

I. GENERAL

These terms and conditions apply to purchases from Mid-West Instrument ("Seller") on all orders for products and/or services.

- A. Buyer purchase orders are not binding until confirmed by order acknowledgement from Seller and are subject to these Terms and Conditions. Oral orders are not accepted.
- B. Prices are based on these terms and conditions of sales and are valid for 30 days from date issued unless otherwise noted on quote.
- C. Seller reserves the right, without prior notice, to:
 - 1. Change and/or revoke any price.
 - 2. Change and/or revoke any provisions contained herein.
 - 3. Discontinue shipments to buyer.
 - 4. Resolve any inconsistencies, conflicts, or ambiguities.
- D. Special production runs or product orders are subject to Seller requirements such as, but not limited to, minimum quantities and extended delivery times. Special orders are subject to reasonable cancellation charges.
- E. Shipping dates are established from the date Seller has all information to properly process subject order. Seller assumes no responsibility for any delays in shipment for any reason.
- F. **Minimum Order** is \$75.00 net.

II. PAYMENT TERMS AND SALES TAX

- A. If Buyer has previously established credit terms: Net 30 days from shipment date.
- B. If credit is not established, payment plus estimated (by Seller) freight charges shall accompany purchase order.
- C. Cash or anticipation discounts are not permitted.
- D. Seller reserves the right to revoke any credit extended to Buyer if Buyer fails to pay for any shipments when due. If, in Seller's opinion, there is any adverse change in Buyer's financial condition, Seller shall have the right to suspend further shipments until receipt of adequate assurance of Buyer's ability to pay.
- E. Payment terms are specified on the invoice. Any invoice not paid when due is subject to a late payment charge of 1.5% per month, or if such rate is greater than the maximum rate permitted by applicable law, then at the highest rate allowed by applicable law. In the event the Buyer fails to make full payment when due and Seller employs an attorney or collection agency to assist in collection of the account, Buyer agrees to pay all of Seller's reasonable cost of collection, including collection agency fees and court costs.
- F. Unless otherwise stated, prices do not include sales, use, excise, and similar taxes applicable to either the products or the materials used in the manufacture of products or services. All such taxes and charges shall be shown separately on Seller's invoices.

III. TRANSPORTATION

- A. All shipments are Ex Works, (Incoterms 2020), Seller's loading dock, except as expressly provided below.
- B. Each shipment is deemed accepted in good condition by the common carrier and title and all risk of loss or damage pass to Buyer upon that acceptance by the carrier. Buyer is responsible for inspecting the merchandise upon receipt. Buyer shall insist that visible damage be noted on its copy of the freight bill. If the product has been lost or damaged in transit, Buyer must file the claim with the carrier, as Seller bears no responsibility for any such loss or damage.
- C. Freight, handling and insurance charges:
 - 1. Prepaid Shipments: All freight, handling and insurance charges shall be invoiced to Buyer.
 - 2. Collect Shipments via UPS or FedEx: All freight and handling charges shall be billed to the collect account number provided. Collect shipments are NOT insured. Buyer must request coverage if required and the insurance cost will be added to the freight charge. All uninsured shipments are the responsibility of Buyer. Seller assumes no responsibility for any such loss or damage.
 - 3. Truck Shipments: All freight, handling and insurance charges shall be billed to the account number provided. Truck shipments are NOT insured. Buyer must request insurance coverage, if required, and the insurance cost will be added to the freight charge. All uninsured shipments are the responsibility of the Buyer. Seller assumes no responsibility for any such loss or damage.
- D. All shipments are made by carriers of Seller's choice. Any special arrangements requested by Buyer shall be at Buyer's additional expense.
- E. Buyer shall report any quantity shortages, incorrect items, or billing errors in writing to the Seller within fifteen (15) days of delivery. Sales order and invoice numbers are to be furnished on all claims.
- F. Seller reserves the right to make delivery in installments. All such installments shall be separately invoiced and paid for when due, without regard to subsequent deliveries. Delay in delivery of any installment shall not relieve Buyer of Buyer's obligation to accept remaining deliveries.
- G. Seller shall not be liable for failure to deliver or delay in delivery occasioned by causes beyond Seller's control, including without limitation, strikes, lockouts, fires, embargoes, pandemics, epidemics, quarantines, terrorist attacks, war or other breakouts of hostilities, acts of God, inability to obtain shipping, space, machinery breakdowns, delays of carriers, raw material providers or other suppliers or subcontractors, and domestic or foreign governmental acts or regulations. In the event of any delay in delivery due to such causes, unless otherwise agreed, the time for delivery shall be deemed extended for a period of sixty (60) days. If delivery is not made within such extended sixty (60) day period, the contract shall be renegotiated. In no event shall Buyer be entitled to incidental or consequential damages for late performance or a failure to perform.

IV. RETURNS

No return shall be accepted without a Seller-furnished Return Goods Authorization number (RGA#). Please reference the Seller Return Goods Authorization (RGA) Policy for Seller Products.

V. LIMITED WARRANTIES

- A. Seller warrants that Seller's products, when shipped, will meet Seller's published specifications. All claims under this warranty must be made in writing immediately upon discovery and except as noted below, within one (1) year from invoice date.
- B. Any product which is determined by Seller to be defective may be returned to Seller according to the terms of the Returned Goods Authorization Policy.
- C. Seller warrants certain designated differential pressure gauge (Models 105, 106, 109, 120, 121, 122, 123, 124, 130, 140, 142, 220, and 240), Flow Test Kits (805, 806, 809, 820, 831, 841, 842, and 843) and backflow test kits (845, 830, and 835) manufactured and sold by Seller to be free from defects in material and workmanship under normal use and service for a period of five (5) years from invoice date.
- D. Seller warrants differential pressure gauges (Models 115, 116, 522, and 555) and accessory type products (150, 200, 300, 700, 710, 715, and manifolds) against defects in material and workmanship under normal use and service for one (1) year after date of invoice from Seller unless otherwise stated.
- E. **THE FOREGOING LIMITED WARRANTIES ARE EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES EXPRESS OR IMPLIED, INCLUDING THE WARRANTIES OF TITLE, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND OF ALL OTHER OBLIGATIONS OR LIABILITIES ON THE PART OF SELLER, AND SELLER NEITHER ASSUMES NOR AUTHORIZES ANY OTHER PERSON TO ASSUME FOR IT, ANY OTHER LIABILITY IN CONNECTION WITH THE SALE HEREUNDER. SELLER DISCLAIMS ANY LIABILITY FOR PRODUCT DEFECTS THAT ARE DUE TO PRODUCT MISUSE, IMPROPER USE, DAMAGE, IMPROPER PRODUCT SELECTION OR MISAPPLICATION.**

VI. LIMITATION OF LIABILITY

UNLESS APPLICABLE LAW OTHERWISE REQUIRES, SELLER'S AND ANY OF ITS VENDOR'S TOTAL LIABILITY TO BUYER, BUYER'S CUSTOMERS OR TO ANY OTHER PERSON, RELATING TO ANY ORDER OR PURCHASE OF ANY PRODUCTS OR SERVICES, FROM THE USE OF THE PRODUCTS FURNISHED OR FROM ANY ADVICE, INFORMATION OR ASSISTANCE PROVIDED BY SELLER (BY ANY METHOD, INCLUDING A WEBSITE), IS LIMITED TO THE PRICE RECEIVED BY SELLER FOR THE PRODUCTS GIVING RISE TO THE CLAIM. BUYER'S FAILURE TO TIMELY SUBMIT A CLAIM HEREUNDER SHALL WAIVE ALL CLAIMS FOR DAMAGES OR OTHER RELIEF INCLUDING BUT NOT LIMITED TO CLAIMS BASED ON LATENT DEFECTS. NEITHER SELLER NOR ITS VENDORS SHALL BE LIABLE FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PENAL DAMAGES (INCLUDING, BUT NOT LIMITED TO BACK-CHARGES, LABOR COSTS, COSTS OF REMOVAL, REPLACEMENT, TESTING OR INSTALLATION, LOSS OF EFFICIENCY, LOSS OF PROFITS OR REVENUES, LOSS OF USE OF THE PRODUCTS OR ANY ASSOCIATED PRODUCTS, DAMAGE TO ASSOCIATED PRODUCTS, LATENESS OR DELAYS IN DELIVERY, UNAVAILABILITY OF PRODUCTS, COST OF CAPITAL, COST OF SUBSTITUTE PRODUCTS, FACILITIES OR SERVICES, DOWNTIME, OR CLAIMS FROM BUYER'S CUSTOMERS OR OTHER PARTIES). IF SELLER FURNISHES BUYER WITH ADVICE OR OTHER ASSISTANCE WHICH CONCERNS ANY PRODUCTS SUPPLIED HEREUNDER, OR ANY SYSTEM OR EQUIPMENT IN WHICH ANY SUCH PRODUCTS MAY BE INSTALLED, THE FURNISHING OF SUCH ADVICE OR ASSISTANCE IS GRATUITIOUS AND WILL NOT SUBJECT SELLER TO ANY LIABILITY, WHETHER BASED ON CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE) OR OTHER GROUNDS.

VII. CANCELLATION CHARGES

Seller may impose cancellation charges equal to the cost of raw materials purchased by Seller and labor and materials costs incurred (and not otherwise mitigated), dedicated to manufacturing Products prior to the date of Buyer's cancellation notice. A 25% cancellation fee will be assessed if engineering calculations and drawings (if needed) are completed prior to the date of Buyer's cancellation notice.

VIII. ARBITRATION; CONTROLLING LAW; JURISDICTION AND VENUE

- A. Except for actions to protect intellectual property rights and to enforce an arbitrator's decision hereunder, all disputes, controversies, or claims arising out of or relating to this Agreement or a breach thereof shall be submitted to and finally resolved by arbitration under the rules of the American Arbitration Association ("AAA") then in effect. There shall be one arbitrator, and such arbitrator shall be chosen by mutual agreement of the parties in accordance with AAA rules. The arbitration shall take place in Sterling Heights, Michigan, USA. The arbitrator shall apply the laws of the State of Michigan, to all issues in dispute. The controversy or claim shall be arbitrated on an individual basis and shall not be consolidated in any arbitration with any claim or controversy of any other party. The findings of the arbitrator shall be final and binding on the parties and may be entered in any court of competent jurisdiction for enforcement. Enforcements of any award or judgment shall be governed by the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards.
- B. This Agreement shall be governed, controlled, interpreted, and defined by and under the laws of the State of Michigan without regard to conflicts of law provisions thereof.
- C. The parties agree that the courts of Macomb County in the State of Michigan, and the U.S. District Court for the Eastern District of Michigan shall be the exclusive jurisdiction and venue for all legal proceedings that are not arbitrated under these Terms and Conditions and RGA Policy.

IX. ASSIGNMENT

An order shall not be assigned by either party without the express written consent of the other. Consent will not be required, however, for internal transfers and assignments as between either party and its affiliates under common ownership, and nothing herein shall limit either party's right to factor or sell receivables.

X. TERMINATION

Either party may terminate the whole or any part of the other party's performance under a purchase order if there is a material breach of these Terms & Conditions and RGA Policy. In the event of any such breach, the non-breaching party will provide the breaching party with written notice of the nature of the breach and the non-breaching party's intention to terminate for default. In the event the breaching party does not cure such failure within ten (10) days of such notice, the non-breaching party may, by written notice, terminate the order; provided, that the breaching party shall continue its performance to the extent not terminated. In addition, subject to the payment of any cancellation charges by Buyer to Seller, either party may terminate

an order on thirty (30) days prior notice to the other party.

XI. EXPORT COMPLIANCE

Buyer acknowledges that the Product is subject to U.S. export control laws, rules and regulations including, but not limited to: The Export Administration Act of 1979 (50 U.S.C. § 2401 et seq., as extended by Executive Order 13222); The Arms Export Control Act of 1976 (22 U.S.C. § 2751 et seq.); The Export Administration Regulations (15 C.F.R. § 730 et seq.); The International Traffic in Arms Regulations (22 C.F.R. § 120 et seq.); and The International Emergency Economic Powers Act (50 U.S.C. § 1701 et seq.). Buyer shall comply with all applicable export control and trade embargo laws, rules and regulations and shall not resell, export, re-export, distribute, transfer, or dispose of the Product, directly or indirectly, without first obtaining all necessary written consents, permits and authorizations and completing such formalities as may be required by any such laws, rules, and regulations. Buyer acknowledges that any diversion of these commodities contrary to the aforementioned laws, rules and regulations is prohibited. Failure by Buyer to comply with all applicable export control and trade embargo laws, rules and regulations shall constitute a material breach of these Terms and Conditions of Sale. Seller assumes no responsibility or liability for Buyer's failure to obtain required authorizations. Buyer agrees to impose this same compliance requirement in its contracts with third parties pertaining to the Product.

XII. MISCELLANEOUS

These Terms and Conditions and RGA Policy constitute the entire understanding of the parties with respect to the subject matter of this agreement and merges all prior communications, understandings, and agreements. These Terms and Conditions and RGA Policy may be modified only by a written agreement signed by the parties. Seller objects to and rejects any terms between Buyer and any other party, and no such terms, including but not limited to any government regulations or "flow-down" terms, shall be a part of or incorporated into any order from Buyer to Seller, unless agreed to in writing by an authorized representative of Seller.

The failure of either party to enforce at any time any of the provisions hereof shall not be a waiver of such provision, or any other provision, or of the right of such party thereafter to enforce any provision hereof. If any provision of These Terms and Conditions and RGA Policy are declared invalid or unenforceable, such provision shall be deemed modified to the extent necessary and possible to render it valid and enforceable. In any event, the unenforceability or invalidity of any provision shall not affect any other provision of these Terms and Conditions and RGA Policy, and these terms shall continue in full force and effect, and be construed and enforced, as if such provision had not been included, or had been modified as above provided, as the case may be.

WARNING: Seller's Products may contain chemicals known to the State of California to cause cancer and/or reproductive harm.