

## **TERMS AND CONDITIONS OF SALE #2 Valve**

- 1. Exclusive Terms.** Unless otherwise agreed to in writing signed by A. H. Stock Manufacturing Corporation ("Seller"), any term contained in any Buyer order, acknowledgment or other communication that is inconsistent with these terms is inapplicable. These terms shall exclusively govern. No course of dealing, usage of trade or course of performance will be relevant to supplement or explain any terms.
- 2. Price.** All prices are F.O.B., the Seller's plant of manufacture, unless otherwise stated. Prices do not include any federal, state, or local taxes or other governmental charges with respect to the sale, purchase, manufacture, delivery, storage, processing, use, or consumption of any of the Goods provided hereby. Prices are stated and payable in U.S. dollars.
- 3. Invoicing and Payments.** Invoice payable without setoff, ~~2.0% ten (10) days~~, thirty (30) days net. Interest due on amounts over forty five (45) days at rate of 1.5% per month. If Buyer defaults, Seller may, in addition to all other remedies at law or equity: (a) defer or suspend further shipments or provision of Goods; (b) cancel the unshipped or unperformed portion of any order and invoice Buyer for incurred costs and reasonable profit without Seller liability or (c) ship Goods to Buyer on C.O.D. or cash in advance basis.
- 4. Delivery.** Title to and risk of loss for the Goods shall pass to Buyer upon delivery to the common carrier or to Buyer directly. Seller makes shipping arrangements and Buyer pays all such costs and expenses. Timeframes of Seller are good faith estimates of the expected delivery date for the Goods. Seller shall use commercially reasonable efforts to fill Buyer's orders but in no event shall Seller be liable for any damages associated with Seller's inability to meet any such timeframes or deadlines, including but not limited, to incidental or consequential damages arising therefrom.
- 5. Inspection & Acceptance.** Buyer shall inspect all Goods and report all discrepancies within ten (10) business days after receipt. Buyer's payment shall constitute final acceptance of the Goods and waiver of right to inspect or reject the Goods. Goods returned without Seller's prior authorization will be refused. Seller not responsible for freight costs, damages to Goods, or any other costs or liabilities pertaining to Goods returned without authorization. Seller may substitute conforming replacement Goods. Buyer responsible for all freight costs to and from Buyer. Buyer responsible for any repackaging costs. Buyer responsible for full value of Goods returned in unsaleable condition. No return of special order Goods permitted. All Goods returned subject to 10% invoice restocking fee less freight charges.
- 6. Security Interest.** Buyer grants to Seller a purchase money security interest in all Goods, accessories and additions thereto, whether presently upon Buyer's premises or hereafter acquired all spare parts and components therefor, and all proceeds of the sale or other disposition. Buyer hereby authorizes Seller and its agents to file any financing statements and other documents necessary to perfect, maintain or otherwise continue the security interest granted. Seller shall have all remedies of a secured party under the Uniform Commercial Code.
- 7. Limited Warranty. A.** Seller warrants that all Products sold to be free from defects in material and workmanship for a period of one (1) year from the date of shipment, provided that: (1) Seller is notified in writing by the Buyer within thirty (30) days after Buyer's discovery of such failure; or (2) Defective products are returned freight prepaid by Buyer to the Seller no later than ten (10) days following the last day of the warranty period. Seller's sole obligation, and Buyer's sole remedy for failure of the Goods to comply with warranty is, at Seller's option, to repair or replace the Goods and return to Buyer freight pre-paid within thirty (30) days from the date Seller receives the defective goods. **B.** This limited warranty does not apply to: (a) periodic or routine maintenance and setup, (b) repair or replacement of the Goods due to normal wear and tear, (c) defects or damage to the Goods resulting from misuse, abuse, neglect, or accidents, (d) defects or damage to the Goods resulting from improper or unauthorized alterations, modifications, or changes, (e) any Goods that has not been installed and/or maintained in accordance with the instruction manual or technical guidelines provided by Seller, and (f) parts acquired from third party vendors ("Vendor Parts"). If Vendor Parts are defective, Seller will use best efforts to resolve the warranty issue on behalf of Buyer with the third party vendor. If Seller is unable to resolve a warranty dispute with a third-party vendor to the satisfaction of Buyer, Buyer shall look to the manufacturer of Vendor Parts for any remedy in respect to defective Vendor Parts. Seller shall pass any unexpired warranty for such Vendor Parts provided by third party vendors or passed on by such third party vendors from the original manufacturers through to Buyer. **C** The above warranty period shall not be extended by the repair or replacement of the Goods. The above warranty shall apply to Buyer, its successors, assigns and those who purchase or use said products. Buyer shall deal directly with Seller for returns and repairs.
- 8. EXCLUSION OF OTHER WARRANTIES.** THE FOREGOING LIMITED WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED. ANY AND ALL OTHER EXPRESS, STATUTORY OR IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE ARE EXPRESSLY DISCLAIMED. NO WARRANTY IS MADE WHICH EXTENDS BEYOND THAT WHICH IS EXPRESSLY CONTAINED HEREIN.
- 9. Limitation of Liability.** IN NO EVENT SHALL SELLER BE LIABLE TO BUYER OR ANY OTHER PARTY FOR ANY INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, LOST PROFITS OR DOWN TIME) ARISING FROM OR IN ANY MANNER CONNECTED WITH THE GOODS, ANY BREACH BY SELLER OR ITS AGENTS OF THIS AGREEMENT, OR ANY OTHER CAUSE WHATSOEVER, WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY OF LIABILITY. BUYER'S REMEDY WITH RESPECT TO ANY CLAIM ARISING UNDER THIS AGREEMENT IS STRICTLY LIMITED TO NO MORE THAN THE AMOUNT PAID BY THE BUYER FOR THE GOODS.
- 10. Intellectual Property Rights.** Seller retains all rights in its intellectual property. Nothing in this Agreement shall be deemed or construed to be a transfer or license of any of Seller's intellectual property.
- 11. Force Majeure.** Seller shall not be responsible for any delay or failure in the delivery of Goods due to causes beyond Seller's reasonable control including, without limitation, acts of God, acts of war or terrorism, enemy actions, hostilities, strikes, labor difficulties, embargoes, non-delivery or late delivery of materials, parts and equipment or transportation delays not caused by the fault of Seller, delays caused by civil authorities, governmental regulations or orders, fire, lightening, natural disasters or any other cause beyond Seller's reasonable control. In the event of any such delay, performance will be postponed by such length of time as may be reasonably necessary to compensate for the delay.
- 12. Patterns, Dies and Molds.** Unless furnished to Seller by Buyer, all tools, dies, molds, drawings, artwork, designs, or other materials used by Seller to manufacture or provide the Goods are and shall remain the property of Seller.
- 13. Installation.** Buyer shall install the Goods according to any Seller instructions and shall indemnify Seller against any and all damages, demands, suits, causes of action, claims and expenses (including actual attorneys' fees and costs) arising directly or indirectly out of Buyer's failure to properly install the Goods.
- 14. Work By Others; Safety Devices.** Seller not responsible for labor or work performed by Buyer or others, of any nature, relating to design, manufacture, fabrication, use, installation or provision of Goods.
- 15. No Waiver.** No waiver of any term is valid unless in writing by Seller. No waiver by Seller of any default is a waiver of any other or subsequent default. The failure of Seller to insist upon strict and timely performance of any term shall not be deemed a waiver of any right or remedy of Seller or a waiver of any subsequent default in performance of any term.
- 16. Severability.** If any court of competent jurisdiction determines that any term is invalid or unenforceable, such determination shall have no effect on the other provisions hereof, which shall remain in full force and effect.
- 17. Assignment.** Buyer may not assign any of its rights, duties or obligations without Seller's prior written consent and any attempted assignment without such consent will be void.
- 18. Remedies.** All rights and remedies of Seller are cumulative and in addition to any other remedies at law or in equity.
- 19. Attorney's Fees.** If legal action is necessary to recover monies due from Buyer or to enforce any provision of this Agreement, Buyer shall be liable to Seller for all costs and expenses associated therewith, including Seller's actual attorneys' fees and costs.
- 20. Governing Law/Venue.** This Agreement shall be construed and governed under the laws of the State of Wisconsin, without application of conflict of law principles. Each party agrees that all actions or proceedings arising out of or in connection with this Agreement shall be commenced, tried, and litigated only in the state courts sitting in Manitowoc County, Wisconsin or the U.S. Federal Court for the Eastern District of Wisconsin. Each party consents to and waives any objection to the exercise of personal jurisdiction over it by said courts. EACH PARTY WAIVES TO THE FULLEST EXTENT PERMITTED BY LAW THE RIGHT TO A TRIAL BY JURY.