



TERMS AND CONDITIONS OF SALE

Effective Date: September 10, 2018

1. **PURCHASE ORDERS.** Send purchase orders to Hydro Gate ("Seller"), 12000 East 47th Ave., Suite 200, Denver, CO 80239, OR Hydro Gate, c/o Sales Representative, 12000 East 47th Ave., Suite 200, Denver, CO 80239
2. **PAYMENT.** Payment is due 100% net 30 days after the invoice date. No retainage or portion of the amount due may be held for any reason. Payment is not contingent on payment from or approval of any third party. All orders and shipments are subject to credit approval. Waivers of lien will be provided upon request after full payment is received. Remittance should be to Hydro Gate, LLC, 23418 Network Place, Chicago, IL 60673-1234. If the Buyer fails to pay the Seller as specified herein, the Buyer agrees to pay all collection costs, attorney fees, and expenses incurred in collecting payment, including interest at the maximum legal rate. The Buyer will pay all transportation, insurance, and similar charges incident to delivery of products.
3. **PRICING.** Pricing is valid for shipments of material conducted within 365 days from the date of purchase order. If an order does not have a release and shipment date within the 365 days from date of purchase order, or receives a release date beyond the 365 days, then the Buyer agrees to accept price adjustments. Price adjustments will be made in accordance with the percentage change in the Producer Price Index by Industry: Metal Valve Manufacturing (PCU33291-33291-Not Seasonally Adjusted). The primary official source of PPI data is the BLS Website. Price adjustments shall always use the latest version of the PPI data published at the time of shipment. The price adjustment rate will be determined by comparing base rate from the index at the time of the purchase order to the rate on the date of the shipment and determining the positive percentage change between those two dates. This percentage change will be applied to increase the original purchase price.
4. **TAXES.** Quoted prices exclude sales, use or other taxes. Where applicable, all taxes will be billed to the Buyer at time of shipment, unless the Buyer provides proper exemption documentation before shipment is invoiced.
5. **SHIPMENTS.** Unless otherwise noted, quoted price is F.O.B. shipping point with full freight allowance to jobsite. The Buyer will pursue claims directly with carrier for products received that were damaged in transit. Each shipment will be accompanied by a packing list. The Buyer will check shipment against packing list and report any shortages and discrepancies in writing to the Seller within 5 business days after receipt.
6. **DELIVERY.** Quoted shipping dates are estimates only. The Seller will meet quoted schedules or reflect current schedules upon order acknowledgement. Lead-time will be as mutually agreed to at the time of product release to manufacture and credit package approval by the Seller. The Seller will not be responsible for delay in deliveries due to any cause beyond the Seller's reasonable control, including acts of God, government or the Buyer, fires, labor disputes, boycotts, floods, epidemics, quarantine restrictions, war, insurrection, terrorism, riot, civil or military authority, freight embargos, transportation shortages or delays, unusually severe weather or inability to obtain necessary labor, materials or manufacturing facilities due to such causes. In the event of a delay, the date of delivery will be extended for a length of time equal to the period of the delay.
7. **CANCELLATIONS/DELAYS.** The Buyer may cancel this order only with the prior written consent of the Seller. The Buyer agrees to pay the Seller a cancellation charge for any such cancelled order, which charge will be no less than 10% of purchase price.
8. **WARRANTY / LIMITATION OF LIABILITY.** The purchase, consequential, incidental or punitive damages of any kind (including, but not limited to, loss of use, revenue or profits, inventory or use charges, cost of capital or claims of customers) incurred by the Buyer or a third party. Total liability of the Seller, including its affiliates, officers, employees, agents, subcontractors, suppliers and representatives (the "Protected Group") with respect to the order or a breach thereof, is capped at the order price of the specific product giving rise to the claim.
9. **DAMAGES.** The Seller will not be liable for special, indirect, consequential, incidental or punitive damages of any kind (including, but not limited to, loss of use, revenue or profits, inventory or use charges, cost of capital or claims of customers) incurred by the Buyer or a third party. Total liability of the Seller, including its affiliates, officers, employees, agents, subcontractors, suppliers and representatives (the "Protected Group") with respect to the order or a breach thereof, is capped at the order price of the specific product giving rise to the claim.
10. **INDEMNITY.** The Buyer agrees to indemnify, hold harmless and defend the Protected Group, against any and all judgments, losses, damages, expenses, costs, including defense costs and legal fees, arising from any and all claims for liability arising or claimed to arise from any act or omission of the Buyer or the Seller in any way related to this order or products. To the extent the aforesaid obligation is prohibited by law, obligation will, but only to extent of such prohibition, be null and void. The remainder of the Buyer's indemnity obligations will remain in effect.
11. **LAW/VENUE.** No suit or cause of action or other proceeding will be brought against either party more than 1 year after accrual of the cause of action or 1 year after the claim arises, whichever is shorter, whether known or unknown when the claim arises or whether based on tort, contract or any other theory. These terms will be governed by and construed in accordance with the laws of the State of Delaware (without giving effect to conflict of law rules) as to all matters. The parties irrevocably submit to the exclusive jurisdiction of the United States District Court for the Northern District of Illinois.
12. **EXPORT/IMPORT.** The Buyer will comply with all applicable import and export control laws and/or regulations, including without limitation those of the U.S. and/or other jurisdictions from which products may be supplied or to which they may be shipped. The Buyer will not use, transfer, release, import, export or re-export products in violation of such applicable laws and/or regulations.
13. **GENERAL.** Any changes must be signed by both parties. The Seller's waiver of any performance will not constitute a waiver of any other performance. These conditions supersede any prior written or oral agreement, understanding, representation or promise, and any pre-printed or standard terms and conditions contained in the Buyer's request for quote, purchase order, invoice, order acknowledgement or similar document.

BY _____

ACCEPTANCE BY THE BUYER

The foregoing proposal/order is hereby accepted.

Signature of the Buyer

Printed Name/Title

Company Name Order Number Date