



# Terms and Conditions

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## ENTIRE AGREEMENT

These Terms and Conditions of Sale together with Buyer's Credit Application (if applicable), which are incorporated herein by reference, are between New Star Flow Control and Buyer, and form the entire agreement between New Star Flow Control and Buyer and apply to all transactions between New Star Flow Control and Buyer unless otherwise specifically agreed to in writing and approved by authorized signatory of New Star Flow Control. All prior oral or written agreements, including but not limited to Buyer's purchase order, which are different from or purport to be in addition to these Terms and Conditions of Sale are not applicable and are not binding on New Star Flow Control. Buyer will be deemed to have accepted these Terms and Conditions of Sale if any goods or services are sold, supplied or delivered by New Star Flow Control to Buyer or an invoice is delivered by New Star Flow Control to Buyer in respect of such goods or services.

- 1. ACCEPTANCE OF ORDERS:** All orders are subject to acceptance by New Star Flow Control, which acceptance is contingent on adequate supply and, if applicable, credit approval of Buyer.
- 2. CANCELLATION AND RETURNS:** Buyer may not cancel, return, change or modify any order without the written consent of New Star Flow Control and payment by Buyer of all applicable cancellation or re-stocking fees. Special order items may not be cancelled or returned and no refunds will be issued. If return has been approved by New Star Flow Control in writing, the Buyer may return any goods which New Star Flow Control stocks and which are not special order items if: (i) it is in new condition, suitable for resale in its undamaged original packaging and with all original parts; and (ii) it has not been used, installed, modified, rebuilt, reconditioned, repaired, altered or damaged. All returns are subject to a 25% re-stocking fee, unless otherwise agreed to by New Star Flow Control. New Star Flow Control reserves the right, in its sole discretion, to refuse the return and/or cancellation of any product.
- 3. PRICE:** All prices are subject to change unless otherwise noted on New Star Flow Control quotations. Buyer will be invoiced at prices in effect at the time of shipment, unless otherwise agreed to in writing by an authorized representative of New Star Flow Control. All taxes, transportation costs, duties and other charges are in addition to quoted prices. Prices quoted are based on the quantities quoted, New Star Flow Control reserves the right to re-quote if quantities, raw material, specifications, or delivery differ at the time the order is placed.
- 4. PAYMENT:** Terms of invoice payment are net 30 days. In the event Buyer fails to make full payment to New Star Flow Control when due, all past due amounts will be subject to a service charge accruing at a rate of 2% per month, calculated daily and compounded monthly (24% per annum) or the highest rate permitted by law, whichever is lower. If Buyer is in default for non-payment, then in addition to any other remedies available to New Star Flow Control, Buyer agrees to pay and shall indemnify and hold harmless New Star Flow Control in respect of such interest together with all of the costs, losses, charges, expenses and liabilities of New Star Flow Control related or incidental to its collection efforts or the enforcement of any of its rights in connection with such default (including legal fees). New Star Flow Control will grant a lien waiver only to the extent that payment is received and not avoidable as a bankruptcy preference.
- 5. TAXES:** All taxes, duties, and/or fees that are payable or may become payable under any laws and regulations with respect to the sale, purchase, shipment, delivery, storage, use, consumption, or transportation of the goods may be added to the invoice and in any event will be paid by the Buyer.
- 6. SHIPMENT:** All orders are shipped EX Works point of shipment. Risk of loss will transfer to Buyer upon tender of goods to Buyer, Buyer's representative or common carrier. The cost of any special packaging or handling caused by Buyer's requirements or requests will be added to the amount of Buyer's order. If Buyer causes or requests a delay of shipment, or if New Star Flow Control ships or delivers an order erroneously as a result of inaccurate, incomplete or misleading information supplied by Buyer or its agents or employees, all storage and other additional costs and risk will be borne by Buyer. New Star Flow Control will prepare shipments according to applicable standards to minimize the possibility of rust, breakage, or other deterioration in transit, however New Star Flow Control accepts no responsibility for such damage.
- 7. DELIVERY:** Quotations and sales, including the transfer of title to goods sold and the risk therefor are Ex Works (per current Incoterms) New Star Flow Control manufacturing plant in Edmonton, Alberta, Canada, unless otherwise stipulated. New Star Flow Control will make a good faith effort to complete the delivery of all goods ordered by Buyer as indicated in writing; provided, however, that New Star Flow Control assumes no responsibility or liability and will not accept any back charge for any loss or damage due to delay or inability to deliver, whether or not such loss or damage was made known to New Star Flow Control, including but not limited to as a result of New Star Flow Control non-performance caused by an act of God, war, labour disputes, civil unrest, accidents, the inability to obtain materials, delays of carriers, contractors or suppliers or any other causes of any kind which is beyond the control of New Star Flow Control. If Buyer can not accept delivery of goods by agreed delivery date on purchase order, New Star Flow Control reserves the right to notify the Buyer and then charge for storage and administrative costs incurred against goods held for more than one month while awaiting delivery or other instructions, which the Buyer agrees to pay on demand.
- 8. INSPECTION AND ACCEPTANCE:** Buyer shall examine all goods upon receipt and prior to installation. All claims for damage, shortage, errors in shipment or improper delivery must be made to New Star Flow Control in writing within five (5) business days of delivery, after which date Buyer will be deemed to have irrevocably accepted the goods, if not previously accepted, and will have no right to reject the goods or to revoke acceptance. Buyer must make any claims for billing errors or adjustments to New Star Flow Control in writing within ten (10) business days from the invoice date. Claims not received in writing within such period of time will be waived by Buyer.



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9. **WARRANTY:** New Star Flow Control warrants goods of its own manufacture against defects in material and workmanship for a period of 12 months from the date goods are first used in commercial operation or 18 months from date of shipment, whichever occurs first. Any warranty is void if there has been misuse, accident, modifications, unsuitable physical or operating environment, improper maintenance, storage or installation. All other warranties are those of the relevant manufacturer, New Star Flow Control assigns to Buyer any warranty provided by its suppliers and by the manufacturer. Use of a third party to repair or replace New Star Flow Control goods without written consent from New Star Flow Control authorized representative will void this warranty and New Star Flow Control will not be liable for any expenses.

10. **INDEMNIFICATION:** Buyer shall indemnify, hold harmless and defend New Star Flow Control and its employees, officers, directors and agents from and against any action, cause of action, judgment or claim for damages to property (including environmental damages) or bodily injury, loss of life, liability of any nature (including the violation of any applicable laws or regulations in connection with the sale, transportation, installation, use or repair by Buyer of the goods sold, supplied or delivered by New Star Flow Control), costs, or expenses including reasonable legal fees to the extent caused by the negligent act or omission or willful misconduct of or breach of these Terms and Conditions of Sale by Buyer.

11. **LIABILITY:** The Buyer will hold New Star Flow Control harmless and indemnify New Star Flow Control from, for and against any and all claims, demands, liabilities, lawsuits or actions for damages and expenses, including legal fees, arising out of or related to goods or services provided by New Star Flow Control unless caused by the gross negligence or intentional misconduct of New Star Flow Control. The Buyer will not claim against New Star Flow Control (and/or its members) for labor, direct or indirect expenditures or losses, economic or consequential damages (including loss of profits) or punitive damages or environmental damages resulting from the purchase or use of the goods and/or services of New Star Flow Control howsoever caused. Notwithstanding any other provisions in the contract, the Buyer agrees that the liability of New Star Flow Control, whether in contract, tort or any other legal theory, will be limited to a maximum of 100% of the goods value supplied by New Star Flow Control and paid for under the contract.

12. **DEFAULT:** If Buyer is in default of these Terms and Conditions of Sale, New Star Flow Control, at its option, cancel any unexecuted portion of any order to which these Terms and Conditions of Sale apply and/or exercise any right or remedy which may be available to it at law. Buyer will be in default under these Terms and Conditions of Sale if: (a) the Buyer fails to perform any covenant, term or condition contained herein or breaches any representation or warranty given by Buyer to New Star Flow Control; (b) Buyer fails to give a required notice to New Star Flow Control; (c) the Buyer is insolvent or the Buyer fails to pay debts as they come due or if Buyer makes an assignment for the benefit of its creditors, or a receiver or receiver and manager is appointed for Buyer or for any of the goods ordered pursuant to these Terms and Conditions of Sale, or if any petition is filed to adjudicate Buyer bankrupt.

13. **FORCE MAJEURE:** New Star Flow Control will endeavour to complete the contract or deliver the goods within the time agreed, but will not be liable for any loss or damages caused directly or indirectly by any delay and/or delays caused by changes to laws and/or regulations, or by fires, strikes, and disputes with workers, extreme weather, accidents, embargos, transportation delays, shortage of rail cars, fuel or other materials, shortage of labor or for any other causes beyond the reasonable control of New Star Flow Control.

14. **SEVERABILITY:** These Terms and Conditions of Sale will be construed as if prepared jointly by the parties hereto and any uncertainty or ambiguity will not be interpreted against any one party. If any of the provisions contained in these Terms and Conditions of Sale are held to be unenforceable then such provision will be given effect in such reduced form as may be decided by a court of competent jurisdiction; provided, however, that if any provision should be declared unenforceable or invalid for any reason, such unenforceable or invalid provisions will be severed from the remainder of these Terms and Conditions of Sale without affecting the enforceability or validity of the remaining provisions. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to the contract.

15. **NON-WAIVER:** The failure of New Star Flow Control to insist upon the strict performance of any of these Terms and Conditions of Sale will not be deemed to be a waiver of any of the right or remedies of New Star Flow Control, nor of its right to insist upon strict performance of such term or of any other term in the future. No waiver of any of these Terms and Conditions of Sale will be valid unless in writing signed by New Star Flow Control.

16. **GOVERNING LAW:** These Terms and Conditions of Sale are governed by the laws of the province of Alberta and the federal laws of Canada applicable therein without regard to conflict of law provisions and Buyer hereby irrevocably attorns to the jurisdiction of the courts of such province. All actions, regardless of form, arising out of or related to a transaction governed by these Terms and Conditions of Sale must be brought against New Star Flow Control within the applicable statutory period, but in no event more than one (1) year after the date of the relevant invoice.