

# Tyco Valves & Controls - Procurement Terms and Conditions

**ACCEPTANCE** - This Purchase Order is Buyer's offer to Seller and shall become a binding contract on the terms and conditions set forth herein when it is accepted either by Seller's acknowledgement or performance.

**COMPLETE AGREEMENT** - This Purchase Order and the terms and conditions herein shall constitute the complete agreement between the parties and may not be altered or modified except in writing duly executed by each party. No terms and conditions stated in or attached to Seller's communications to Buyer, including but not limited to acknowledgements or invoices, are applicable to this Purchase Order in any way and are not to be considered Seller's exceptions to the provisions of this Purchase Order. Trade custom, trade usage and past performance are superseded by this Purchase Order and shall not be used to interpret this Purchase Order.

**CHANGES** - Buyer reserves the right to suspend all work as well as make changes to the scope of product to be furnished by Seller. Seller shall negotiate all claims for equitable adjustments due to changes in writing to Buyer within 30 days after receipt by Seller of notification of the change, but in no event after the final payment of the Purchase Order.

**CANCELLATION** - Buyer reserves the right to cancel this Purchase Order in whole or in part upon written notice to Seller. Seller shall be entitled to reasonable charges consisting of a pro rata apportionment of the Purchase Order price based on the work actually performed prior to cancellation, not to exceed the aggregate commitment specified in the Purchase Order. Seller shall not be entitled to charges due to Seller's unreasonable accumulations of raw material. Cancellation shall not have the effect of waiving damages the Buyer might otherwise be entitled to.

**CONFIDENTIALITY** - Seller shall not, without first obtaining the written consent of Buyer, in any manner advertise, publish, or disclose the fact that Seller has contracted with Buyer to furnish the product herein ordered nor any of the details connected with this Purchase Order to any third party except as herein specified and except as may be required to perform this Purchase Order.

**DELIVERY** - Deliveries shall be strictly in accordance with the schedule set out or referred to in the Purchase Order and in the exact quantities ordered. Time is of the essence. The prices on this Purchase Order are firm and are not subject to escalation unless expressly noted on the face hereof. Buyer reserves the right at Seller's expense to return product shipped in advance of schedule. Seller shall provide written notification to Buyer of any possible or actual delay in performance under this Purchase Order and shall provide all relevant information concerning the cause for such delay. In no event, however, shall such notice relieve Seller of its obligations under this Purchase Order.

**WARRANTY** - Seller shall warrant product to be free of defects in design, workmanship, and material and shall repair or replace at Seller's expense (including parts, freight, and labor for removal and reinstallation) any product found to be defective. Seller shall assure product is suitable for its intended use and that product conforms to the specifications, drawings, samples, or other descriptions furnished or specified by Buyer.

**NONCONFORMANCE** - Product not conforming to the requirements of this Purchase Order may be rejected. All costs with respect to the rework, repair or the replacement of the nonconforming product, including packing, packaging and freight charges, shall be at the Seller's expense as deemed equitable under the circumstances.

**PROPRIETARY RIGHTS** - Seller agrees that Buyer's designs, specifications, formulas, and manufacturing information are proprietary data and shall not be disclosed to others or utilized for purposes other than those intended in this Purchase Order. Seller shall return all proprietary data and copies thereof to Buyer upon completion of Seller's obligations under this Purchase Order or upon Buyer's request at any earlier time.

**RIGHT-OF-ACCESS** - Buyer reserves the right to verify purchased product at the Seller's, or its

subcontractors', premises. Buyer's inspection does not absolve Seller of the responsibility for the quality of product, and shall not preclude subsequent rejection by Buyer.

**IDENTIFICATION** - Seller shall identify Buyer's purchase order number on Seller's invoice, packing list, bill of lading or on any packages.

**PACKING & SHIPPING** - No change shall be allowed for handling, packing, crating, drayage or storage without written permission of Buyer. Product shall be packaged in a method to preserve and protect from damage and/or degradation. All goods are to be suitably prepared for shipment by Seller in accordance with acceptable commercial practices so as to secure the lowest possible transportation rates and meet the carrier's requirements. In addition, Seller shall cause the product to be labeled to conform to all requirements of federal, state and local laws. Unless otherwise provided on the face hereof, all sales are F.O.B. Buyer's place of business.

**PRICING** - This Purchase Order must not be filled at prices higher than last quoted by Seller without notice to Buyer and acceptance. With respect to any particular product, the price to be paid or otherwise charged to Buyer shall be no higher than the lowest price for such product offered by Seller to any other customer.

**HAZARDOUS MATERIALS** - Seller shall notify Buyer in writing upon acceptance of this Purchase Order if goods furnished are subject to laws or regulations relating to hazardous or toxic substances, or when disposed of, to regulations governing hazardous wastes, or any other applicable environmental, health, or safety laws or regulations. Instruction for handling, warnings, and material safety data sheets shall be provided with each shipment.

**TAXES** - The prices stated on this Purchase Order include all United States and point of origin taxes and duties except sales, use, or similar taxes. Specific instructions within this Purchase Order concerning the invoice of sales, use or similar taxes must be followed. Seller agrees to indemnify Buyer against any loss, liability or expense resulting from Seller's failure to pay taxes, fees, duties, assessments, charges or conditions.

**TITLE** - Seller warrants full and unrestricted title for all goods and/or related services furnished by Seller under this Purchase Order, free and clear of any and all liens, restrictions, reservations, security interests, and encumbrances. If Buyer makes progress payments under this Purchase Order, title to the goods and related services shall pass to Buyer at the time that Seller identifies the goods to this Purchase Order. Seller shall clearly identify the goods (including raw materials and components) as property of Buyer by visible marking or tagging. Care, custody and control of such goods remains with Seller until such time as Buyer takes physical possession or otherwise agrees in writing. All shop drawings, patterns, tools (if such tools are useful only to produce product ordered), or other items made preparatory to production of any goods purchased under this Purchase Order are Buyer's property and upon demand shall be delivered to Buyer.

**SELLER'S RESPONSIBILITY** - Seller shall carry on its works and manufacture of goods at its own risk until product is fully completed and accepted by the Buyer. In the case of any accident, destruction or injury to the product before the final completion and acceptance, Seller shall repair or replace product at its own expense and to the Buyer's satisfaction.

**PATENTS** - Seller warrants that the manufacture, use and/or sale of product provided does not infringe any claims of any U.S. or foreign patent. Seller agrees to defend, indemnify and hold the Buyer (and its agents, representatives, employees, officers, related companies, successors and assigns, and customers) harmless from any and all claims, demands, actions, damages and liabilities (including attorney's fees) involving the infringement of any patent, trademark, copyright or other intellectual property right by reason of the manufacture, use, or sale of said product by Buyer.

**INDEMNITY & INSURANCE** - Seller agrees to defend, indemnify and hold the Buyer (and its agents, representatives, employees, officers, related companies, successors and assigns, and customers) harmless from all claims, demands, actions, damages, and liabilities (including attorney's fees and consequential and incidental damages) arising out of any injury (including death) to any person or damage to any property in any way connected with the performance of this Purchase Order, any product furnished hereunder, or any act or omission of Seller, its agents, employees, or subcontractors. Seller agrees to maintain Workmen's Compensation and Comprehensive General Liability insurance, including property damage coverage, in an amount and form satisfactory to Buyer. Upon request, Seller agrees to provide Buyer with certificates evidencing that such insurance is being maintained.

**LIMITATION OF LIABILITY** - In no event shall Buyer be liable for anticipated profits or for incidental or consequential damages. Buyer's liability on any claim of any kind for any loss or damage arising out of or in connection with this Purchase Order or from the performance or breach thereof shall in no case exceed the price allocable to the product ordered hereunder. Buyer shall not be liable for penalties of any description. Any action resulting from any alleged breach by Buyer must be commenced within one year after the cause of action has accrued.

**COMPLIANCE WITH LAWS** - Seller, in the performance of this Purchase Order, shall comply with the provisions of all applicable federal, state and local laws, rules and ordinances, including but not limited to those listed directly below, from which liability may accrue to Buyer from any violation thereof by Seller. Seller shall comply with all provisions of Executive Order No. 11246 of September 24, 1965; all child labor laws; all rules, regulations and relevant orders of the Secretary of Labor; 41 CFR Pt. 60-1.4(a)1 through 7, 60-140(a), 60-250.4 and 60-741.4; the Fair Labor Standards Act of 1938, as amended; the Consumer Product Safety Act; the Occupational Safety and Health Act; Section 503 of the Rehabilitation Act of 1973, as amended; and the Vietnam Era Veterans Readjustment and Assistance Act of 1974, as amended, all of which are hereby incorporated by reference. Seller agrees that with respect to its employees and those of its subcontractors it shall pay all taxes and contributions imposed by present and future federal and state laws with respect to such employees and their compensation, including all interest and penalties which may be imposed.

**ASSIGNMENT** - No part of this Purchase Order may be assigned or subcontracted without the prior written approval of Buyer. Seller shall incorporate the within terms and conditions on any order or subcontract approved by Buyer and procured from third parties pertaining to this Purchase Order. Seller shall remain fully responsible for all work performed by subcontractors, subvendors, or subsuppliers.

**WAIVER** - No failure to exercise and no delay in exercising on the part of Buyer any right, power or privilege hereunder will operate as a waiver thereof, nor will any single or partial exercise of any right, power or privilege hereunder preclude further exercise of the same right, power or privilege.

**VALIDITY OF PROVISIONS** - In the event any provision or any part or portion of any provision of this Purchase Order shall be held to be invalid, void or otherwise unenforceable, such holding shall not affect the remaining part or portions of that provision, or any other provision hereof.

**JURISDICTION AND DISPUTES** - This Agreement shall be governed in accordance with the law of the State of Texas. All disputes under this Agreement shall be resolved by the courts of the State of Texas and the parties all consent to the jurisdiction of such courts, agree to accept service process by mail, and hereby waive any jurisdiction or venue defenses otherwise available.

**PRODUCT** - Product referred to herein includes product goods and product services provided.