

McKenzie Valve & Machining LLC Terms and Conditions of Sale

These Terms and Conditions (these “**Terms and Conditions**”) apply to all products McKenzie Valve & Machining LLC (“**Seller**”) sells to the purchaser (“**Buyer**”). Buyer agrees to all of the terms, conditions and special instructions contained in this document, all of which constitute a single contract. Buyer’s acceptance of Seller’s offer, receipt of goods or services from Seller or performance of any of the terms hereof constitute Buyer’s acceptance of all of the terms, conditions and special instructions set forth herein. Any different or additional provisions, terms, conditions or special instructions which are contained in Buyer’s bid specifications, proposal (or request for proposal), acceptance, order or other form, document or communication submitted by Buyer will not be binding on Seller or become part of the formal legal contract between Buyer and Seller unless specifically agreed to in writing by an authorized representative of Seller, notwithstanding Buyer’s acceptance of or payment for any shipment or any other act or omission of Buyer. If this order is deemed an acceptance of a prior offer by Buyer to Seller, such acceptance is limited to the express terms contained herein. These Terms and Conditions will survive termination of this contract to the extent necessary for the fulfillment thereof.

If Buyer and Seller have a pre-existing continuing written agreement referenced in this contract, the terms of such agreement will take precedence over the terms of this contract, to the extent of any conflict between such terms. In the event of any conflict between the terms on the front or in the body of this document and these Terms and Conditions, the terms on the front of or in the body of this document will take precedence.

1. **OFFER BY SELLER:** Seller will supply to Buyer the products set forth in this document. If this document constitutes an offer by Seller, the pricing and other terms set forth on the face of or in the body of the offer are valid only for a period of thirty (30) days following issuance of the offer, and will become binding upon Seller only if Buyer issues a written acceptance of such offer within the thirty (30) day period.
2. **DELIVERY:** The products will be shipped on a schedule mutually agreed to by Seller and Buyer. Any shipment or delivery dates are estimates only and are not binding on Seller. All products will be shipped FOB Seller’s place of business.
3. **TITLE:** Title to all products will pass to Buyer upon Seller’s full payment therefor.
4. **PRICES:** Unless otherwise stated, Seller’s prices exclude all federal, provincial, state and local taxes, all of which will be paid by Buyer. If Buyer is exempt from any such taxes, Buyer will provide to Seller current certificates evidencing such exemption. Unless otherwise stated, Seller’s prices exclude all

delivery charges, handling fees and duties, all of which will be paid by Buyer. Seller's prices are subject to change without notice.

5. TERMS: Unless otherwise specified in this order, payment terms are net 30 days from date of invoice and all payments will be in US Dollars. In the event any invoice is not paid when due, it will be subject to interest at the lesser of 1- 1/2% per month or the maximum legal rate. If there is a good faith dispute with regard to a portion of an invoice, Buyer will provide prompt written notice (in any event within ten (10) days) and detail of the dispute prior to the invoice due date, and will pay the undisputed portion when due. Upon resolution of the dispute, any disputed amounts owed to Seller will be paid with interest at the rate above, calculated from the date the amounts were originally due. In addition to Seller's other rights and remedies hereunder, Seller will be entitled to recover from Buyer all fees and costs of collection, including without limitation Seller's attorneys' fees and costs. In the event an invoice is more than five (5) days past due, Seller will have the right to suspend performance hereunder until all past due invoices have been paid, or Seller at its option may terminate this contract. Seller has the right of set-off for any amounts owed to Seller by Buyer.

6. WARRANTY: See MVM Warranty at www.mckenzievalve.com

7. LIMITATION OF LIABILITY: Seller will not be liable for any indirect, incidental, special, consequential or punitive damages hereunder. In no event will Seller's liability hereunder exceed the amount received by Seller for the products with respect to which the claim arises. In all instance, any action by Buyer must be brought within one (1) year after the cause of action arose.

8. BUYER'S OBLIGATIONS: Except as attributable to the gross negligence or willful misconduct of Seller, Buyer shall assume all risks and liabilities arising from the use, possession or delivery of the products provided hereunder. Buyer, at its sole cost and expense, will indemnify, hold harmless and defend Seller and Seller's directors, officers, members, managers, agents, employees, parents, subsidiaries, affiliates, customers, successors, and assigns from and against any claim, loss, cost, damage or expense, including attorneys' fees and expenses, arising out of the purchase, possession, delivery or use of the products by Buyer or any other person or entity, including without limitation any claim by any customer of Buyer.

9. INTELLECTUAL PROPERTY: Any and all inventions, discoveries, patent applications, patents, copyrights, trademarks and trade names, commercial symbols, trade secrets, work product and information embodying proprietary data existing and owned by Seller as of the date of this contract or made or conceived by employees of Seller during the term of this contract shall be and remain the sole and exclusive property of Seller.

10. COSTS BEYOND CONTROL: Following notice from Seller, Buyer shall pay to Seller a surcharge in the event of any extraordinary, emergency or other unanticipated increases in the cost of manufacturing, supplying or distributing the products.

11. FORCE MAJEURE: If, because of any cause or causes beyond the

reasonable control and without the negligence of Seller, including without limitation Acts of God, labor strikes or disturbances, unusual weather, interruptions of transportation, interruptions of public utility power facilities, embargoes, acts of civil or military authority, war, riots, material breakdowns (including shutdowns for emergency maintenance or the like) at Seller's facilities, condemnation or acts of eminent domain or forced sale, Seller is commercially unable to carry out part or all of its obligations hereunder, then Seller's obligations shall be suspended to the extent made necessary by such event during the continuance of such event.

12. RELATIONSHIP OF PARTIES: Seller and Buyer are independent contractors. Buyer has no authority to hire any employee, purchase any material or services or make any other commitment on behalf of Seller.

13. ADVERTISING: Buyer will not, without obtaining the prior written consent of an authorized representative of Seller, in any manner advertise or publish the fact that Seller has contracted with or sells to Buyer, or otherwise use Seller's name or logo. Buyer will not disclose any information regarding this contract to any other person or entity without Seller's prior written consent.

14. DISPUTES: The parties will seek to resolve all disputes under this contract expeditiously and in good faith. This contract will be construed in accordance with the internal laws of the State of Tennessee, without regard to its conflict of laws provisions, and all disputes hereunder will be adjudicated by any state or Federal court located in the state of Tennessee. To the extent it may be applicable, the parties expressly agree to exclude the application of the U.N. Convention on Contracts for the International Sale of Goods (1980) to this Agreement.

15. INSOLVENCY: Seller may cancel this contract in the event of the happening of any of the following, or any comparable event: insolvency of Buyer; Buyer's filing of a voluntary petition in bankruptcy; the filing of any involuntary petition to have Buyer declared bankrupt provided it is not vacated within 30 days from date of filing; the appointment of a receiver or trustee for Buyer provided such appointment is not vacated within 30 days from the date of such appointment; the execution by Buyer of an assignment for the benefit of creditors; or if Seller, in its reasonable judgement, is insecure in Buyer's ability to perform its obligations hereunder. Buyer will at all times provide Seller with all information regarding Buyer's financial condition that is reasonably requested by Seller and with adequate assurances of performance that are reasonably requested by Seller, including the posting of a bond or other security.

16. NOTICES: Any notice to be given hereunder will be validly given if in writing, and if delivered personally, sent by overnight courier, charges prepaid, or sent by registered or certified mail, return receipt requested, postage prepaid, to the other party at its last known business address. Notice will be deemed delivered upon personal delivery, one (1) business day after being sent by overnight courier, or three (3) business days after being sent by registered or certified mail.

17. GENERAL: This contract constitutes the entire agreement of the parties, and supersedes all prior agreements, whether oral or written, of the parties, including without limitation all estimates and proposals of Seller, except as provided in these Terms and Conditions. No waiver or modification of this contract will be valid unless in writing and signed by the parties. The failure of either party to insist upon strict adherence to any term hereof on one or more occasions will not be considered a waiver or deprive that party of the right thereafter to insist on strict adherence to that term or any other term. If any provision of this contract is declared invalid or unenforceable by a court of competent jurisdiction, such provision will be ineffective to the extent of such invalidity or unenforceability, but will not affect any other provisions of this contract, which will otherwise remain in full force and effect. The terms hereof will inure to and be binding upon Buyer and Seller and their heirs, legal representatives, successors and assigns; provided that no part hereof may be assigned by Buyer, by operation of law or otherwise, without Seller's prior written consent. Section headings and titles herein are for the convenience of the parties only and will not be construed as affecting the substantive provisions of this contract.

Last updated November 13, 2020

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