

FLUID PROCESS CONTROL CORPORATION ADDITIONAL TERMS AND CONDITIONS OF SALE

1. **Quotations:** Quotations are issued by Seller, in writing, according to specifications furnished by Buyer. Buyer shall remain solely liable for any errors or omissions in its specifications. Prices in quotations are valid only for the period expressed therein. If no period is given, the price in quotation shall remain valid for thirty (30) days from its date.

Buyer is responsible for choosing products to meet its requirements. Buyer is entering into this contract in reliance upon its own skill and judgment and not in reliance upon any representation by Seller.

2. **Contract Formation:** A contract of sale is formed only after Seller issues a written Order Acknowledgment and/or invoice in response to Buyer's order. Only the terms and conditions in the quotation, Order Acknowledgment and invoice shall be binding. Any prior discussions or proposals are superseded and any additional or conflicting terms proposed by Buyer, by purchase order or otherwise, are rejected. If Buyer submits a purchase order, Seller's written Order Acknowledgment constitutes a counter offer that will be deemed accepted upon expiration of the objection period noted below or by receipt of goods, whichever occurs first.

Buyer shall have eight (8) days from the date of Seller's Order Acknowledgment, if any, to object to the terms of the Order Acknowledgment. Otherwise, the terms and conditions on the Order Acknowledgment will be deemed accepted.

The terms and conditions of the contract, except as specified below, may be modified only by the mutual written consent of the parties.

3. **Changes:** Seller reserves the right to make product and design changes which will not adversely affect form, fit or function requirements. All changes requested by Buyer are subject to written approval by Seller and to reasonable changes in delivery or price as Seller determines necessary.

4. **Prices and Conditions of Payment:** Except where specified to the contrary in the quotation, prices are quoted before tax, FOB origin, without installation. Any costs of Seller relating to packaging, transportation, insurance and duties shall be charged to Buyer.

Payment in full is due within thirty (30) days from the invoice date.

No order, once accepted by Seller, may be canceled by Buyer without Seller's written consent. In the case of non-standard products, Buyer will be held to the full purchase price, regardless of any attempts to or actual forfeitures of any installment payment. In the case of orders for standard products that Seller agrees to cancel, Buyer will be held to Seller's restocking fee and other reasonable compensation for lost profit.

In the event payment is delinquent, Seller reserves the right to charge interest at the prime rate plus three percent (3%) for the delinquency period (or the legal maximum allowed by law, if lower).

If payment is not received when due on this or any other order, Seller also reserves the right to suspend its obligations under this or any other order until payment of any amount in arrears plus interest has been made. Payment will not be deemed final in the case of payment by check until the funds are collected by Seller.

In the event of default by Buyer, Seller may terminate the contract by notice. The defaulting Buyer shall assume the cost and risk of return of products to Seller.

5. **Delivery Dates:** Delivery periods are estimates only. Seller shall not be bound by any delivery date specified in Seller's acknowledgment. Under no circumstances will Buyer be entitled to charge Seller, if the estimated delivery period is exceeded.

Whether or not Seller agrees to a specific shipping date, Seller shall not be liable for delay or failure to deliver due to wars, civil disturbances, strikes, accidents, fires, floods, storms, acts of god, the inability to obtain necessary labor, energy, water, raw or finished materials or facilities, pandemics, government orders, regulations, priorities or allocations, delays in transportation, failure of Buyer to supply, delays in delivery by Buyer of necessary items, or other causes beyond Seller's control.

6. **Delivery and Transfer of Risk:** Title to products (and risk of damage or loss) shall pass to Buyer upon delivery of the products to a carrier for shipment to Buyer.

The products shall be packaged in packaging approved by Seller for proper shipping and handling. The cost of packaging shall be invoiced to Buyer.

If Buyer requests, Seller shall choose the common carrier and shall deliver the products to such common carrier packaged for transport. In such an event, insurance costs and freight charges shall be invoiced to Buyer.

Each delivery shall constitute a separate contract and the failure of the Seller to make one delivery shall not constitute cause for cancellation of this contract.

7. **Acceptance of Goods:** Products sold by Seller shall not be subject to any special acceptance procedure, except as otherwise agreed. All products must be inspected promptly, but no later than 48 hours after receipt by Buyer. Notice of non-acceptance of any products must be received by Seller within four (4) days of receipt by Buyer.

Where special conditions must be met prior to acceptance of the products, acceptance tests shall be carried out at Seller's place of business during normal working hours and in the presence of Seller's technicians. Such tests may not exceed a duration of four (4) consecutive hours. Any product which passes the test shall be deemed to be accepted. Buyer must supply, at its cost, the parts and personnel necessary to carry out such tests. Products which are not accepted for failure to pass the test shall be returned immediately, in their entirety, to Seller. Seller shall have an

opportunity to bring such products into conformity and shall then present such products to Buyer for final acceptance.

Products are to be put into service directly by Buyer according to the instructions, manuals and documents provided by the manufacturer of the products. Seller cannot guarantee that instructions, manuals, software, plans and documents are free from errors or omissions. Seller cannot, therefore, be held liable for any loss or damage resulting therefrom.

8. **Limited Warranty:** Products (whether or not they are branded goods) are sold with the following warranty only: that they will comply in all material respects with the description which appears on the face hereof. Seller makes no other warranty but will cooperate with Buyer to provide the benefit of any warranty against defects in materials and workmanship that is provided by the manufacturer of the products and made available to the Seller.

THE FOREGOING WARRANTY IS MADE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, AND SELLER SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR FREEDOM FROM PATENT INFRINGEMENT. SELLER SHALL NOT BE LIABLE TO THE BUYER OR ANY OTHER PERSON FOR ANY DAMAGES, SPECIAL, CONSEQUENTIAL, OR INCIDENTAL, WHETHER ARISING UNDER WARRANTY, CONTRACT, STRICT LIABILITY OR OTHERWISE, ARISING OUT OF THE SALE, USE OR INABILITY TO USE ANY PRODUCT.

Products alleged to be nonconforming must be returned, at Buyer's cost, to Seller for exchange or repair, to the extent provided by the manufacturer's warranty. To obtain warranty service, immediately notify Fluid Process Control Corporation of any defects within the warranty period. Request for warranty service should be sent to:

FLUID PROCESS CONTROL CORPORATION
15W700 79th Street
Burr Ridge, Illinois 60527
Tel: (630) 986-1600
Fax: (630) 986-1669

9. **Limitation of Damages:** EXCEPT AS OTHERWISE PROVIDED HEREIN FOR A BREACH OF WARRANTY, SELLER'S LIABILITY HEREUNDER SHALL BE LIMITED TO REPAIR OR REPLACEMENT OF THE PRODUCTS OR REFUND OF THE PURCHASE PRICE, AT SELLER'S OPTION.

IN NO EVENT SHALL SELLER BE LIABLE TO BUYER OR ANY OTHER PERSON FOR ANY INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES RESULTING FROM THE USE OR INABILITY TO USE THE PRODUCTS COVERED HEREBY, WHETHER ARISING FROM BREACH OF WARRANTY, NEGLIGENCE OR STRICT LIABILITY OF SELLER, OR OTHERWISE, OR FOR ANY MACHINE WORK, LABOR CHARGES, OTHER EXPENSE, LOSS OR DAMAGES CAUSED BY DEFECTIVE MERCHANDISE.

ANY ACTION HEREUNDER MUST BE COMMENCED WITHIN ONE YEAR OF ACCRUAL OF CAUSE OF ACTION.

10. **Intellectual Property Rights:** Seller reserves all title to copyrights, patents and other intellectual property rights in all documents and products. All copies of technical plans and documents furnished during contract proposals shall be returned upon request.

These plans and documents shall be considered by Buyer to be strictly confidential. Buyer shall take all measures in order to ensure that no improper use is made thereof by its agents, officers and employees and may not communicate them to any outside person or firm.

If any product ordered by Buyer is manufactured according to designs or processes specified by Buyer, Buyer agrees to indemnify and save Seller, its affiliates, officers, agents and employees harmless from any expenses, loss, attorneys' fees, costs, damages or liabilities which may be incurred as a result of actual or alleged infringement of patent, copyright or trademark rights.

11. **Applicable law:** This contract shall be governed by the substantive laws of the State of Illinois. Seller warrants that in the performance of work under this contract, it has complied in all material respects with all applicable Federal, State and local laws, rules and regulations, including worker's compensation insurance, the Fair Labor Standards Act, environmental protection, occupational health and safety, and regulations applicable to government contractors and subcontractors. Seller has not offered or given and shall not offer or give any gratuity with a view toward securing any business from Buyer or influencing the terms and conditions of this contract.

12. **Headings:** Headings are for convenience of reference only and shall not affect or limit the meaning of the provisions herein.

13. **Resale Certification (If applicable):** The Buyer certifies that all products covered by this contract are for resale or to become a component part of tangible property for resale. If any occupation, sales or use tax should become applicable, the Buyer shall be responsible for such tax and shall promptly pay or remit to Seller for payment the full amount thereof.