

## Valco Standard Conditions of Sale

### Acceptance

All sales between Valco Instruments Co., Inc. ("Valco") and the customer ("Buyer") are subject to the terms and conditions contained herein ("Valco's Standard Conditions of Sale"). No variation of these terms and conditions will be binding upon Valco unless agreed to in writing and signed by an officer or other authorized representative of Valco. In all cases where Buyer's Purchase Order Terms conflict with Valco's Standard Conditions of Sale, Valco's Standard Conditions of Sale will take precedence. Buyer acknowledges that Buyer has read these terms and conditions and has had the opportunity to consult with legal counsel for legal advice regarding same. Valco's sale of its goods (also referred to as products) to Buyer is expressly made conditional on Buyer's assent to these terms and conditions. **Unless Buyer notifies Valco within ten (10) days after receipt of this Valco's Standard Conditions of Sale and returns the purchased goods to Valco, Buyer accepts the goods purchased from Valco subject to the terms and conditions of this Valco's Standard Conditions of Sale.** Buyer understands and acknowledges that Valco would not consummate this sale without Buyer's agreement to these terms and conditions and that Valco's pricing of its goods is in reliance on these terms and conditions.

### Delivery

Valco will use commercially reasonable efforts to make shipments on date(s) agreed by Valco. Shipments are made F.O.B. (or as may be applicable, FCA or EXW) Valco's facility. All products shall be deemed to be delivered and risk of loss shall pass to Buyer at such time as the product is loaded onto a transportation carrier vehicle. Buyer shall pay, and be exclusively liable for, all costs of shipping, delivery, and any related insurance. All claims by Buyer for damage, loss or delays in transit shall be made by Buyer against the carrier, and Valco shall have no responsibility or obligations with respect to any such damage, loss, or delay. If Valco arranges transportation for Buyer, such arrangements shall be at Buyer's sole risk and expense, and transfer of title and risk of loss as specified above shall not be affected. Buyer shall pay any increase in transportation costs that are charged to Valco subsequent to its invoice to Buyer, including any fuel surcharges.

*Incoming Inspection:* Buyer shall inspect goods immediately upon delivery and shall notify Valco in writing of any claims for damage, defects, or shortage within ten (10) days after receipt of the goods. Failure to do so will relieve Valco of liability for any such claims, and the goods shall be deemed to be accepted by Buyer. If Buyer rightfully rejects any non-confirming tender of goods within the time provided herein, Buyer shall return the goods to Valco, at Valco's expense, within twenty four (24) hours after rejection.

*Delivery Damages:* Valco shall not be liable for any damages, loss, or penalty as a result of any delays in manufacturing or delivery of goods.

### Force Majeure

Valco will not be liable for delays or damage to goods resulting from extraordinary events beyond Valco's control, such as (but not limited to) flood, war, riots, labor events, acts of State, or any other acts of God.

### Insurance

Valco maintains sufficient insurance to conduct business with an acceptable level of risk. Accordingly, Valco will not accept or entertain requirements of any Buyer for minimum levels of insurance coverage.

### Payment

Payment will be accepted in United States Dollars only and Buyer shall pay Valco's invoice within thirty (30) days after the goods have been received.

**Late Charges**

If Buyer fails to pay the price or any other payment due to Valco promptly and when due, Valco may require Buyer to pay, in addition to the price payment, interest thereon at a rate equal to the lesser of 1 1/2% per month and the maximum rate of interest allowable under applicable law, from the original due date until full payment has been made by Buyer or on Buyer's behalf. Furthermore, this late fee is in addition to any other remedies Valco may have under applicable laws. The parties acknowledge and agree that this late fee is reasonable in the light of the anticipated or actual harm caused by the Buyer's late payments to Valco, the difficulties of proof of loss, and the inconvenience or non-feasibility of Valco otherwise obtaining an adequate remedy. Furthermore, Valco may immediately stop any and all deliveries and/or shipments of goods to Buyer if Buyer is more than fifteen (15) days delinquent on its payments to Valco.

**Price**

Prices are listed in United States Dollars. Charges associated with taxes, shipping, and duties will be assessed to Buyer at the time of sale and will be included in the invoice. Unless agreed to in writing and signed by an officer or other authorized representative of Valco, Valco reserves the right to adjust pricing as it sees fit and does not offer any best price guarantees.

**Taxes**

Shipments made within the state of Texas or Washington will be assessed the appropriate sales tax, unless the Buyer can provide documentation of authorized tax-exempt status.

**Intellectual Property**

*Ownership:* Valco reserves the title and all rights to all plans, specifications, and technical data (Valco's Intellectual Property), including but not limited to drawings, flow diagrams, layout details, specifications, trade secrets, and computer programs supplied by Valco, and all such intellectual property belongs to and remains the property of Valco. Buyer will take every precaution and will execute any instrument necessary to maintain confidentiality of Valco's Intellectual Property. Buyer understands and agrees that Buyer has a non-exclusive license to use Valco's intellectual property only to the extent necessary to use the goods purchased from Valco, and Buyer may not share such intellectual property with any other person or disclose same to any other person, but shall agree to hold such intellectual property in strict confidence. Buyer understands and acknowledges that Valco's intellectual property gives it its competitive advantage in the industry and Valco would be irreparably harmed by any infringement, violation or misappropriation of its intellectual property. Valco may enforce this paragraph through any and all legal action, including, but not limited to, injunctive and other equitable relief. "Intellectual Property" shall mean any and all intellectual property rights related to goods sold by Valco to Buyer, as they are now or may in future exist, including without limitation: (a) any and all rights, privileges and priorities arising under the laws or treaties of the United States, any state, territory or possession thereof, any other country or political subdivision or territory thereof, or the European Community, relating to intellectual property, including patents, copyrights, trade names, trademarks, service marks, mask works, trade secrets, inventions, databases, names and logos, trade dress, technology, know-how, and other proprietary information and licenses from third persons granting the right to use any of the foregoing, including all registrations and applications for any of the foregoing that have been issued by or filed with the appropriate authorities, any common-law rights arising from the use of the foregoing, , all rights of renewal, continuations, divisions, extensions and the like regarding the foregoing and all claims, causes of action, or other rights arising out of or relating to any actual or threatened infringement by any person relating to the foregoing; (b) all computer applications, programs and other software, including without limitation operating software, network software, firmware, middleware, and design software, all design tools, systems documentation and instructions, databases, and related items; and (c) all cost information, sales and pricing data, customer prospect lists, supplier records, customer and supplier lists, customer and vendor data, correspondence and lists, product literature, artwork, design, development and manufacturing files, vendor and customer drawings, formulations and specifications, quality records and reports and other books, records, studies, surveys, reports, plans and documents.

**Indemnification, Release, Waiver and Hold Harmless**

BUYER RELEASES, RELINQUISHES AND DISCHARGES AND AGREES TO INDEMNIFY, PROTECT AND SAVE HARMLESS VALCO, ITS AGENTS, OFFICERS, EMPLOYEES, SUBSIDIARIES AND AFFILIATES FROM ALL CLAIMS, DEMANDS AND CAUSES OF ACTION OF EVERY KIND AND CHARACTER INCLUDING THE COST OF DEFENSE THEREOF, FOR ANY INJURY TO, INCLUDING DEATH OF, PERSONS (WHETHER THEY BE THIRD PERSONS, CONTRACTORS OR EMPLOYEES OF EITHER OF THE PARTIES HERETO) AND ANY LOSS OF OR DAMAGES TO PROPERTY (WHETHER THE SAME BE THAT OF EITHER OF THE PARTIES HERETO OR THIRD PARTIES) CAUSED BY OR ALLEGED TO BE CAUSED, ARISING OUT OF, OR IN CONNECTION WITH ANY USE OF PRODUCT BY BUYER, ITS AGENTS, OFFICERS, EMPLOYEES, SUBSIDIARIES AND AFFILIATES THAT IS INCONSISTENT WITH VALCO'S INSTRUCTIONS AND SPECIFICATIONS REGARDING SUCH PRODUCT OR ANY OTHER MISUSE OR ABUSE OF SUCH PRODUCTS. BUYER FURTHER AGREES TO DEFEND ANY SUIT OR ACTION COVERED BY THIS PARAGRAPH BROUGHT AGAINST VALCO, ITS AGENTS, OFFICERS, EMPLOYEES, SUBSIDIARIES AND AFFILIATES, FOR ANY ALLEGED LOSS, DAMAGE, INJURY TO, OR DEATH OF, PERSONS OR PROPERTY LOSS OR PATENT OR TRADEMARK INFRINGEMENT AND TO PAY ALL DAMAGES, COSTS AND EXPENSES, INCLUDING ATTORNEY'S FEES ARISING OUT OF, OR IN CONNECTION WITH ANY USE OF PRODUCT BY BUYER, ITS AGENTS, OFFICERS, EMPLOYEES, SUBSIDIARIES AND AFFILIATES THAT IS INCONSISTENT WITH VALCO'S INSTRUCTIONS AND SPECIFICATIONS REGARDING SUCH PRODUCT OR ANY OTHER MISUSE OR ABUSE OF SUCH PRODUCTS.

**Assignment**

Valco reserves the right to assign all or part of this agreement, and/or the ability to fulfill any agreements between Valco and Buyer, to any of its subsidiaries and/or affiliates as it sees fit, without notice to Buyer. No right or interest in this contract may be assigned by Buyer without the written consent of Valco. Any attempted delegation of performance by Buyer without prior written consent of Valco will be void and ineffective for all purposes.

**Limited Warranty**

Except as specified below, products sold hereunder shall be free from defects in materials and workmanship and shall conform to Valco's published specifications or other specifications accepted in writing by Valco for one year from the date of shipment or its useful life, whichever is less. The foregoing warranty does not apply to any products which have been subject to misuse, neglect, accident or modification or which have been altered or soldered such that they are not capable of being tested under normal test conditions. Valco's sole obligation for products failing to comply with this warranty shall be, at Valco's discretion, to either replace the nonconforming product or issue Buyer credit for the purchase price of the nonconforming product where, within the warranty period and in accordance with Valco's return procedures: (1) Valco has received Buyer's request for an Return Merchandise Authorization ("RMA") for the return of nonconforming product; (2) where Valco has issued Buyer an RMA; (3) Buyer has returned the nonconforming product to Valco in accordance with Valco's return procedures; and (4) Valco has determined that the product is nonconforming and such nonconformity is not the result of improper installation, repair or other misuse.

**Disclaimer of Warranties**

THE FOREGOING WARRANTY AND REMEDIES ARE EXCLUSIVE AND VALCO HEREBY DISCLAIMS ALL OTHER WARRANTIES, EXPRESSED, IMPLIED OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS. VALCO DOES NOT ASSUME OR AUTHORIZE ANY OTHER PERSON TO ASSUME FOR IT ANY OTHER LIABILITY IN CONNECTION WITH ITS PRODUCTS. IN NO EVENT SHALL VALCO BE LIABLE TO BUYER, OR ANY SUBSEQUENT PURCHASER OF ANY PRODUCTS FURNISHED TO BUYER, INCLUDING THE ULTIMATE END-USER, IN CONTRACT, TORT, WARRANTY, STRICT LIABILITY, OR OTHERWISE FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO, THE COST OF LABOR,

REQUALIFICATION, DELAY, LOSS OF PROFITS OR GOODWILL, EVEN IF THE EXCLUSIVE REMEDIES PROVIDED HEREIN FAIL OF THEIR ESSENTIAL PURPOSE AND EVEN IF VALCO IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

**Buyer's Exclusive Remedy**

THE EXCLUSIVE REMEDY OF BUYER IS THE REPAIR OR REPLACEMENT OF NONCONFORMING GOODS OR THE ISSUANCE TO BUYER OF CREDIT OR REFUND FOR THE PURCHASE PRICE OF THE NONCONFORMING GOODS, AT VALCO'S DISCRETION. IN THE EVENT OF BREACH OR REPUDIATION OF THE CONTRACT BY VALCO, BUYER SHALL NOT BE ENTITLED TO ANY CONSEQUENTIAL OR EXEMPLARY DAMAGES. IT IS THE INTENT OF THE PARTIES THAT THIS REMEDY PROVIDED HEREIN IS THE SOLE REMEDY AVAILABLE TO BUYER AND IS NOT CUMULATIVE OF THOSE PROVIDED BY COMMON LAW OR STATUTE. IN NO EVENT SHALL VALCO BE LIABLE TO BUYER, ITS AGENTS, OFFICERS, EMPLOYEES, SUBSIDIARIES OR AFFILIATES FOR MORE THAN THE PURCHASE PRICE OF THE GOODS SOLD BY VALCO TO BUYER. BUYER UNDERSTANDS AND ACKNOWLEDGES THAT VALCO RELIED ON THIS PROVISION IN PRICING ITS GOODS.

**Applicable Laws and Forum Selection**

All sales shall be governed and construed by the laws of the State of Texas in the United States of America, except that conflict of law rules shall be disregarded. Furthermore, the exclusive venue for resolving any dispute between the parties shall lie in Houston, Harris County, Texas.

**Severability**

The unenforceability or invalidity of any provision of this Valco's Standard Conditions of Sale shall not affect the enforceability or validity of any other provision herein, and the invalidity or unenforceability of any provision to any specific person or circumstance shall not affect the enforceability or validity of such provision as it may apply to other persons or circumstances.

**No Offset**

All payments due by Buyer to Valco under any sale between the parties are to be made by Buyer without offset or other reduction.

**Survival of Terms**

Except as otherwise contemplated by this Valco's Standard Conditions of Sale, all covenants and agreements of the parties contained herein shall survive the delivery and acceptance date.

**Cancellation**

Buyer shall not have the right of cancellation, except upon the written consent of Valco. When cancellation is accepted, Valco reserves the right to make a cancellation charge of up to 25% of the price for said product.

**Costs**

Buyer hereby agrees to reimburse Valco for all costs and expenses (including reasonable attorney's fees) incurred by Valco in connection with any legal proceeding commenced hereunder or otherwise arising out of Valco's Standard Conditions of Sale for recovery of goods sold or for collection of monies due hereunder.

**Waiver**

Valco's forbearance or failure to exercise, at any time, any of its rights and/or remedies herein shall not be deemed a subsequent waiver thereof nor a waiver of any other right or remedy contained herein.

**Headings**

The headings herein are for convenience only and do not define or limit the provisions hereof.



**Compliance with Laws**

Buyer shall comply with all applicable country, state and local laws and regulations including but not limited to laws and regulations governing the manufacture, processing, distribution, transportation, labeling, handling, discharge, treatment, storage, installation, disposal, recycling, reclamation, use, exporting, importing or other activity relating to the goods sold hereunder. Buyer shall have the sole responsibility to obtain any transportation, storage, use or other licenses required under applicable laws and regulations.

**Export**

The goods sold hereunder may require a valid export license issued by the U.S. Department of Commerce prior to the export of such property from the United States. As a condition of sale, Buyer will abide by all U.S. Export Administration regulations, including compliance requirements to obtain a valid export license whenever applicable. Buyer shall have the sole responsibility to obtain any and all export or import licenses or permits required under applicable laws and regulations.