

EXPORT CONDITIONS OF SALE FOR BADGER METER, INC.

1. OFFER, GOVERNING PROVISIONS, AND CANCELLATION. This writing constitutes an offer or counter-offer by Badger Meter, Inc. ("Seller") to sell the products and/or services described herein to the purchaser to which this offer is addressed, subject to the terms and conditions set forth on the face and reverse sides hereof. This writing is not an acceptance of any offer made by purchaser; and Seller hereby objects to any additional or different terms which may be contained in any of purchaser's purchase order, acknowledgment or other forms, or in any communication heretofore or hereafter received from purchaser. This offer expires 60 days from its date, unless goods are subsequently shipped by Seller and accepted by purchaser.

THIS CONTRACT AND THESE TERMS AND CONDITIONS, WHEN ACCEPTED BY PURCHASER EXPLICITLY, BY ACCEPTANCE OF GOODS OR OTHERWISE, SHALL CONSTITUTE THE ENTIRE AGREEMENT BETWEEN SELLER AND PURCHASER, AND SHALL BE GOVERNED BY AND CONSTRUED ACCORDING TO THE INTERNAL LAWS OF THE STATE OF WISCONSIN, AND THE UNITED STATES OF AMERICA. THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL NOT BE GOVERNED BY THE PROVISIONS OF THE 1980 U.N. CONVENTION OF CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS.

No order may be cancelled or altered by the purchaser except upon terms and conditions acceptable to Seller, as evidenced by Seller's written consent. Any goods returned shall be subject to restocking and reconditioning charges. Authorized returns shall be shipped Delivered to Seller's United States offices.

2. DELIVERY AND DELAY. All quoted delivery dates and/or periods are approximate. The delivery periods shall commence when Seller shall have acknowledged receipt of complete specifications, and/or applicable documents required to effect shipment such as import license, exchange permit, shipping instructions, etc. Title and risk of loss or damage in transit shall pass to purchaser at the point where Seller has fulfilled its obligations under the shipping term specified in this contract; as described in INCOTERMS 1980 (published by the International Chamber of Commerce, Paris, France); provided that if payment shall be made under a letter of credit, Seller shall have a security interest in the goods shipped until acceptance of the related draft or drafts by the bank confirming such credit.

Seller reserves the right to make delivery in installments, unless otherwise expressly stipulated in the contract, and all such installments, when separately invoiced, shall be paid for when due per invoice, without regard to subsequent deliveries. Delay in delivery or nonconformity of any installment shall not relieve purchaser or its obligations to accept remaining deliveries.

Seller shall not be liable for any damage as a result of any delay due to any cause beyond Seller's reasonable control, including but not limited to any act of God; act of purchaser; embargo or other governmental act, regulation or request; fire; accident; strike; slow-down; war; riot; delay in transportation; delayed delivery by suppliers, and inability to obtain necessary labor and materials. In the event of any such delay, the date of delivery shall be extended for a period equal to the time lost by reason of the delay. If shipping or progress of the work is delayed or interrupted by the purchaser directly or indirectly, the purchaser shall pay Seller for all additional charges therefrom.

Claims for shortages or other errors must be made in writing to Seller within thirty (30) days after receipt of shipment, and failure to give such notice shall constitute unqualified acceptance and a waiver of all such claims by purchaser.

3. DESCRIPTIVE LITERATURE AND SUBSTITUTES. Catalogues, product brochures, photographs and other illustrations are a general representation of the products offered, but shall not be taken as precise and shall not form part of this contract. Seller reserves the right to make changes in design, specifications or materials which in Seller's opinion are an improvement or necessary because of priorities or regulations established by governmental authority or nonavailability of materials from suppliers.

4. STORAGE. If the products are not shipped within fifteen (15) days after notification to the purchaser that they are ready for shipping, for any reason beyond Seller's reasonable control, including the purchaser's failure to give shipping instructions, Seller may store such products at the purchaser's risk in a warehouse or yard or upon Seller's premises; and the purchaser shall pay handling, transportation and storage charges at the prevailing commercial rates upon submission of invoices therefor.

5. PRICE AND PAYMENT. The prices for the goods and/or services covered by this offer are Seller's prices for such goods and/or services with (i) the exclusive Warranty of repair or replacement of defective parts as found in Paragraph 9 below, and (ii) the Exclusion of Consequential Damages and Disclaimer of Other Liabilities, as found in Paragraph 12 below, including the disclaimer of negligence, strict liability and other tort liability, enforceable against the purchaser. If the purchaser desires for Seller to provide a greater or additional warranty and/or to be liable for some or all of the matters disclaimed in paragraph 12, and/or to be liable for consequential or incidental damages, then the purchaser must notify Seller before purchaser accepts (or is deemed to accept) this offer pursuant to paragraph 1, in which event Seller will amend this offer to reflect higher sales prices reasonably compensating Seller for assuming that additional exposure. In the absence of such a notification, by accepting this offer purchaser is accepting such limitations and disclaimers in exchange for the lower prices set forth herein.

All prices listed are payable in United States Dollars. Except as otherwise set forth in this offer, payment shall be by letter of credit. Purchaser shall, no later than sixty (60) days prior to each scheduled shipment date, cause to be issued for Seller's benefit an irrevocable letter of credit in U.S. Dollars in the full amount of the purchase price, plus prepaid freight, such letter of credit (a) to be issued by a prime U.S. bank acceptable to Seller, (b) to be subject to and governed by the Uniform Customs and Practice for Documentary Credits (1994 Revision) and to be otherwise acceptable in form and substance to Seller, and (c) to provide for payment to Seller of the full amount of the purchase price plus prepaid freight in U.S. Dollars, upon presentation by Seller of sight drafts, Seller's invoice and appropriate shipping documents. Revaluations or devaluations of the United States Dollar in reference to other currencies shall not affect the prices quoted or acknowledged.

6. TAXES AND OTHER CHARGES. Any manufacturer's tax, occupation tax, use tax, sales tax, excise tax, value-added tax, duty, custom, inspection or testing fee, or any other tax, fee or charge of any nature whatsoever imposed by any governmental authority, on or measured by the transaction between Seller and the purchaser shall be paid by the purchaser in addition to the price quoted or invoiced. In the event the Seller is required to pay any such tax, fee or charge, the purchaser shall reimburse Seller therefor.

7. SHIPMENT. Prices are f.o.b. ExFactory and any charges Seller may be required to pay or collect with respect to the sale, purchase, delivery, storage, processing, use, consumption or transportation of the goods shall be for the purchaser's account.

Method and route of shipment will be at the discretion of Seller unless purchaser shall specify otherwise, and any additional expense of the method or route of shipment specified by purchaser shall be borne by purchaser.

8. EXPORT PACKING AND DOCUMENTS. Prices include Seller's standard commercial export packing which will vary depending on whether shipment is made by air or ship. Purchaser shall bear any additional expenses required to satisfy purchaser's specifications. Packages will be marked in accordance with purchaser's instructions and Seller shall furnish complete packing lists and such other information as may be necessary to enable purchaser's agent to prepare documents required for export shipment. Purchaser shall supply Seller with all necessary information and assistance for the most expeditious clearance of each shipment. No shipping containers may be returned to Seller unless such return is accepted in advance by Seller in writing and unless all return freight is prepaid by purchaser.

9. WARRANTIES. Seller warrants equipment and all parts manufactured by it and supplied hereunder to be free from defects in materials and workmanship for a period of 18 months from date of shipment or 12 months from date of installation, whichever period shall be shorter. If within such period any such equipment or parts shall be proved to Seller's satisfaction to be defective, such equipment or parts shall be repaired or replaced at Seller's option. Seller's warranty obligations shall be limited to such repair or replacement, shall be purchaser's exclusive remedy hereunder and shall be conditioned upon Seller's receiving written notice of any alleged defect within ten (10) days after its discovery and, at Seller's option, return of such product to Seller, f.o.b., its factory. This warranty shall not apply to equipment or parts not manufactured by Seller or to equipment or parts which shall have been subject to negligence, accident, damage by circumstances beyond Seller's control or improper installation, operation, maintenance or storage or to other than normal use or service. With respect to equipment and parts not manufactured by Seller, the warranty obligations of Seller shall in all respects conform and be limited to the warranty extended to Seller by the supplier.

THE FOREGOING WARRANTIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER EXPRESS AND IMPLIED WARRANTIES WHATSOEVER, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE (except warranties of title). This exclusive remedy shall not be deemed to have failed its essential purpose so long as the Seller is willing and able to replace defective products or issue a credit to purchaser within a reasonable time after purchaser proves to Seller that a defect is involved.

10. PATENTS, TRADEMARKS AND COPYRIGHTS. Seller will, at its own expense, defend any suits that may be instituted by anyone against purchaser for alleged infringement of any United States patent, trademark, or copyright relating to any products manufactured and furnished by Seller hereunder, if such alleged infringement consists of the use of such products, or parts thereof, in purchaser's business and provided purchaser shall have made all payments then due hereunder, shall have given Seller immediate notice in writing of any such suit, transmitted to Seller immediately upon receipt all processes and papers served upon purchaser, permitted Seller through its counsel, either in the name of purchaser or in the name of Seller, to defend the same and given all needed information, assistance and authority to enable Seller to do so. If such products are in such suit held in and of themselves to infringe any valid United States patent, trademark or copyright, then: (a) Seller will pay any final award of damages in such suit attributable to such infringement, and (b) if in such suit use of such products by purchaser is permanently enjoined by reason of such infringement, Seller shall, at its own expense and its sole option, either (i) procure for purchaser the right to continue using the products, (ii) modify the products to render them noninfringing, (iii) replace the products with noninfringing goods, or (iv) refund the purchase price and the transportation costs paid by purchaser for the products.

Notwithstanding the foregoing, Seller shall not be responsible for any compromise or settlement made without its written consent, or for infringements of combination or process patents covering the use of the products in combination with other goods or materials not furnished by Seller. The foregoing states the entire liability of Seller for infringement, and in no event shall Seller be liable for consequential damages attributable to an infringement.

As to any products furnished by Seller to purchaser manufactured in accordance with drawings, designs or specifications proposed or furnished by purchaser or any claim of contributory infringement resulting from the use or resale by purchaser of products sold hereunder, Seller shall not be liable, and purchaser shall indemnify Seller and hold Seller harmless from and against any and all loss, liability, damage, claim or expense (including but not limited to Seller's reasonable attorneys' fees and other costs of defense) incurred by Seller as a result of any claim of patent, trademark, copyright or trade secret infringements, or infringements of any other proprietary rights of third parties.

The purchase of any products hereunder does not entitle purchaser to employ the same in any patented process.

11. NUCLEAR DISCLAIMER. Equipment sold hereunder is not intended for use in connection with any nuclear facility or activity unless such usage is detailed on the face of this offer. If equipment is used in a nuclear facility or activity in the absence of such explicit reference herein, Seller disclaims all liability for any damage, injury or contamination, and the purchaser shall indemnify and hold Seller, its officers, agents, employees, successors, assigns and customers, whether direct or indirect, harmless from and against any and all losses, damages, or expenses of whatever form or nature (including attorneys' fees and other costs of defending any action) which they, or any of them, may sustain or incur, whether as a result of breach of contract, warranty, tort (including negligence), strict liability or other theories of law, by reason of such use.

12. EXCLUSION OF CONSEQUENTIAL DAMAGES AND DISCLAIMER OF LIABILITY. Seller's liability with respect to breaches of warranty shall be limited as provided in Paragraph 9 hereof. With respect to other breaches of this contract, Seller's liability shall in no event exceed the contract price. SELLER SHALL NOT BE SUBJECT TO AND DISCLAIM: (1) ANY OTHER OBLIGATIONS OR LIABILITIES ARISING OUT OF BREACH OF CONTRACT OR OF WARRANTY, (2) ANY OBLIGATIONS WHATSOEVER ARISING FROM TORT CLAIMS (INCLUDING NEGLIGENCE AND STRICT LIABILITY) OR ARISING UNDER OTHER THEORIES OF LAW WITH RESPECT TO PRODUCTS SOLD OR SERVICES RENDERED BY SELLER, OR ANY UNDERTAKINGS, ACTS OR OMISSIONS RELATING THERETO, AND (3) ALL CONSEQUENTIAL, INCIDENTAL AND CONTINGENT DAMAGES WHATSOEVER. Without limiting the generality of the foregoing, Seller specifically disclaims any liability for penalties (including administrative penalties), special or punitive damages, damages for lost profits or revenues, loss of use of products or any associated equipment, cost of capital, facilities or services, downtime, shut-down or slow-down costs, spoilage of material, or for any other types of economic loss.

13. TECHNICAL INFORMATION. Any sketches, models, samples or designs submitted by Seller shall remain the property of Seller and shall be treated as confidential information unless Seller has in writing indicated a contrary intent. No use or disclosure of such sketches, models and samples, or any design or production process or techniques revealed thereby, shall be made without the express written consent of the Seller.

14. PURCHASER'S PROPERTY. Any property of the purchaser placed in Seller's custody for performance of this contract is not covered by insurance, and no risk is assumed by Seller in the event of loss or damage to such property by fire, water, burglary, theft, civil disorder or any accident beyond the reasonable control of the Seller.

15. ARBITRATION. Actions by Seller for nonpayment by purchaser of the undisputed purchase price of goods sold by Seller, or for redress for other undisputed breaches by purchaser of the contract of sale, may be brought by Seller before any judicial court of competent jurisdiction without need for prior arbitration. All disputes between purchaser and Seller in connection with this contract may be, at Badger's sole option, finally settled by arbitration in Milwaukee, Wisconsin, under the Rules of the American Arbitration Association (which Rules with respect to matters not regulated by them shall incorporate the UNCITRAL arbitration rules) by one or more arbitrators appointed in accordance with said Rules applying these Terms and Conditions of Sale and consistent provisions of the internal laws of the State of Wisconsin.

16. SEPARABILITY. If any provisions of these Terms and Conditions of Sale supplemented as provided herein shall be deemed illegal or unenforceable, such illegality or unenforceability shall not affect the validity and enforceability of any legal and enforceable provisions hereof which shall be construed as if such illegal and unenforceable provision or provisions had not been inserted herein, unless such illegality or unenforceability shall destroy the underlying business purpose of these Terms and Conditions.