



VSTC-06

EFFECTIVE AUGUST 1, 2006, TERMS AND CONDITIONS OF SALE WILL APPLY TO ALL PRODUCTS SOLD BY THE VALVSOURCE GROUP OF COMPANIES

1. **NO RIGHTS OF CANCELLATION:** The parties acknowledge and agree that the Purchaser shall not have the right to cancel or reject any shipment of Products not delivered within the delivery time specified in this Purchase Agreement. In the event the Purchaser fails or refuses to accept delivery of the Products, Seller shall have the right to cancel this Agreement whereupon all deposit monies paid by Purchaser shall be retained by Seller as liquidated damages and not as penalty and without prejudice to any rights of Seller to claim for all additional costs, expenses and damages Seller may suffer or incur as a result of such cancellation. The Purchaser understands that the Products described in this Agreement are specially designed and custom built and that Seller takes immediate steps upon execution of this Agreement to design order and construct those items set forth herein.
2. **PRICES:** Possession of price lists will not be accepted by the Seller as an obligation, or offer, to sell any goods listed therein. All prices contained in published price lists are subject to change without notice and supersede those of all previous lists.
3. **SALES TAXES, ETC.:** The Purchaser shall pay and be responsible for all provincial, local or federal sales, use or other taxes (including general sales or value added taxes) and customs duties now or hereinafter enacted which may be applicable to the sale of the Products or the importation of the Products to the destination specified by the Purchaser and which duties and taxes shall be the responsibility of the Purchaser.
4. **CREDIT APPROVAL:** Orders are accepted subject to satisfactory credit approval. Pending credit approval, delivery may be delayed without liability to Seller.
5. **TERMS OF PAYMENT:** The terms of payment for Products purchased pursuant to this Agreement are (I) upon acceptance of the purchase order a deposit in such amount as may be set out in the Seller's written acceptance notice and (II) the balance within 30 days from the date of invoice. Any invoice amount which is not paid when due shall bear interest at the rate of one and one-half (1 1/2%) percent per month until paid in full. The Purchaser agrees that it will not have any rights of set off against or deduction from the purchase price for the Products payable by the Purchaser pursuant to this Agreement. The Purchaser grants to Seller a purchase money security interest in all Products delivered pursuant to this Agreement and all proceeds thereof (whether cash or non-cash and including, without limitation, accounts, instruments and chattel paper). Any failure by the Purchaser to pay the purchase price in full as provided in this Agreement shall constitute an event of default for purposes of said security interest. Upon the occurrence of any such default, Seller shall have all rights of a secured party after default under applicable law. Any repossession and removal of any Products shall be without prejudice to any of Seller's other remedies at law or in equity. The Purchaser agrees, without further consideration, at any time, to do or cause to be done, to execute and deliver, all such further acts and instruments (including, without limitation, financing statements approved for filing) as Seller may reasonably request in order to perfect Seller's security interest.
6. **DELIVERY DATE:** Seller will utilize reasonable best efforts to meet the delivery schedules stipulated in this Agreement. In the event the provisions of Section 15 hereof shall apply, the delivery date shall be extended by a number of days that is equal to the duration of the event or condition that is responsible for such delay.
7. **F.O.B. AND SHIPMENT:** Seller shall deliver the Products to the Purchaser F.O.B. Seller's warehouse. Risk of loss of or damage to the Products shall pass to the Purchaser at the F.O.B. point upon transfer of possession to the carrier for delivery to the Purchaser. Loss of or destruction of or damage to the Products from and after the time they are received by the carrier for delivery to the Purchaser shall not in any way release, reduce or in any way affect the Purchaser's responsibility to pay the full purchase price thereof in accordance with the provisions of this Agreement. Seller is not responsible for its selection of the carrier or the mode of shipment.
8. **INSPECTION BY PURCHASER:** All Products must be inspected by the Purchaser upon receipt and the Purchaser and Seller, collectively, agree to file appropriate claims with the carrier when there is evidence of shipping damage, either concealed or external. Claims for shortage or error in shipment or for damage other than shipping damage must be made within 5 days after receipt of shipment, failing which the Purchaser shall be deemed to have accepted the shipment.
9. **LIMITED WARRANTY:** Purchaser acknowledges that the Products are provided to the Purchaser subject only to the limited warranties provided by the manufacturer of the Products and are subject to all of the conditions, limitations and exclusions set out therein, all of which are hereby accepted by the Purchaser. The warranty exclusions include, without limitation, (I) any defects caused by faulty installation performed by Purchaser or third parties, (II) any damage caused by the contractors or tradesman of the Purchaser, (III) any damage caused by improper use or misuse, including exposure to excessive temperatures, moisture or cleaning agents and solvents and (IV) any damage caused during transportation or improper storage. Claims for warranty repairs and replacements must be made within the applicable time period described in the manufacturer's limited warranty and shall be governed by the policies in Section 13 hereof. In no event shall Seller be liable for other than the repair or replacement of any defective Products. In no event shall Seller be liable for any damages, direct or indirect, special or consequential, including, without limitation, damages for lost profits, business interruption, or economic loss arising out of defects in the Products.
10. **EXCLUSION OF WARRANTIES:** Except as expressly set forth herein seller disclaims all warranties with regard to the products including, without limitation, all implied warranties of merchantability and fitness for a particular purpose.
11. **RETURNED PRODUCTS:** This policy covers only Products of current manufacture, design, and normally stocked items in new condition. The return of obsolete and used Products shall not be permitted. The Purchaser shall not return Products without first obtaining Seller's written permission. Products must be returned within 30 days after the date that written permission has been given. All transportation charges for any returned Products shall be paid by the Purchaser. Request to return Products must be accompanied by relevant customer order and Seller's invoice number(s). Final acceptance of returned Products is subject to examination and testing.
12. **CATALOGUE AND OTHER PRINTED MATTER:** Seller's illustrations are representations of a certain size of each line of Product, but do not necessarily represent all sizes and materials in detail. Similarly, dimensions, weights and material information have been prepared with care, but their correctness is not guaranteed. Seller reserves the right to vary the designs and dimensions without notice.
13. **FORCE MAJEURE:** Any delay or failure of performance by Seller shall be excused if and to the extent caused, directly or indirectly, events beyond Seller's control including, without limitation, fire, flood earthquake, lightning, hurricane, explosion, accident or breakdown, acts of God, embargo, strike, labour dispute, labour trouble, lockout, shortage or control of power supply, shortage of supplies or raw materials, or any causes whether of the same kind as the causes enumerated before or not. Subject to any express provisions of this Agreement, any such causes of delay shall extend the time of performance by the length of delay occasioned thereby.
14. **NO WAIVER:** No waiver by Seller of any right hereunder or of any right granted in connection with a failure to perform or breach by the Purchaser shall be deemed as a waiver of any other right hereunder or of any right granted in connection with any other failure or breach by the Purchaser, whether of a similar nature or otherwise.
15. **NOTICE:** Any notice made under or in relation to this Agreement shall be sent to the addresses first above written or such other address as the intended recipient shall have previously designated by written notice, by postage prepaid registered mail or by telegram including telex, followed by a confirmation letter by postage prepaid and return-receipt requested registered mail. The notice shall be deemed to be made on the fifth day following the date of mailing.
16. **ENTIRE AGREEMENT:** This Agreement contains the entire agreement and understanding of the parties hereto with respect to the subject matter of this Agreement, and supersedes all prior discussions, agreements, understandings of any and every nature, whether written or oral, between the parties with respect to the subject matter of this Agreement, and no condition, definition, warranty or representation other than those expressly provided for in this Agreement with respect to the subject matter of this Agreement shall be binding upon either party hereto.
17. **AMENDMENTS IN WRITING:** Any amendment, modification, change or alteration of this Agreement shall be made in writing which expressly refers to this Agreement and which is signed by a duly authorized officer or representative of each of the parties hereto.
18. **SEVERABILITY:** All provisions of this Agreement are severable and this Agreement shall be interpreted and enforced as if all completely invalid or unenforceable provisions were not contained herein. All partially valid and enforceable provisions shall be enforced to the extent they are valid and enforceable.
19. **NO AGENCY OR PARTNERSHIP:** Nothing herein contained shall be deemed or construed to constitute either party the agent or partner of the other. Neither party shall have any right, title or authority to enter into any contract, agreement or commitment on behalf of the other or to bind the other in any manner whatsoever.
20. **GOVERNING LAW:** This agreement shall be governed by and construed in accordance with the laws of the jurisdiction from which the products are shipped by the seller to the purchaser and the parties hereby attorn to the courts of such jurisdiction.
21. **ENUREMENT:** This Agreement shall enure to the benefit of and be binding upon the parties hereto and on their successors and permitted assigns.
22. **SELLER DEFINED:** For the purposes hereof, Seller means the Corporation listed as such on the front page of the Invoice or acceptance notice of which these terms and conditions of sale form a part.