

Mikron Valve & Manufacturer, Inc.

(a subsidiary of PSB Industries, Inc)

1259 W. 11th Street

Erie, PA 16502

Terms and Conditions of Sale

1. **Offer.** Any of the Purchaser's terms and conditions which are in addition to or different from those contained herein which are not separately agreed to in writing (except additional provisions specifying quantity, character of the goods ordered, and in shipping instructions) are hereby objected to and rejected. Objection to any terms and conditions contained herein shall be deemed to have been waived if written notice of such objection is not received by Seller within ten (10) days of the date of this Purchase. Purchaser will in any event be deemed to have assented to all terms and conditions contained herein if any part of the goods described herein is accepted. **Please note particularly the Limited Warranty and limitation of Remedies provisions set forth below.**
2. **Limited Warranty.** To the extent the contract involves services, Seller warrants the services against defects in workmanship, and such warranty is the exclusive warranty pertaining to services. All goods manufactured by Seller are warranted to be free from defects in material and workmanship under normal use and service and such warranty is the exclusive warranty pertaining to goods. All replacements or repairs necessitated by inadequate preventive maintenance, or by normal wear and usage, or by fault of Purchaser, or by unsuitable power supply sources or by attack or by deterioration under unsuitable environmental conditions, or by abuse, alteration, accident, misuse modification, repair, storage or handling, or any other cause not the fault of Seller are excluded from this Limited Warranty, and shall be borne at Purchaser's expense. All products purchased by Seller from a third party for resale to Purchaser ("Resale Products") shall carry the warranty extended only by the original manufacturer, and Purchaser agrees that Seller has no liability for Resale Products beyond making a reasonable commercial effort to arrange for procurement and shipping of the Resale Products. **THIS EXPRESS WARRANTY IS IN LIEU OF AND EXCLUDES ALL OTHER WARRANTIES, WHETHER EXPRESSED, IMPLIED OR STATUTORY, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR TITLE.**
3. **Limitation of Remedies.** In the event of Seller's liability, whether based on contract, tort, negligence, strict liability or otherwise, Purchaser's sole and exclusive remedy will be limited to, as permitted by law, at Seller's option, the repair, correction or replacement by Seller of any nonconforming goods for which claim is made by Purchaser, in accordance with these terms and conditions, or to the allowance of a credit for the portion of the purchase price, paid by the Purchaser, attributable to the nonconforming goods. Seller shall not be liable for incidental or consequential damages, punitive damages, or any other losses, damages or expenses, directly, or indirectly arising from the sale, remanufacture, handling or use of the goods or from, any other cause relating thereto. Any legal or equitable action or proceeding brought relating to the goods, their sale or condition, or these terms and conditions, must be commenced within one year from the date such cause of action arose or within any applicable statutory limitations period, whichever is shorter.
4. **Claims-Notice of Defects.** In the event any goods to be furnished hereunder are claimed to be defective, the Seller shall be given ample opportunity for inspection, including inspection at Purchaser's premises or upon request shall be furnished with a sample of such goods. Seller shall be liable only to repair, correct or replace defective goods or to allow credit for such item at its option. All costs of dismantling, reinstallation and freight and the time and expenses of Seller's personnel for site travel and diagnosis under this warranty clause shall be borne by Purchaser. Goods repaired and parts replaced during the warranty period shall be in warranty for the remainder of the original warranty period or 30 days, whichever is longer. Defective goods may be returned only upon Seller's written approval, and Purchaser shall consult with Seller as to the proper method of identifying and returning defective goods. Any claims must be made within 3 days of Purchaser's discovery of any defective goods or such shorter period as may be commercially reasonable, but in any event within thirty (30) days after receipt of the goods sold hereunder.
5. **Patent or Trademark Infringement.** If the goods sold hereunder are to be prepared for manufacture according to the Purchaser's specification, Purchaser shall defend, hold harmless and indemnify Seller against any claims, liability, costs or attorneys fees incurred, in relation to any claim for patent or trademark infringement.
6. **Force Majeure.** Seller shall not be liable for any delay in delivery or for non-delivery, in whole or in part, caused by the occurrence of any contingency beyond the control either of Seller or of suppliers to the Seller, including but not limited to, failure or delay in transportation, acts of any government or any agency or subdivision thereof, judicial action, labor disputes, fire, accident, or acts of nature, shortage of labor, fuel, raw material or machinery or technical failure. If any contingency occurs, Seller may allocate production and deliveries among Seller's customers. Purchaser agrees to accept partial delivery of goods in Seller's possession.
7. **Confidentially.** In the event Purchaser's personnel visit Seller's plant or Purchaser otherwise receives any proprietary or confidential information from Seller, such information shall be retained as confidential by Purchaser and not be used or disclosed to any third party without the written consent of Seller. Seller retains all rights in any invention, improvement, discovery or patent it conceives relating to the goods delivered hereunder.
8. **Price.** Unless otherwise stated, all prices quoted are subject to change at any time, without notice to prices prevailing at time of receipt of Purchaser's order. All payments shall be in United States currency. If there is a delay in completion of shipment of said order, due to any change requested by Purchaser, or, as a result of any delay on Purchaser's part in furnishing information required for completion of the order, the price agreed upon at time of acceptance of order is subject to change. Prices and FOB terms are otherwise as stated on the front of this quotation. Prices are exclusive of all taxes-federal, state or local unless otherwise noted. There will be added to the quoted price any sales or other tax or duty which Seller may be required to collect or pay upon the sale of goods quoted. If such amount is not included in invoice of the goods, it may be invoiced separately later.
9. **Delivery.** The promised delivery date is the best estimate possible of when the goods will be shipped. Seller shall not be liable for any loss, damage, incidental or consequential damage due to delays. Carrying charges may be imposed on Purchaser for shipment, which are delayed at the request of Purchaser.
10. **Course of Performance.** The fact that Seller may accept or acquiesce in a course of performance shall not affect the terms herein, though Seller knows of the nature of the performance and has an opportunity to object to it. In no event shall any such action constitute or be deemed a waiver of any right, claim or defense against Purchaser.
11. **Security Interest.** Seller hereby reserves a security interest in and to all goods to be shipped to Purchaser hereunder, and the proceeds thereof, to secure the payment of the purchase price provided herein.
12. **Representation of Solvency.** Purchaser hereby represents that it is solvent, and that on each delivery this representation shall be deemed renewed unless notice to the contrary is given in writing by the Purchaser to the Seller at or before delivery of the goods.

13. Right to Identify Goods. If the Purchaser wrongfully rejects or revokes acceptance or fails to make a payment due on or before delivery or repudiates the contract in whole or in part then, notwithstanding any other remedy available to the Seller, the Seller may identify to the contract any conforming finished goods in the Seller's possession or control at the time the Seller learns of the breach, or if the goods at such time are unfinished the Seller may either complete the manufacture and wholly identify the goods to the contract or cease manufacture and resell for scrap or salvage value or proceed in any other reasonable manner, including proceeding against Purchaser for any delinquency that may result from such identification or resale for scrap or salvage value.

14. Right to Stop Goods in Transit. If the Purchaser becomes insolvent, repudiates, or fails to make payment when due, before delivery to the Purchaser, the Seller shall have the right to stop delivery of the goods.

15. Right of Resale. In the event of any breach or repudiation of or under this contract by Purchaser or any failure of Purchaser to comply with the provisions hereof, Seller may resell the goods covered hereby which have not already been delivered to Purchaser, together with any goods reclaimed by Seller or as to which Seller may agree to accept return, at one or more public or private sales, at wholesale or otherwise, and recover from Purchaser the amount by which the price established in this contract exceeds the amounts so received, together with all incidental damages occasioned by the default of Purchaser.

16. Reorders. Reorders, at Seller's option, may require a new written agreement. Any reorders accepted by Seller but not placed pursuant to a new written contract shall be governed by the terms and conditions stated herein.

17. Cancellation. Orders canceled or terminated by the Purchaser for reasons not the fault of Seller, are subject to cancellation charges in addition to actual costs incurred by Seller.

18. Payments. If, in the Seller's judgment, the financial condition of the Purchaser at any time does not justify continuance of production, or shipment on the terms of payment originally specified, the Seller may require full or partial payment in advance or other adequate assurance of payment satisfactory to Seller.

19. Remedies. The rights and remedies reserved to Seller shall be cumulative and additional to all other remedies provided by law and equity. Seller shall be entitled to recover costs and attorney fees in the enforcement or defense of any rights hereunder.

20. Assignment. Neither party shall assign its rights or delegate its performance hereunder without the prior written consent of the other, and any attempted assignment or delegation without such consent shall be void.

21. Entire Agreement. This instrument contains the entire agreement of the parties relating to the subject matter hereof and may not be waived, changed, modified, extended or discharged orally but only by agreement in writing and signed by, the party against whom enforcement of any such waiver, change, modification, extension or discharge is sought.

22. Governing Law. This agreement shall be construed, interpreted and the rights of the parties determined in accordance with the laws of the State of Pennsylvania, without regard to Conflicts of Law Principles. Purchaser and Seller expressly exclude the application of the United Nations Convention on Contracts for the International Sales of Goods, as amended.

23. Severability. No part of this acknowledgement shall be affected if any other part of it is held invalid or unenforceable.