

## DURBIN INDUSTRIAL VALVE, INC. TERMS AND CONDITIONS

1. **ENTIRE AGREEMENT:** This agreement is intended by Durbin Industrial Valve, Inc. and the Purchaser as the final expression of their agreement and is the complete and exclusive statement of the terms and conditions thereof notwithstanding any oral representations or statements to the contrary heretofore made. No modification hereof shall be effective unless in writing signed by both parties and specifically stating it is such a modification. If terms or conditions are contained herein which are additional to or different from the Purchaser's order, then this acknowledgment supersedes the Purchaser's order.
2. **PRICES AND DISCOUNTS:** All prices and discounts are in accordance with the established price and discount schedules of Durbin Industrial Valve, Inc.
3. **PRICE TERMS:** Unless otherwise agreed upon in writing by Durbin Industrial Valve, Inc., prices quoted are F.O.B. Akron, OH. Durbin Industrial Valve, Inc. shall not be responsible for any storage, transportation, or similar charges incurred at destination.
4. **BOND PREMIUMS:** In the event Durbin Industrial Valve, Inc. shall be required as a condition of the manufacture and sale of goods covered hereby to furnish a performance bond, all bond premiums and expenses in connection therewith shall be paid by the Purchaser in addition to the quoted purchase price.
5. **INTEREST:** Overdue invoices shall bear interest at the rate of 1% per month on the unpaid balance from the past due date of the invoice.
6. **PAYMENT TERMS:** Subject to establishment of satisfactory credit, terms are strictly net 30 days after date of invoice payable in U.S. currency or, in the case of overseas shipments, in negotiable instruments which are to be transacted through a mutually acceptable banking establishment. No cash discounts or other discounts for prompt payment are offered unless otherwise agreed upon between the parties in writing prior to order. Durbin Industrial Valve, Inc. reserves the right to require payment in advance, C.O.D. or guarantee by letter of credit, and to otherwise modify credit terms at its discretion.
7. **TAXES:** Any taxes imposed by federal, state, foreign, or local governmental authority on the sale or use of the goods covered hereby shall be paid to Durbin Industrial Valve, Inc. by the Purchaser in addition to the quoted purchase price, unless the Purchaser has filed a valid tax exempt certificate with Durbin Industrial Valve, Inc.
8. **FUTURE PRICES:** Prices quoted with reflected expiration date herein are firm for shipment of the goods covered or as previously negotiated in writing. Hereafter, prices are subject to change by Durbin Industrial Valve, Inc. without notice. Delays in delivery caused by the Purchaser shall subject the prices herein to escalation. Goods held by Durbin Industrial Valve, Inc. beyond delivery date at the request of the Purchaser will be invoiced on the date of completion and terms of payment will apply as from said invoice date. Goods so delayed or held will be subject to charges for storage and all other expenses incident to such delay or holding.
9. **DELIVERY:** Durbin Industrial Valve, Inc. shall attempt to make shipment within the time specified herein. However, delivery dates are approximate and estimated and are based on prompt receipt of all necessary data and specifications from the Purchaser. Durbin Industrial Valve, Inc., reserves the right to make partial shipments of any one or more of the goods covered hereby and to ship from any location it may select. No liability or breach of this agreement shall result from delay in performance or nonperformance occasioned by acts of God or the public enemy, fire, explosion, flood, drought, weather conditions, war, riot, sabotage, accident, embargo, equipment breakdown, or inadequacy, shortage or failure of supply of materials or equipment, fuel, energy, or labor disputes or shortages, or plant shutdown, or inability to obtain material, equipment or transportation, government priority, requisition or allocation, or other action of any governmental authority, or any circumstances or causes of like or different character beyond the control of Durbin Industrial Valve, Inc. in the reasonable conduct of its business and Durbin Industrial Valve, Inc. shall have the right to apportion its production among its customers in such manner as it may consider to be equitable.
10. **WARRANTY:** Durbin Industrial Valve, Inc. warrants to the original Purchaser that the goods covered hereby manufactured by Durbin Industrial Valve, Inc. will be free from defects in material or workmanship for a period of one year from the date of shipment from Durbin Industrial Valve, Inc. under normal use and service. This warranty shall not apply to any goods damaged through improper installation, accident, negligence, abuse, or poor operating practices. This warranty does not apply to replacement parts which are not manufactured or supplied by Durbin Industrial Valve, Inc., nor does it apply to defects or damage caused by use of parts not manufactured or supplied by Durbin Industrial Valve, Inc. or by repairs not performed by Durbin Industrial Valve, Inc. THE WARRANTY GIVEN IN THIS PARAGRAPH IS EXCLUSIVE, EXCEPT AS SO WARRANTED, THE GOODS COVERED HEREBY ARE SOLD AS IS. DURBIN INDUSTRIAL VALVE, INC. MAKES NO OTHER WARRANTY, EXPRESS OR IMPLIED, COVERING SUCH GOODS, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE.
11. **Return Material Authorization:** If any goods covered hereby manufactured by Durbin Industrial Valve, Inc. are alleged to be defective under the warranty given in paragraph 10, the Purchaser shall begin the RMA process by obtaining a claim number from the Durbin Industrial Valve, Inc. website [www.durbinvalve.com](http://www.durbinvalve.com). Durbin Industrial Valve, Inc. requires all returned material to follow our outlined RMA Claim procedure for the warranty request to be considered. After receipt of Claim Number submission form, the Purchaser may return the alleged defective item as a complete valve assembly unaltered or disassembled to Durbin Industrial Valve, Inc., Akron, OH, transportation charges prepaid by the Purchaser. If found to be defective, Durbin Industrial Valve, Inc. will, at its option, repair the item or replace it free of all charges, except said transportation charges. The parties hereto agree that the Purchaser's sole and exclusive remedy against Durbin Industrial Valve, Inc. shall be the repair or replacement as provided above and that Durbin Industrial Valve, Inc. shall have no other liability, except said repair or replacement, for any damages from any cause whatsoever. The Purchaser specifically agrees that no other remedy shall be available to the Purchaser (including, but not limited to, special, incidental or consequential damages for personal injury, property damage, lost profits, repair or replacement costs, labor expenses, interruption of operations, or any other special, incidental or consequential damages) and that Durbin Industrial Valve, Inc. shall in no event be responsible for same. This exclusive remedy shall not be deemed to have failed of its essential purpose so long as Durbin Industrial Valve, Inc. has made or is willing and able to make said repair or replacement. Durbin Industrial Valve, Inc. neither assumes, nor authorizes any other person to assume for Durbin Industrial Valve, Inc. any other liability in connection with the goods covered hereby.
12. **Expedite Service:** Durbin Industrial Valve, Inc. offers an expedited service. Customers who wish to utilize this service will be required to pay a fee 35% of their order with the minimum charge of \$400.00.
13. **CANCELLATION:** All orders are firm and are not subject to cancellation or change in specifications, shipping schedules or other conditions by the Purchaser without the written consent of Durbin Industrial Valve, Inc., which will be given only upon the written agreement of the Purchaser to compensate Durbin Industrial Valve, Inc. for all expenses incident to such cancellation or changes.
14. **CREDITS AND RETURN OF GOODS:** Goods covered hereby may be returned to Durbin Industrial Valve, Inc. for credit ONLY. Durbin Industrial Valve, Inc. requires all returned goods to follow our outlined "RGA Claim" return procedure located on our website [www.durbinvalve.com](http://www.durbinvalve.com). After inspection, report and review of circumstances, needed to complete the RGA Claim process an appropriate credit may be allowed only for current catalog items or parts, less reconditioning and restocking charges as applicable. Any credit allowed will be based on the selling price at the time of original shipment from Durbin Industrial Valve, Inc.

15. Restocking: There will be a 35% restocking fee on all non-warranty returns with a minimum of \$35.00 . No returns will be accepted 30 days after invoice date, unless prior written authorization is received.

16. INDEMNITY: The Purchaser assumes all risks of and responsibility and liability for all losses, damages, and personal injuries which may be incurred by any of its employees, agents, independent contractors, customers, employees of its customers, or any other persons, caused directly or indirectly, by the goods covered hereby. The Purchaser expressly and unequivocally agrees to indemnify and save Durbin Industrial Valve, Inc. harmless from all claims, actions, suits, proceedings, costs, expenses, damages and liabilities, including attorney's fees, arising out of, connected with, or resulting, directly or indirectly, from the goods covered hereby; to defend, at the Purchaser's own cost and expense, all suits which may be brought against Durbin Industrial Valve, Inc., either alone or in conjunction with others, upon any such liabilities or claims, and to promptly satisfy, pay and discharge all judgments and fines that may be recovered against Durbin Industrial Valve, Inc. in all such actions.

17. LIABILITY: The Purchaser shall remain primarily liable for the purchase price. Durbin Industrial Valve, Inc. shall not be obliged to accept any term or condition of payment which will shift said liability to a third person not a party to the contract of sale, whether or not such third person is the United States government, its agents or instrumentalities.

18. LAWS AND REGULATIONS: Durbin Industrial Valve, Inc. represents that the goods covered hereby are not manufactured or sold in violation of any federal, state or local law or regulation. Durbin Industrial Valve, Inc. makes no representation and assumes no liability regarding laws, regulations, import duties, or taxes of any foreign jurisdiction.

19. DESIGNS: All designs and specifications shown in catalogs are subject to change by Durbin Industrial Valve, Inc. without notice.

20. WEIGHTS AND DIMENSIONS: Shipping weights and dimensions given in catalogs and drawings are as close to actual as practicable, but are not guaranteed. No claims will be allowed because of any discrepancy between such listed data and actual weight or dimensions of goods shipped.

21. SHIPPING AND PACKING: All goods are carefully packed for shipment. Durbin Industrial Valve, Inc. shall not be liable for any loss, delay or damage after having received "in good order" receipts from the transportation company. All claims by the Purchaser for loss, delay or damage shall be made directly to the carriers involved in the shipment. Durbin Industrial Valve, Inc. will render all reasonable assistance to the Purchaser in securing satisfactory adjustment of such claims. Goods will be shipped by the method and via the carrier that Durbin Industrial Valve, Inc. believes dependable, unless a method or carrier is specifically designated by the Purchaser in writing.

22. ERRORS: Durbin Industrial Valve, Inc. reserves the right to correct all typographical or clerical errors which may be present in its prices or specifications. No claims will be allowed because of any such errors.

23. SPECIFICATION CLAIMS: Failure of the Purchaser to make a claim in writing against Durbin Industrial Valve, Inc. within ten (10) days after any delivery of any of the goods covered hereby shall constitute an irrevocable acceptance of the goods comprising the particular delivery and the Purchaser's acknowledgment that the goods in said delivery meet the agreed specifications.

24. WAIVER: Waiver by Durbin Industrial Valve, Inc. of a breach of any of the terms and conditions hereof shall not be construed as a waiver of any other breach.

25. ASSIGNABILITY: Neither this agreement nor any right or obligation hereunder is assignable by the Purchaser without the prior written consent of Durbin Industrial Valve, Inc., except to an assignee or successor in title (by merger or otherwise) to substantially all the assets of the Purchaser. This agreement shall be enforceable against the assigns and successors of the Purchaser.

26. PARAGRAPH HEADINGS: Paragraph headings used herein are for convenience only and are not a part of this agreement and shall not be used in construing it.

27. APPLICABLE LAW: The construction, performance and completion of this agreement shall be governed by the laws of the State of Ohio. To the extent that the provisions hereof may at any time vary from the Uniform Commercial Code of the State of Ohio, the provisions hereof shall govern.

28. ACCEPTANCE AND COMPLETE AGREEMENT. Customer's purchase order constitutes an expression of acceptance to *Durbin Industrial Valve, Inc. terms and conditions as set forth herein and Purchaser shall be deemed to have agreed hereto. Purchaser hereby agrees that Durbin Industrial Valve, Inc. may correct any typographical or clerical error herein, and such correction shall become part of the Contract without any further action on the part of Purchaser.*