

## 1. PRICE AND PAYMENT TERMS

- 1.1 All prices set forth herein are FOB GEMÜ shipping point and are payable at 2% 15 days, net 30 days after invoice date. Shipments will be invoiced as of date of shipment, and all accounts not paid within thirty (30) days of invoice date will bear interest at the rate of two percent (2%) per month from invoice Date. In the event of failure of timely payment by Buyer, Buyer shall pay to GEMÜ all costs of collection including the entire amount due hereunder as attorney's fees if collected by or through an attorney-at-law.
- 1.2 Prices on the goods are exclusive of all city, state, and federal excise taxes, including, without limitation, taxes on manufacture, sales, receipts, gross income, occupation, use and similar taxes. Wherever applicable, any tax or taxes will be added to the invoice as a separate charge to be paid by the Buyer.
- 1.3 In addition to the purchase price for the goods Buyer shall pay and be liable for all of Buyer's expenses incurred by GEMÜ for insurance, freight, cartage, warehousing, and all other charges in connection with loading and shipping the goods to the Buyer.
- 1.4 Buyer shall pay all amounts payable to GEMÜ hereunder when due, time being of the absolute essence.
- 1.5 Payment for the goods shall, if GEMÜ so requires, be made in full prior to delivery and GEMÜ shall be entitled to withhold delivery until such payment has been made and any check or other negotiable instrument given in payment has cleared. GEMÜ shall have the additional right at any time to limit or cancel any credit extended or to be extended hereunder. Upon failure by Buyer to make payment to GEMÜ within thirty (30) days after notice from GEMÜ limiting or canceling any credit extended or requiring Buyer to make payment before delivery, GEMÜ shall have the option to cancel this and other contracts between GEMÜ and Buyer. In such an event, in addition to its other remedies, GEMÜ may resell all or any part of the goods undelivered under contract within 28 days notice at public or private sale and Buyer shall be liable to GEMÜ for the difference between the resale price and the price at which Buyer agreed to buy the goods together with incidental damages.

## 2. TITLE TO AND RESERVATION OF SECURITY INTEREST IN THE GOODS

- 2.1 Until Buyer has completed payment for the goods, title and ownership to said goods shall remain with GEMÜ and its assigns, and GEMÜ hereby reserves and Buyer hereby grants to GEMÜ a purchase money security interest in the goods. The goods shall at all times be located at the place to which delivery is to be made as indicated on the reverse hereof unless written approval is obtained from GEMÜ for removal to some other place. Said goods shall not become a part of the realty or any other fixture.
- 2.2 If the Buyer defaults in the payment of any part of the purchase price as herein provided at any maturity date as to any payment or fails to comply with or defaults in any of the material provisions of this Agreement, or in the event that a petition for a receiver or in reorganization or in bankruptcy is filed by or against Buyer, or whenever GEMÜ or its assigns shall deem themselves insecure, then in any such event the full amount of the purchase price remaining unpaid shall become immediately due and payable at the option of GEMÜ or its assigns, and the Buyer agrees to return said goods on demand, if not yet fully paid for, and GEMÜ or its assigns may without notice of demand and without any legal process enter into any premises where the goods are located to take immediate possession thereof and to make such disposition deemed by GEMÜ or its assigns as desirable. All payments made shall be retained as liquidated damages for the use of the goods and not as a penalty. The goods may be sold with 28 days notice at public or private sale, with the right in GEMÜ or its assigns to bid in such sale, and the proceeds thereof less expenses shall be credited to the amount unpaid. The Buyer agrees to pay the difference between the fair market value of the goods sold and monies derived from private or public sale and all costs incurred, legal or otherwise, as a result of the breach of this Agreement.
- 2.3 Until payment for the goods has been completed, Buyer may not sell, transfer, convey, pledge, hypothecate or otherwise use the goods as security for any borrowing or for any other purposes. A violation of this provision shall cause an immediate default of Buyer's obligations under this agreement.

## 3. INSURANCE

Buyer shall specifically insure the goods against "all risks," subject to normal exclusions, from the time that the risk of loss passes to Buyer, during the loading of goods to carrier, transport and unloading, and continuously thereafter until all amounts owed by Buyer to GEMÜ are paid in full to GEMÜ. Evidence of such insurance satisfactory to GEMÜ shall be submitted by Buyer prior to shipment or GEMÜ may procure such insurance at Buyer's expense.

## 4. EXCLUSIVE WARRANTIES AND EXPRESS WAIVER OF ANY TORT OR OTHER CONTRACTUAL REMEDY

- 4.1 GEMÜ warrants the goods to be free from defects in workmanship and/or materials for a period of one (1) year from the date of shipment to Buyer. This warranty does not extend to parts or components not manufactured or processed by GEMÜ, although GEMÜ will to the extent possible pass to Buyer the benefit of any guarantee or warranty given to GEMÜ in respect of such parts or components. No goods may be returned without the express prior written approval of GEMÜ after a determination by GEMÜ that such goods are defective because of poor workmanship or defective materials. GEMÜ shall credit or make adjustment to the purchase price of the goods or replace or repair, at its option, any defective goods or portions thereof. In the event that GEMÜ determines in its sole discretion that the defect is attributable to any cause other than poor workmanship or defective materials (including, but not limited to, misuse or abusive operation of the goods), then GEMÜ shall have no obligation whatsoever with respect to repair or replacement of the defective goods and the warranty described herein shall be void and of no force and effect.
- 4.2 EXCEPT AS NOTED IN PARAGRAPH 4.1, THE PARTIES AGREE THAT THERE IS NO WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE OR ANY OTHER WARRANTIES BY SELLER, EITHER EXPRESSED OR IMPLIED, OR ANY AFFIRMATION OF FACT OR REPRESENTATION WHICH EXTENDS BEYOND THE DESCRIPTION OF THE FACE HEREOF.

4.3 THE MAXIMUM DAMAGES RECOVERABLE UNDER ANY LEGAL THEORY, WHATSOEVER, IN THE EVENT OF BREACH OF ANY WARRANTY BY GEMÜ, EXPRESSED OR IMPLIED, OR OF THIS AGREEMENT OR UNDER ANY CIRCUMSTANCES SHALL BE LIMITED TO THE PURCHASE PRICE OF THE GOODS. BUYER AGREES THAT NO OTHER REMEDY (INCLUDING, BUT NOT LIMITED TO, INCIDENTAL OR CONSEQUENTIAL DAMAGES FOR LOST PROFITS, LOST SALES, OR ANY OTHER INCIDENTAL OR CONSEQUENTIAL LOSS) SHALL BE AVAILABLE TO IT UNDER ANY CIRCUMSTANCES.

4.4 WARNING - GEMÜ products are designed and manufactured with experienced and quality workmanship, using quality materials; GEMÜ products have been designed to meet all applicable standards. These products are available with components of various materials and they should be used only in services recommended in the GEMÜ catalog or by a GEMÜ engineer. MISAPPLICATION OF THE PRODUCT(S) MAY RESULT IN INJURIES OR PROPERTY DAMAGE. A selection of valve components of the proper material consistent with the particular performance requirement is important for proper application. Examples of a misapplication or misuse of a GEMÜ diaphragm valve includes using it in an application in which the pressure/ temperature rating exceeds or fails to maintain the valves as recommended.

## 5. LIMITATION ON DAMAGES RECOVERABLE FOR WARRANTY, TORT OR CONTRACT ACTIONS OF ANY NATURE

There is a limitation on damages recoverable regardless if the action against GEMÜ sounds in warranty contract or tort pursuant to paragraph 4 above. GEMÜ shall not be liable for delay in shipment for any cause beyond its reasonable control, nor shall such delay entitle Buyer to cancel any order or refuse to accept delivery. GEMÜ shall not be liable for failure or delay in shipment or other performance hereunder if such failure is due in whole or in part to strikes, fires, accidents, wars, rebellions, civil commotion or public strike, acts of any government, whether legal or otherwise, acts of public or private enemies, force majeure, inability to secure or obtain or delay in securing or obtaining transportation, machinery, materials, or sufficient qualified labor, or any other causes beyond GEMÜ's reasonable control.

## 6. RISK OF LOSS

Unless otherwise specifically agreed in writing, risk of loss of the goods shall pass from GEMÜ to Buyer when the goods or any portion thereof, properly packed and secured in such a manner as to reach their destination in good condition under normal conditions of transport, are placed in the possession of the carrier, FOB GEMÜ shipping point for shipment to Buyer. GEMÜ may choose any reasonable carrier for delivery. Tender of delivery shall be deemed made at GEMÜ shipping point even when freight is prepaid to point of destination or GEMÜ is required to deliver the goods to a particular destination.

## 7. MODIFICATIONS

This Agreement constitutes the entire agreement of the parties with respect to the terms and conditions of sale of the goods specified herein. This Agreement supercedes any other agreement, representation or statement made by GEMÜ prior to the date these terms and conditions are issued to buyer. No modification of this Agreement shall be binding upon the parties unless in writing and signed by the party to be bound. The requirement that any modification will be in writing cannot be waived unless the waiver of this requirement is in writing. Any terms and provisions contained in any document of the Buyer which are inconsistent with the terms and provisions hereof shall not be binding on GEMÜ and shall not be considered applicable to the sale or shipment of the goods. No agent, employee or representative of GEMÜ other than its officers has any authority to bind GEMÜ to any affirmation, representation or warranty concerning the goods sold under this Agreement and unless an affirmation, representation or warranty made by an agent, employee, or representative is specifically included within this Agreement, it has not formed a part of the basis of this bargain and shall not in any way be enforceable or actionable.

## 8. WAIVER

Waiver by GEMÜ of a breach by Buyer of any provision of this Agreement shall not be deemed a waiver of future compliance with the provision of the Agreement breached.

## 9. ASSIGNMENT

No right or interest in this Agreement shall be assigned by Buyer without the written consent of GEMÜ, and no delegation of any obligation by Buyer shall be made without the written permission of GEMÜ. Any attempted assignment or delegation shall be wholly void and totally ineffective for all purposes unless made in conformity with this paragraph.

## 10. CONTROLLING LAW

The validity and interpretation of this Agreement shall be governed by the laws of the State of Georgia.

## 11. EXCLUSIVE JURISDICTION

In the event of any legal action, Buyer, to the extent it may lawfully do so, hereby submits to the exclusive jurisdiction of any state or federal court located in Fulton County, Georgia. Buyer further submits to the exclusive jurisdiction of all Georgia courts from which an appeal may be taken from the aforesaid courts. The Buyer or Seller expressly waives any objections based on personal jurisdiction or venue in any of these Georgia courts. The Buyer further agrees that it may be validly served with any legal process in connection with the foregoing by the mailing of a copy thereof by registered or certified mail at its address shown on the reverse hereof.

## 12. SEVERABILITY CLAUSE

If any paragraph or part thereof is determined to be invalid, all remaining paragraphs of the agreement and all terms not invalidated shall be considered severable from the invalidated provision.

**GEMÜ**<sup>®</sup> VALVES, ACTUATORS  
AND CONTROL SYSTEMS

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