

**FLUID PROCESS CONTROLS CORPORATION
TERMS AND CONDITIONS OF PURCHASE**

1. GENERAL

- (a) Prompt acceptance of this order by returning the acknowledgement copy hereof is requested, but, in any event, any delivery hereunder shall constitute an acceptance hereof and of all its terms.
- (b) If Buyer's customer requires that such customer's terms and conditions of purchase apply to its order to Buyer, Buyer may incorporate by reference those customer terms and conditions on the face of this order, which shall then also become part of Buyer's order to Seller, and where necessary to make the context of such provisions or clauses applicable to this order, the terms "buyer" or a term of similar import in the customer terms shall mean Fluid Process Controls Corporation, and "seller" or a term of similar import in the customer terms shall mean the Seller under this order. Such customer terms and conditions shall be additional to, and not in lieu of, these written terms and conditions, provided that in the event of a conflict between those customer imposed terms and conditions incorporated herein and these printed terms and conditions, the customer imposed terms and conditions shall apply. This order is a final and exclusive statement of the agreement between the parties and may not be modified, supplemented, explained or waived by parol evidence. Any contrary or additional terms proposed by Seller by quotation, acknowledgement, invoice or otherwise are rejected. Any reference in this order to Seller's proposal or quotation are only to describe the materials or work covered hereby and do not constitute an acceptance of any terms set forth therein.
- (c) This contract shall be construed and enforced under the Uniform Commercial Code as in effect in the State of Illinois on the date hereof, excluding the United Nations Convention On Contracts For The International Sale Of Goods.

2. PERFORMANCE BY SELLER

- (a) Time is of the essence for this order and it is essential it be performed on the specified date(s).
- (b) In addition to any express written warranty provided by Seller, Seller warrants the material and work furnished hereunder shall be merchantable, free from defects, shall conform to any applicable specifications, shall be fit and sufficient in all respects for the intended purposes thereof, and shall meet all standards of all federal, state and local safety and health requirements. Any part of the material or work not complying with the requirements hereof, may be returned at Seller's risk and expense, including transportation both ways, for prompt correction of defects. Payments by Buyer shall not constitute acceptance nor waive any rights of Buyer hereunder. Seller agrees that the warranty in this paragraph and Seller's separate express written warranty shall run to the benefit of both Buyer and Buyer's customer, and either of them may enforce such warranties directly.
- (c) Seller may not assign this order or subcontract any substantial part of the performance or work other than for standard commercial supplies.
- (d) Seller shall defend, indemnify and hold harmless the Buyer and its customers from and against all claims, liabilities, lawsuits and penalties, including all attorneys fees and other expenses, which results, directly or indirectly, from any of the following (i) personal injury or death or property damage or destruction arising out of alleged defects in material, workmanship or design of the material or work furnished hereunder, (ii) violations of federal, state or local safety or health requirements arising out of the use of resale of material or work furnished hereunder, (iii) failure of Seller to fulfill its warranty obligations, or (iv) the infringement by use or sale of the materials or work furnished hereunder of any intellectual property rights of any persons.

3. CERTAIN CHARGES OR EXPENSES NEGATED

UNLESS OTHERWISE SPECIFICALLY PROVIDED HEREIN, (i) NO CHARGES FOR TRANSPORTATION, PACKING, CRATING, CARTAGE, STORAGE OR CONTAINERS SHALL BE ALLOWED, (ii) THE PRICE INCLUDES ALL APPLICABLE SALES AND SIMILAR TYPE TAXES WHICH ARE NOT IMPOSED BY LAW ON THE BUYER, AND (iii) ANY INFORMATION OR DATA DISCLOSED OR FURNISHED TO BUYER BY SELLER HEREUNDER SHALL BE DEEMED SOLD AS PART OF THE PRICE HEREOF, NON-PROPRIETARY AND FREE OF ALL RESTRICTIONS WHATSOEVER.

4. BUYER'S PROPERTY

Buyer or its customers retain title to all drawings, designs, specifications, technical data and materials furnished to Seller for use with this order and the same shall be treated as Buyer's confidential information, shall be used by Seller only to complete this order and shall be returned upon completion or termination of this order, along with all copies or reproductions thereof, provided copies or reproductions shall be made only with Buyer's written consent.

5. CHANGES

Buyer may at any time by written notice make changes within the general scope of this order if requested by Buyer's customer. If any such change affects the time for or cost of performance, an equitable adjustment shall be made in the delivery schedule, purchase price, or both, by agreement of the parties. All claims by Seller for adjustment under this clause must be asserted, in writing and in full, within thirty (30) days from the date of notification of the change or shall be waived. Nothing herein shall excuse Seller from proceeding with the order as changed. No extras shall be allowed except pursuant to written changes in this clause.

6. TERMINATION

- (a) Buyer may at any time terminate this order by written notice, in whole or part, if Buyer's customer cancels its order to Buyer, whereupon Seller shall terminate work pursuant to the terms of such notice. Seller shall promptly advise Buyer of the quantities of applicable work and material on hand or purchased prior to termination and the most favorable disposition that Seller can make thereof. Seller shall comply with Buyer's instructions regarding disposition of such work and material. All claims by Seller based on such termination must be asserted, in writing and in full, within ninety (90) days from the date of notification of the termination, or shall be waived. Buyer shall pay Seller the purchase order price of finished work and the cost to Seller (excluding profit or losses) of work in process and raw material; less, however, (i) the agreed value of any items used or sold by Seller with Buyer's consent, and (ii) the reasonable value or cost (whichever is higher) of any defective, damaged or destroyed work or material and any items sold or used by Seller without Buyer's consent, Buyer will make no payments for finished work, work in process or raw material fabricated or procured by Seller unnecessarily in advance or in excess of Buyer's delivery requirements. The payment provided under this clause shall constitute Buyer's only liability in the event this order is terminated as provided herein. The foregoing provisions of this clause shall not apply to any termination by Buyer for default of Seller or under the following provisions of this clause unless a court shall find such termination by Buyer to be improper.
- (b) To the extent, this order covers items normally carried in inventory by Seller (as distinguished from items specially made to Buyer's specifications), Buyer shall have no liability for any termination of this order, in whole or in part, prior to actual shipment and for any termination, within ten (10) days after receipt by Buyer, its liability shall be limited to returning said items and reimbursing Seller for direct costs of handling and transportation.
- (c) Buyer shall not be liable for failure to take delivery of material or work or render any other performance in the event fire, accidents, labor difficulties, pandemic, government actions, third party failures or any other conditions beyond Buyer's reasonable control render it commercially impractical for Buyer to do so.

7. GOVERNMENT CONTRACTS

If this order is for material or work under a government contract or subcontract, all contract provisions applicable hereto and required by law, order, regulation or Buyer's government contract or subcontract are hereby incorporated herein by reference as fully as if set forth in full. Where necessary to make the context of such provisions or clauses applicable to this order, the terms "Contractor" and "Government" or "Contracting Officer" (or terms of similar import) shall mean respectively Seller, this order, and Buyer.