

TERMS AND CONDITIONS OF DOMESTIC SALES

1. OFFER AND CANCELLATIONS. This writing constitutes an offer or counter-offer by Badger Meter, Inc. ("Seller") to sell the Goods and/or Services described herein in accordance with these terms and conditions. This writing is not an acceptance of any offer made by Purchaser ("Purchaser"), and acceptance of this offer is expressly conditioned upon the Purchaser's assent to these terms and conditions. Purchaser will be deemed to have assented to these terms and conditions when:

- Purchaser signs and delivers to Seller an acknowledgment copy of any of Seller's quotations, order acknowledgment or invoice forms; or
- at Seller's option, when Purchaser provides Seller with specification of assortments, delivery dates, shipping instructions, or instructions to bill and hold as to all or any part of the Goods herein described; or
- when Purchaser receives delivery of the whole or any part thereof; or
- when Purchaser has otherwise assented to the terms and conditions hereof.

No additional or different terms or conditions will be binding upon Seller unless specifically agreed to in writing. Seller hereby objects to any such additional or different provisions contained in any purchase order or other communication from Purchaser. THIS CONTRACT AND THESE TERMS AND CONDITIONS SHALL CONSTITUTE THE ENTIRE AGREEMENT BETWEEN SELLER AND PURCHASER. No order may be cancelled or altered by Purchaser except upon terms and conditions acceptable to Seller, as evidenced by Seller's written consent. In the event of such an approved cancellation by Purchaser, Seller shall be entitled to payment of the full price, less the amount of any expenses saved by Seller by reason of the cancellation.

2. DELIVERY AND DELAY. Delivery of Goods ordered is F.O.B. Factory (meaning Purchaser is responsible for all delivery charges for Goods and the title and risk of loss or damage to Goods in transit shall pass to Purchaser when Goods are moved from Seller's dock into the delivery vehicle for transportation). All quoted delivery dates and/or periods are approximate. The delivery periods shall commence when Seller receives all proper, necessary and requested documentation required to effect shipment, such as complete specifications, intended use, ultimate destination, required permits and shipping instructions. Method and route of shipment will be at the discretion of Seller unless Seller requests otherwise or unless Purchaser specifies otherwise, and any additional expense of the method or route of shipment specified by purchaser shall be borne by Purchaser. If payment is made under a letter of credit, Seller shall have a security interest in the Goods until acceptance of the related draft or drafts by the bank confirming such credit. Unless otherwise provided, terms in this document shall have the meaning as described in the International Chamber of Commerce definition of Trade Terms 2000.

Seller reserves the right to make delivery in installments, unless otherwise expressly stipulated in the contract for sale; and all such installments, when separately invoiced, shall be paid for when due per invoice, without regard to subsequent deliveries. Delay in delivery of any installment shall not relieve Purchaser of 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, without limitation, an 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.

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.

Shipping specifications are approximate; any change resulting from variations is not subject to claim by Purchaser.

3. DESCRIPTIVE AND TECHNICAL INFORMATION. Catalogues, product brochures, photographs and other illustrations are a general representation of the Goods and/or Services offered, but shall not be taken as an exact representation and shall not form part of the contract except as specifically set forth. Seller reserves the right to make changes in design, specifications or materials which in Seller's opinion are an improvement or necessary because of unavailability of materials. Seller may furnish suitable substitutes for materials unobtainable because of priorities or regulations established by governmental authority or nonavailability of materials from suppliers.

Any description of the Goods and/or Services, whether in writing or made orally by Seller or Seller's agents, specifications, samples, literature, models, bulletins, drawings, diagrams, engineering sheets or similar materials used in connection with Purchaser's order are for the sole purpose of identifying the Goods and/or Services and shall not be construed as an express warranty. Any suggestions by Seller or Seller's agents regarding use, application or suitability of the Goods and/or Services shall not be construed as an express warranty unless confirmed to be such in writing by Seller.

Any sketches, models or samples 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 Seller.

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

5. PRICE AND PAYMENT. Payment terms are net payment within 30 days of the date of invoice, unless otherwise stated. Interest will be charged at the rate of 18% per year (but not more than the highest rate permitted by applicable law) on accounts more than 30 days past due. Purchaser agrees to pay all costs of collection, including reasonable attorneys' fees, on all past due accounts. Invoices may be submitted as partial shipments are made. If during the period of the contract the financial condition of Purchaser does not justify the terms of payment specified, Seller may demand full or partial payment in advance before proceeding with the contract. If shipment is delayed beyond the scheduled date by Purchaser, payment shall be due in full when Seller is prepared to make the shipment. If Purchaser defaults in any payment when due, then the whole contract price shall immediately become due and payable upon demand, or Seller, at its option without prejudice to other lawful remedies, may defer delivery or cancel this contract. If delivery is deferred, the Goods may be stored as provided in Paragraph 4 above.

6. TAXES AND OTHER CHARGES. Any manufacturer's tax, retailer's occupation tax, use tax, sales tax, excise tax, duty, customs fee, inspection or testing fee or any other tax, fee or charge of any nature whatsoever that is imposed or required to effect delivery of the Goods and/or Services shall be paid by Purchaser in addition to the price quoted or invoiced. In the event the Seller is required to pay any such tax, fee or charge, Purchaser shall reimburse Seller therefor; or, in lieu of such payment, Purchaser shall provide Seller at the time the order is submitted with an exemption certificate or other document acceptable to the authority imposing the same. When the contract price includes cost of transportation, field service and/or installation, it has been based on the lowest value for such service prevailing at the time such price is established, and, in the event of any change in such rates prior to shipment or performance of services, the price shall be modified accordingly.

7. LIMITED WARRANTY; EXCLUSIVE REMEDY; LIMITATION OF LIABILITY; INDEMNIFICATION. Unless otherwise agreed in writing or provided for in a written product-specific warranty, Seller warrants the Goods supplied hereunder to be free from significant defects in material and workmanship under normal use and service for a period of 18 months from the date of shipment or 12 months from the date of installation, whichever period shall be shorter ("the Warranty Period"). This warranty applies only to the original Purchaser of the Goods and does not apply to Goods that are the subject of negligence, accident, or damage by circumstances beyond Seller's control, or any improper operation, maintenance, storage, installation or use. This warranty also does not apply to Goods or component parts that were not manufactured by Seller, all of which are sold "as is" and without warranty by Seller. This warranty applies only to such defects as are discovered during the Warranty Period and of which Purchaser provides written notice to Seller no later than 90 days after the Warranty Period has expired. A failure to provide such notice constitutes a waiver of the remedies specified herein. If Seller receives timely notification and if the Goods are proved to Seller's satisfaction to have a warranted defect, Seller will, at its own discretion, expense and within a reasonable period of time, either (1) repair, correct or cure the warranted defect(s), or (2) replace the specific Goods at issue, or (3) give Purchaser a refund of the price it paid for the Goods, prorated where appropriate to adjust for the value of any conforming Goods or services accepted and retained by Purchaser. **These remedies shall be Purchaser's exclusive remedies (and the sole and exclusive liability of Seller) for any defects or deficiencies relating to or arising out of Goods sold or services performed by Seller.**

8. DISCLAIMER. THE FOREGOING LIMITED WARRANTY IS EXCLUSIVE AND IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR ARISING BY LAW, CUSTOM OR CONDUCT, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WHICH ARE EXPRESSLY DISCLAIMED.

9. 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 Goods manufactured and furnished by Seller hereunder, if such alleged infringement consists of the use of such Goods, or parts thereof, in Purchaser's business and provided Purchaser shall have made all payments then due hereunder and shall give Seller immediate notice in writing of any such suit and transmit to Seller immediately upon receipt all processes and papers served upon Purchaser and permit Seller through its counsel, either in the name of Purchaser or in the name of Seller, to defend the same and give all needed information, assistance and authority to enable Seller to do so. If such Goods 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 Goods by Purchaser is permanently enjoined by reason of such infringement, Seller shall, at its own expense and at its sole option, either (i) procure for Purchaser the right to continue using the Goods, (ii) modify the Goods to render them noninfringing, (iii) replace the Goods with noninfringing Goods, or (iv) refund the purchase price and the transportation costs paid by Purchaser for the Goods.

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 Goods 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 Goods 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 Goods 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.

10. NUCLEAR DISCLAIMER. Goods sold by Seller are not intended for use in connection with any nuclear facility or activity unless covered by a specific quotation where the conditions of such usage will be detailed. If Goods is used in a nuclear facility or activity without a supporting quotation, Seller disclaims all liability for any damage, injury or contamination, and 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.

11. LIMITATION OF LIABILITY; PURCHASER'S INDEMNITY. The exclusive remedies for breach of warranty are set forth in Section 7 above. In no case shall Seller be liable to Purchaser (or any subsequent Purchaser, user, or other third party) under any legal theory (including but not limited to breach of warranty, breach of contract, violation of consumer protection or deceptive trade practices statutes, negligence, gross negligence, tort, or strict tort liability) for any other or additional damages or any special, incidental, indirect, consequential or punitive damages (including, but not limited to any claims for loss of use of Goods or any associated Goods, cost of capital, facilities or services, shut-down or slow-down costs, damages relating to collateral contracts, or any other economic loss). In no event shall Seller's aggregate liability arising under this agreement or relating to any Goods or Services sold or performed by Seller exceed the amount actually paid to Seller by Purchaser for such Goods or Services. In no event shall any liability of Seller exist other than in favor of the original Purchaser.

The prices for the Goods and/or Services to be provided hereunder were agreed upon in reliance and acknowledgement of the warranty disclaimers, limitations of liability, and other provisions contained herein. Purchaser understands that it is foregoing its right to seek certain damages, including tort damages, in return for obtaining these Goods and/or Services at the price quoted. If Purchaser desires to modify these terms so that Seller assumes additional risks, any such modification must be in a written agreement signed by Seller and will require a negotiated increase in the cost of the Goods and/or Services.

Purchaser shall indemnify Seller against any and all losses, liabilities, damages and expenses (including without limitation attorneys' fees and any other costs of defending any action) which Seller may incur as a result of any claim by Purchaser or others arising out of or in connection with the Goods and/or Services sold hereunder and based on Good or Service defects not proved to have been caused solely by Seller's negligence.

12. SEVERABILITY. If any of these terms and conditions or any provisions of the contract(s) into which these terms are incorporated is held to be void or unenforceable, such provision shall be deemed to be severable and the remaining provisions shall be enforced as written.

13. LIMITATIONS; CONTROLLING LAW; VENUE. Any suit or action by Purchaser against Seller relating to or arising out of any Goods and/or Services purchased from or services performed by Seller must be filed within two years following the delivery of the Goods (or the performance of the Services) to which the action relates, failing which Purchaser's action and claims against Seller shall be deemed irrevocably waived. This contract and these terms and conditions shall be deemed as made and accepted in Wisconsin and shall be governed by and construed under the laws of the State of Wisconsin without regard to rules relating to conflict of law. VENUE FOR ANY SUIT OR ACTION RELATING TO OR ARISING OUT OF ANY GOODS AND/OR SERVICES PURCHASED FROM OR SERVICES PERFORMED BY SELLER SHALL LIE EXCLUSIVELY IN THE STATE OR FEDERAL COURTS LOCATED IN MILWAUKEE COUNTY, WISCONSIN, and Purchaser consents to the jurisdiction of such courts and agrees to appear in any such action upon written notice thereof.