



**TERMS AND CONDITIONS**

The following terms and conditions apply to all sales by co-ax valves inc. ("co-ax") to the purchaser ("Purchaser") of any and all products manufactured and/or distributed by co-ax ("Products") and to all quotations and offers made by and purchase orders accepted by co-ax pursuant to an Order Acknowledgement. Co-ax's acceptance of all orders is expressly limited to, and expressly made conditional on, Purchaser's acceptance of these terms and conditions, subject only to any special terms set forth in an invoice prepared by co-ax ("Special Invoice Terms") and delivered to Purchaser. The terms and conditions contained herein, subject to any Special Invoice Terms, are the sole terms and conditions on which the order of the Purchaser will be accepted; co-ax objects to and hereby rejects any and all different or additional terms and conditions contained in any other document. Neither co-ax's commencement of performance or shipment or delivery of Products shall be deemed or construed as acceptance of any additional or different terms and conditions. Purchaser agrees that all purchase orders placed by Purchaser shall be governed by these terms and conditions and any Special Invoice Terms, whether or not such terms and conditions accompany co-ax's shipment of Products.

**1. Purchase Price and Taxes.**

a) The purchase prices for Products shall be the amounts set forth in the applicable co-ax quotation or specific invoice terms.

b) Unless otherwise agreed in writing by co-ax, such prices do not include any applicable sales, use, excise, property, or other federal, state, county, municipal, local, or foreign taxes, value-added or other indirect taxes, customs duties, tariffs, or other imposts, and any related penalties and interest (collectively, "Taxes"). Purchaser shall pay when due any Taxes payable upon the transactions contemplated by these terms and conditions and/or the applicable purchase order or Special Invoice Terms.

**2. Terms of Payment and Delivery.**

Except where otherwise provided herein or specified in writing by co-ax: (a) any and all orders placed by Purchaser may be paid either (i) net thirty (30) days of co-ax's invoice, (ii) by credit card or (iii) by wire transfer or ACH, provided that, if paid by credit card, Purchaser shall bear any credit card processing fee unless the purchase order is the first sale of Products by co-ax to the Purchaser, in which event, payment shall be made by Purchaser with and through a credit card issued to Purchaser and co-ax will pay any credit card processing fee such that the net price of the Product will not include any such credit card processing fee, (b) Purchaser shall advise co-ax which payment method to apply net thirty (30) days or credit card except for the first-time purchasers which must purchase using a credit card, (c) all payments shall be made in United States dollars, and (d) Products shall be shipped to Purchaser EXW origin. Purchaser will be charged freight collect unless co-ax has agreed, in writing, to accept another form of payment. An invoice (which may contain Special Invoice Terms) will be forwarded at the time of shipment, and co-ax shall use reasonable efforts to ship Products by the method specified by Purchaser; provided, however, that all shipment and delivery dates are approximate. The shipment date is the date when the Products have left co-ax's facility. The delivery date is the date when the Products have



reached the Purchaser's facility. Shipments of Products are in all cases subject to availability, and partial shipments by co-ax of quantities of Products requested in the purchase order are permitted. PURCHASER SHALL NOTIFY co-ax, WITHIN FIVE (5) BUSINESS DAYS AFTER THE DELIVERY DATE, OF ANY CLAIMED SHORTAGES OR DEFECTS OR REJECTION AS TO ANY PRODUCTS DELIVERED. Such notice shall be in writing and shall be reasonably detailed, stating the grounds for any such rejection. Failure to give any such notice within the five (5) business day period shall be deemed an acceptance in full of the delivered Products.

**3. Cancellations and Returns.**

Orders for Products may be cancelled at any time by Purchaser prior to commencement of co-ax's production of such Products or the ordering of any special supplies needed to produce such Products. ONCE PRODUCTION HAS BEGUN OR SPECIAL SUPPLIES HAVE BEEN ORDERED, ALL ORDERS FOR GOODS ARE NOT SUBJECT TO CANCELLATION AND, SUBJECT TO THE PAYMENT TERMS OF SECTION 2, ALL GOODS ARE NON-RETURNABLE, AND ALL SALES ARE FINAL.

**4. Risk of Loss.**

Anything herein or in applicable law to the contrary notwithstanding, Purchaser shall bear the risk of loss, deterioration, and damage to the Products from the time they are ready for shipment. If Purchaser causes a delay in delivery, Purchaser shall bear the risk of loss from the time the Products are ready for shipment. In the event of such a delay, co-ax may, in its sole discretion, agree to insure the Products upon Purchaser's written request at Purchaser's sole expense.

**5. Granting of a Security Interest.**

Purchaser hereby grants to co-ax a security interest in the Products and the proceeds thereof which security interest shall attach immediately upon title to the Products passing to Purchaser. The security interest shall remain in effect until payment in full has been made by Purchaser for the Products. These terms and conditions constitutes a security agreement between Purchaser, as debtor, and co-ax, as secured party, under the Uniform Commercial Code as adopted in Pennsylvania (13 Pa.C.S. 1101, et seq.), and co-ax has the rights and remedies of a secured party thereunder. Purchaser hereby authorizes co-ax to file financing statements to perfect the security interest granted and to do any other act or thing necessary or useful in perfecting co-ax's security interest in the Products and shall cooperate fully with co-ax in this regard.

**6. Service Fee and Collection Costs.**

If Purchaser does not pay for the Products in accordance with the terms of Section 2, Purchaser shall pay a delinquency and service fee in an amount equal to the amounts due co-ax multiplied by 1.5% per month computed for each twenty-four (24) hour period during which payment remains in arrears.



**7. Acceleration.**

Upon any breach by Purchaser of these terms and conditions, co-ax may demand immediate payment of any and all amounts owed by Purchaser to co-ax hereunder or under another contract of sale between Purchaser and co-ax. Additionally, co-ax may, by written notice to Purchaser, cancel any previously accepted purchase order for which Purchaser has not made payment.

**8. Warranties and Purchaser's Remedies.**

co-ax warrants that the Products delivered hereunder shall conform with the description in the Order Acknowledgement. co-ax shall be liable to Purchaser for defects in the Products, including failure to meet expressly warranted specifications, as follows, to the exclusion of any other claims:

- a) All parts considered unusable or whose usability has been impaired to a non-negligible degree within six (6) months following delivery due to circumstances prior to the transfer of risk, such as defective design, poor materials, or defective workmanship, will be reconditioned or replaced, at the reasonable discretion of co-ax. The discovery of defects must be immediately reported in writing to co-ax. Defective parts replaced by co-ax are the property of co-ax. If the reconditioned or replaced Products are considered unusable or whose usability has been impaired to a non-negligible degree, then Purchaser may elect to rescind its purchase of the Products and receive a refund of all amounts paid for the Products and, in such event, Purchaser may retain the Products.
- b) co-ax's liability hereunder will expire twelve (12) months after the transfer of risk from co-ax to Purchaser, unless shipment is delayed for reasons caused by co-ax, in which event co-ax's liability hereunder will expire twelve (12) months after the date of shipment to Purchaser.
- c) co-ax shall also transfer to Purchaser all warranties, if any, that co-ax has received from a third party manufacturer only to the extent provided and permitted by such third party manufacturer and subject to all conditions of such manufacturer's warranty. Should any Products be found not to conform with such manufacturer's warranty during the warranty period, Purchaser shall promptly notify co-ax, and co-ax shall, at its sole option, (i) contact the manufacturer and request that it provide to Purchaser the remedy available from the manufacturer, if any; (ii) repair or replace the defective Product; or (iii) refund to Purchaser or issue a credit to Purchaser for the purchase price of the defective Products. This shall be co-ax's sole and exclusive liability and Purchaser's sole and exclusive remedy with respect to third party warranties.
- d) Any and all returns pursuant to Purchaser's warranty claim will be subject to co-ax's Return Material Authorization (RMA) procedures (available on the co-ax website). Purchaser's claim must be made in writing and delivered to co-ax within the warranty period. Purchaser must return alleged non-conforming goods to co-ax within sixty (60) days after Purchaser's receipt of a RMA Number from co-ax. Freight costs to return non-conforming goods will be at co-ax's expense, unless co-ax rejects the warranty claim in which case the Purchaser shall be responsible for such costs.



co-ax shall not be liable for damages caused by (a) use of the Products in any manner other than the use expressly specified (e.g., with regard to pressure, temperature, etc.) and/or for other media than was communicated to co-ax by Purchaser upon execution of the purchase order, (b) unsuitable or improper use, defective installation, or startup by Purchaser or third parties, (c) normal wear and tear, (d) defective or negligent handling by Purchaser or third parties, (e) use with or exposure to unsuitable consumables or substitute materials or chemical, electrochemical, or electrical influences.

Notwithstanding the foregoing, the warranty of the Products shall be immediately rendered void if the [tape/tamper seal] on the subject Product has been broken after the Products are ready for shipment.

**9. DISCLAIMER OF ALL OTHER WARRANTIES.**

ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ARE HEREBY EXCLUDED. IN PARTICULAR, co-ax EXPRESSLY DISCLAIMS ALL WARRANTIES, WHETHER ORAL OR WRITTEN, EXPRESS OR IMPLIED, OR ARISING BY USAGE OF TRADE OR COURSE OF DEALING, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND WARRANTY AGAINST INFRINGEMENT. Notwithstanding anything in these terms and conditions to the contrary, unless agreed otherwise in writing, no warranty is given that the Products meet any requirements, specifications, plans, or shop drawings provided by Purchaser, and no warranty is given for any particular application or use by Purchaser, whether communicated to co-ax or otherwise. co-ax shall not be liable to Purchaser for any technical assistance or information related to the Products given by co-ax or any suggestions by co-ax regarding the use, selection, application, or suitability of the Products by Purchaser.

**10. LIMITATION OF LIABILITY.**

co-ax's LIABILITY TO PURCHASER FOR DEFECTIVE OR NON-CONFORMING PRODUCTS, FOR DELAY IN SHIPMENT OR DELIVERY, OR FOR ANY OTHER BREACH OF THESE TERMS AND CONDITIONS, SHALL BE LIMITED TO ITS OBLIGATIONS AS STATED IN THESE TERMS AND CONDITIONS. co-ax SHALL NOT BE LIABLE FOR ANY DELAYS OR DAMAGES CAUSED BY ANY THIRD PARTY CARRIER OF SHIPPED PRODUCTS OR BY ANY FORCES OR EVENTS OUTSIDE OF co-ax's REASONABLE CONTROL.

- a) NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, PURCHASER EXPRESSLY AGREES THAT co-ax SHALL NOT, UNDER ANY CIRCUMSTANCES, BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, SPECIAL, INDIRECT OR PUNITIVE DAMAGES, INCLUDING BUT NOT LIMITED TO LOST PROFITS, LOSS OF BUSINESS OR LOSS OF GOOD WILL, WHETHER CLAIMED UNDER CONTRACT, TORT, INDEMNITY OR ANY OTHER LEGAL THEORY.
- b) PURCHASER EXPRESSLY AGREES THAT UNDER NO CIRCUMSTANCES SHALL co-ax's TOTAL LIABILITY OF ALL KINDS ARISING OUT OF OR RELATED TO THESE TERMS AND CONDITIONS OR ANY SALE HEREUNDER (INCLUDING BUT NOT LIMITED TO ANY WARRANTY CLAIMS HEREUNDER) EXCEED THE TOTAL AMOUNT THAT PURCHASER HAS PAID TO co-ax HEREUNDER FOR THE PURCHASE OF THE PRODUCTS THAT ARE THE SUBJECT OF SUCH LIABILITY.



- c) Any action for breach herein or any other action otherwise arising hereunder must be commenced within twelve (12) months after the cause of action accrues, or such action shall be deemed barred.

**11. Purchaser's Remedies Exclusive.**

Purchaser's remedies set forth herein shall be the sole and exclusive remedies of Purchaser and co-ax's sole and exclusive liability.

**12. Indemnification.**

Purchaser shall hold co-ax harmless against any expense or liability from claims arising from or related to (i) unfair competition or infringement or contributory infringement of any patents, trademarks or copyrights related to any Built-to-Spec Products sold hereunder or to Purchaser's use of any Product in a manner other than its intended use or in combination with any products not supplied by co-ax; and (ii) Purchaser's failure to pay any Taxes payable upon the transactions contemplated by these terms and conditions.

**13. Force Majeure.**

co-ax shall be excused from liability arising from unusual delays or failure to deliver or fill any purchase order where caused by acts of nature, fires, floods, strikes, work stoppages, civil unrest, riots, wars, acts of terror, accidents, allocations or other controls, or regulations, including export or import regulations of any foreign or U.S. federal, state or local government, shortage of trucks or any other means of transportation, fuels, materials or labor, or any other cause beyond co-ax's reasonable control, whether or not similar in kind or class to those mentioned.

**14. Miscellaneous.**

Any and all disputes pertaining to or arising out of these terms and conditions shall be determined by binding arbitration in Philadelphia, Pennsylvania before Judicial Arbitration and Mediation Services, Inc ("JAMS") and in accordance with the rules of JAMS. Any award arising out of such arbitration shall be subject to entry as a judgment by any court of competent jurisdiction in the United States. Any action to confirm or vacate such an award must be brought in either the Court of Common Pleas of Philadelphia, Pennsylvania or the United States District Court for the Eastern District of Pennsylvania. Purchaser consents to personal jurisdiction and venue in such courts and waives any challenge to personal jurisdiction or venue in such courts. Notwithstanding the forgoing, co-ax has the right to file a claim of action to enforce its rights hereunder in any court of competent jurisdiction within the Commonwealth of Pennsylvania or in the jurisdiction where Purchaser's headquarters are located. These terms and conditions shall be construed and enforced pursuant to laws of the Commonwealth of Pennsylvania, exclusive of the laws relating to conflict of laws. In the event of any arbitration, litigation, or other dispute arising as a result of or by reason of these terms and conditions, the prevailing or substantially prevailing party in any such dispute shall be entitled, in addition to any other damages assessed, to its reasonable attorneys' fees and all other costs and expenses incurred in connection with settling or



co-ax valves inc.



CV-STC-0001 Rev. 1 10/16/13

resolving such dispute. A waiver by either party hereto of any term or condition hereof shall not be construed as a waiver or modification of any other term or condition hereunder or any other contract between the parties. No rights or remedies are waived or modified by co-ax unless expressly waived in writing by co-ax. If any part of these terms and conditions is held void or unenforceable, such part shall be treated as severable, leaving valid the remainder. co-ax's remedies herein provided shall be cumulative and in addition to any other or further remedies provided by law or equity.