Buyer to use the goods in the form delivered by Seller.
- (b) Buyer will defend, protect, and save Seller harmless from and against any loss or expense incident to any claimed infringement of any United States patent arising out of the manufacture, service or sale of goods which are manufactured or serviced by Seller, but which are designed by Buyer, its employees, or agents.

## 14. GENERAL.

- (a) This Order shall be construed in accordance with the laws of the State of Illinois.
- (b) This Order shall insure to the benefit of, and be binding upon the successors and assigns of Seller and Buyer. Buyer shall not assign this Order without the written consent of Seller.
- (c) Any action or suit against Seller arising in any way from this document or with respect to the goods must be commenced within one year after the cause of action has accrued.
- (d) The invalidity of any part of this document shall not invalidate any other part and, except for such invalid part, the rest of this document shall remain effective.
- (e) All previous verbal and written communications of Seller and Buyer for the sale of goods described in this document are canceled. Seller and Buyer agree that there are no other agreements or warranties, except as contained in this document, which is the final, complete and exclusive expression of the agreement of Seller and Buyer.
- (f) No waiver of performance required by Buyer shall be valid unless in writing signed by a duly authorized officer of Seller. No waiver of a specific action shall be construed as a waiver of future performance.
- (g) Note these commodities are licensed by the United States for Ultimate Destination. Diversion contrary to United States law is prohibited.
- (h) We hereby certify that these goods were produced and/or services rendered in compliance with all applicable requirements of sections 6, 7 and 12 of the Fair Labor Standards Act, as amended, and of regulations and others of the United States Department of Labor issued under section 14 thereof.