

Terms & Conditions of Sale

O'Keefe Controls Co.

If it's about precision, it's O'Keefe.

O'Keefe Controls Co. is hereinafter designated as "Seller"

In these T&Cs, Seller includes any entity owned or controlled by Seller which has its principal place of business at 4 Maple Drive, Monroe, Connecticut 06468. The term "Buyer" means the party who purchases or agrees to purchase Seller's Products (as defined herein), including, precision orifices, check valves, fixed flow controls, fixed flow rate orifices, restriction orifice unions, miniature in-line screens and breathers, miniature stainless steel fittings and bulkhead connectors and pneumatic float valves and level sensors (collectively the "Products"). Seller and Buyer may be referred to herein individually as a "Party" and collectively the "Parties." "Contract" means the written agreement between Seller and the Buyer (including such written specifications, quotations, drawings, and other documents as may be expressly incorporated into the Contract by reference) and incorporating these T&Cs (as defined herein) and no other terms and conditions of sale.

1. T&Cs Govern. These terms and conditions of sale ("T&Cs") are the only terms and conditions which govern the sale of Products by Seller to Buyer and these T&Cs shall govern the sale of Products to the complete exclusion of any and all other Buyer terms and conditions (including any terms or conditions contained in the Buyer's purchase order, confirmation of order, invoice, specifications, communications, or other documents), excepting and only excepting, terms stated in Seller's quotation acknowledgement relating solely to prices, quantities, delivery schedules and the description and specifications of the Products. Seller hereby specifically and completely rejects any other terms or conditions appearing on, incorporated by reference in, or attached to Buyer's purchase order(s) or any other document. In the event of any conflict between these T&Cs and the terms and conditions contained on Buyer's purchase order or other document, these T&Cs shall exclusively govern and control. Buyer's acceptance of Products constitutes Buyer's acceptance of these T&Cs. If a Seller quotation or acknowledgement follows the issuance of Buyer's purchase order or any other document that purports to impose terms and conditions on the sale of Products, any document issued by Seller shall not operate as an acceptance of the Buyer's terms and conditions and Seller's acceptance of any Buyer purchase order or

other document is expressly conditioned on Buyer's assent to all of Seller's T&Cs set forth herein. Seller reserves the right, from time to time, to change these T&Cs with written or electronic notice to Buyer.

2. Prices, Terms of Payment and Taxes.

(a) Prices. The prices of Products sold by Seller to Buyer will be Seller's applicable prices in effect at the time Buyer's purchase order is accepted by Seller, or such prices quoted by a Seller authorized representative; provided, however, Seller may change the prices of Products at any time and for any reason prior to shipment. Product orders are final, non-cancelable, non-returnable, and non-refundable. Written quotations expire automatically thirty (30) days from the date issued and are subject to change or termination prior to Buyer's acceptance during that period.

(b) Terms of Payment. All invoices are payable in U.S. Dollars to the address on Seller's invoice, without reduction by set-off or otherwise, in full on or prior to shipment unless Buyer maintains an open account with Seller, in which case payment in full shall be due thirty (30) days from date of the invoice. Seller reserves the right, in its sole discretion, to require full or partial pre-payment, letters of credit, or cash on delivery and to revoke any credit previously ex-

tended. Seller reserves the right to assess, and Buyer agrees to promptly pay, service charges of one and one-half percent (1.5%) per month on overdue accounts, or the maximum amount permitted by law, whichever is lower. Undisputed amounts owed by Buyer must be paid without setoff or other withholding. If an invoice is not paid when due, Buyer agrees to pay all collection costs, including costs and reasonable attorneys' fees, including all costs and reasonable attorneys' fees incurred on any appeal.

(c) Taxes. All prices for Products are exclusive of any and all excise, sales, delivery, use, transfer, personal property, local and/or value-added (VAT) taxes, and/or import, export or other duties and any and all other taxes, fees and/or duties imposed by any national, federal, state, municipal or other governmental or fiscal authority with respect to the Products or their sale all of which taxes and duties must be paid by Buyer. Buyer must provide Seller with a valid signed certificate of exemption for each respective jurisdiction. When placing an order, Buyer shall indicate which products are claimed to

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be tax exempt. Buyer assumes responsibility for, and unconditionally indemnifies, guarantees payment or reimbursement of, all applicable taxes, fees, duties, and expenses as may be applicable to Seller. Such taxes and/or duties shall be added to the invoice price and paid by Buyer.

3. Delivery and Risk of Loss.

All prices are FCA (Incoterms 2010) Seller's facility. Buyer agrees to pay all transportation charges incurred after the Products are delivered to the carrier and to reimburse Seller for any transit insurance or freight pre-paid for the Products by Seller. The date of delivery is the date on which the carrier takes the Products from Seller. Seller reserves the right to deliver the Products in any order and to make partial deliveries. All shipping dates are estimates only. Where Buyer furnishes special transportation instructions, any special expense is to be borne by the Buyer, including special handling, packaging and additional freight charges. When export instructions or special packing are required and have been agreed upon by the Parties, any extra charges such as export duties, licenses, fees and the like shall be borne solely by Buyer. Title to and the risk of loss of or damage to the Products or any part thereof, including international shipments, shall pass to the Buyer upon the delivery of Products to the carrier and Buyer shall have the responsibility of filing any claims for loss, damage, delay or otherwise, with the carrier, insurer or other related third parties

4. Delays and Product Acceptance, Installation and Maintenance.

(a) Delays. Seller is not liable, under any circumstances, for loss, damage, detention or delay, whether or not due, to causes beyond its reasonable control, including but not limited to, Acts of God, acts of Buyer, acts of civil

or military authority, fires, strikes, floods, terrorism, epidemics, war, riot, delays in transportation, government restrictions or embargoes, or difficulties in obtaining necessary labor, materials, manufacturing facilities or transportation due to such causes. In the event of a delay due to any cause beyond Seller's control, Seller may allocate production and deliveries among its customers, the time for delivery to Buyer will be extended for a period equal to the duration of the delay, and Buyer will not be entitled to refuse delivery or otherwise be relieved of any obligations as the result of the delay. Products for which delivery is delayed due to any cause within Buyer's control may be placed in storage by Seller at Buyer's risk and expense. Buyer will be liable for all costs and expenses incurred by Seller in holding or storing Products for Buyer or at Buyer's request. Seller reserves the right to withhold shipments in whole or in part if Buyer fails to make any payment to Seller when due or otherwise fails to perform its obligations hereunder.

(b) Product Acceptance, Installation and Maintenance. Inspection and acceptance of Products provided under these T&Cs shall be made by Buyer within fourteen (14) days of receipt of the Products at Buyer's facility. Failure of Buyer to inspect and reject in writing said Products within the above time period shall be deemed acceptance of the Products. Unless specifically agreed in writing by Seller, Buyer assumes responsibility for installation of the Products and for any required maintenance on the Products.

5. Limited Warranty, Limitations or Remedy and No Consequential or Special Damages.

(a) Limited Warranty. Seller's Products are sold subject to the following limited warranty: Seller warrants that the Products provided to Buyer shall, for a period

of one (1) year from the date of delivery from Seller's facility ("Warranty Period"), be free from defects in workmanship and materials.

(b) Limitation of Remedy. Buyer's exclusive remedy and the maximum limit of Seller's liability if a Product is defective in workmanship or materials, provided Buyer provides prompt written notice of the defect within the Warranty Period, shall be, at Seller's sole option: (i) repair or replace the Product at no charge to Buyer, or (ii) to refund the purchase price of the Products. Freight charges for Products returned to Seller for repair/warranty analysis are the responsibility of Buyer, and upon such return, Buyer must properly package such Product to protect against risk of loss and damage. Such repair/replacement refund of the purchase price shall be Buyer's sole and exclusive remedy with respect to a breach of the warranty set forth herein. All costs of de-installation or re-installation of the Product shall be borne by Buyer. Products that are repaired or replaced during the Warranty Period are warranted for a period of six (6) months from the date of repair or replacement or the unexpired term of the original Warranty Period, whichever period is longer. If, upon inspection of any of the Products to which this limited warranty applies, Seller determines that a claimed defect resulted from (i) normal wear and tear; (ii) improper installation and/or maintenance by Buyer or a third party; (iii) misuse or abuse, whether willful or negligent, of any of the Products; (iv) modifications, alterations, service, repair or replacement made by Buyer or a third party during the Warranty Period that were not requested or authorized by Seller; (v) any combination or use of the Products with any incompatible equipment or ancillary products that may be connected to the Products; (vi) failure of Buyer

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to maintain environmental conditions in accordance with Seller specifications or instructions; (vii) failure to follow all instructions provided by Seller (whether oral or written); (viii) customized equipment manufactured by third parties for incorporation into any of the Products or the Products into such customized equipment; (ix) defects or errors in any specifications provided by Buyer; (x) causes beyond Seller's reasonable control; or (xi) causes other than Seller's workmanship or materials, then the warranty shall be null and void and cease to apply. Seller shall have the sole right to determine whether Products are actually defective and the cause of the alleged defect.

(c) Disclaimer of Warranties; No Consequential, Incidental or Special Damages. SELLER DISCLAIMS ALL OTHER REPRESENTATIONS AND WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, IN FACT OR IN LAW, AND THE WARRANTIES IN THIS SECTION ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, FITNESS FOR A SPECIFIC APPLICATION BY BUYER, PERIOD OF SERVICE AND NON-INFRINGEMENT. NO EMPLOYEE OR AGENT OF SELLER, OTHER THAN AN OFFICER OR OTHER AUTHORIZED REPRESENTATIVE OF SELLER, IS AUTHORIZED TO MAKE ANY WARRANTY IN ADDITION TO THE FOREGOING. SELLER SHALL NOT BE LIABLE FOR AND BUYER WAIVES AND RELEASES ALL CLAIMS AGAINST SELLER FOR ANY CONSEQUENTIAL, INCIDENTAL, EXEMPLARY, PUNITIVE, SPECIAL OR INDIRECT DAMAGES, COSTS OR EXPENSES BASED ON NEGLIGENCE, BREACH OF WARRANTY, BREACH OF CONTRACT, STRICT LIABILITY, TORT, OR ANY OTHER THEORY OR CAUSE

OF ACTION, INCLUDING BUT NOT LIMITED TO, SELLER'S FAILURE TO PERFORM ITS OBLIGATIONS UNDER THIS PURCHASE ORDER, THE PURCHASE OF THE PRODUCTS, OR ARISING OUT OF THE USE OR FAILURE THEREOF, INCLUDING BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PRODUCTION, PROFITS OR INJURY TO PERSONS OR PROPERTY. FURTHER, CONSEQUENTIAL AND SPECIAL DAMAGES SHALL NOT BE RECOVERABLE EVEN IF THE REPAIR, REPLACEMENT OR REFUND FOR SELLER'S BREACH OF ITS LIMITED WARRANTY FAILS OF ITS ESSENTIAL PURPOSE OR FOR ANY OTHER REASON. THE PROVISIONS OF THIS PARAGRAPH SHALL SURVIVE ANY TERMINATION OR EXPIRATION OF THE PURCHASE ORDER AND SHALL APPLY REGARDLESS OF THE BASIS OF BUYER'S CLAIM, WHETHER IN CONTRACT, WARRANTY, TORT OR OTHERWISE. SELLER'S MAXIMUM LIABILITY SHALL NOT EXCEED THE PRICE PAID BY BUYER FOR THE PRODUCT(S) THAT GAVE RISE TO ANY SUCH LIABILITY. THE PROVISIONS OF THIS PARAGRAPH SHALL SURVIVE ANY TERMINATION OR EXPIRATION OF THE PURCHASE AND SALE OF THE PRODUCTS AND SHALL APPLY REGARDLESS OF THE BASIS OF BUYER'S CLAIM, BE IT IN CONTRACT, WARRANTY, TORT OR OTHERWISE. THE REMEDIES OF BUYER CONTAINED IN THIS CONTRACT ARE EXCLUSIVE AND IN LIEU OF ANY OTHER REMEDIES AVAILABLE TO BUYER UNDER APPLICABLE LAW.

6. Seller Remedies. If Buyer becomes insolvent or if Buyer is in default for any reason under these T&Cs relating to the purchase of Products or any other agreement between Buyer and Seller, Seller shall be entitled, at Seller's option, to discontinue further performance by withholding shipments, in whole or in

part, and/or to recall Products in transit, retake and repossess all Products which may be stored with Seller for Buyer's account, without the necessity of undertaking any legal proceedings, in addition to any other rights or remedies available to Seller hereunder.

7. Seller Intellectual Property Rights.

Seller shall retain all intellectual property rights relating to the Products, including specifications, designs, drawings, technical data and information, technical processes and business methods, and Buyer shall not duplicate, disclose to others or use Seller's intellectual property without Seller's written permission.

8. Additional Buyer Warranty.

To the extent that Buyer, provides its customer with any warranties in addition to or in lieu of the limited warranty set forth herein, Buyer shall have sole and exclusive responsibility and liability to its customer on account of such additional warranties.

9. Legal Compliance.

Buyer shall comply with all applicable governmental laws, ordinances, codes, rules, regulations and orders in its performance hereunder and shall obtain all permits or licenses required in connection with the purchase, transfer, shipment, installation or use of any of the Products. Buyer shall not export or re-export Products (or intellectual property relating thereto) except in accordance with applicable laws, including but not limited to, the United States Export Administration Act, the Arms Export Control Act, or other similar laws. Buyer shall have sole responsibility for obtaining all applicable licenses or authorizations at its sole cost and expense.

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10. Sample Products.

From time to time, Seller may provide Buyer with sample or prototype products for test and evaluation purposes only ("Sample Products"). During the evaluation period, Seller is the owner of and retains title to the Sample Products. All Sample Products shall be provided "AS IS" without warranty of any kind. Buyer agrees that any use of the Sample Product is at Buyer's sole risk. Under no circumstances shall the Sample Products be used in any production or commercial environment, technology, device or other machinery and Seller shall assume no liability for such unauthorized use.

11. Intellectual Property.

Seller has disclaimed infringement warranties under Section 5(c). Buyer agrees that it is responsible for determining whether its use of the Products requires licenses from third parties, and Buyer is responsible for obtaining such licenses.

12. Buyer Indemnity.

Buyer agrees to defend, indemnify and hold Seller harmless from any and all liability, and to pay all costs and attorney's fees, for injury or damage to persons or property caused in any manner by the Products while in possession or under the control of Buyer or Buyer's customer except as expressly set forth elsewhere in these T&Cs.

13. Assignment.

Buyer may not delegate any duties nor assign any rights or claims hereunder without Seller's prior written consent, and any such attempted delegation or assignment shall be void.

14. General Provisions.

(a) Governing Law. The rights and obligations of the Parties hereunder shall be governed by and interpreted, construed and enforced in accordance with the laws of the State of Connecticut and the Parties hereby irrevocably submit to the jurisdiction of any court of competence, federal and state, in Connecticut, including Seller having all rights provided for in the Connecticut Uniform Commercial Code. The Parties expressly reject the application to this Contract of the United Nations Convention on Contracts for the International Sale of Goods. No actions arising out of the sale of the Products, other than in an action to recover the purchase price of the Products, may be brought by either party more than one (1) year after the cause of action accrues.

(b) Severability; Remedies; Waiver.

In the event that any one or more provisions contained herein (other than the provisions obligating Buyer to pay Seller for the Products) shall be held by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained

herein shall not in any way be affected or impaired thereby. Seller's failure to enforce, or waiver of a breach of, any provision contained herein shall not constitute a waiver of any other breach or of such provision.

(c) Notices. Any notice or communication required or permitted hereunder shall be in writing and shall be deemed received three days after being sent via registered mail with return receipt requested, by courier (for example DHL or FedEx), by first-class mail, postage prepaid, or via email (with evidence of receipt required) to Seller or Buyer at the address specified in the Contract or at such other address, including email addresses, as either party may from time to time designate to the other in writing.

(d) Entire Agreement. This is the complete and exclusive statement of the agreement between Seller and Buyer with respect to Buyer's purchase of the Products. No waiver, consent, modification, amendment or change of the terms contained herein shall be binding unless in writing and signed by Seller and Buyer.

LRD: 09/10/19