

ATEX Explosion Protection, LP Standard Conditions of Sale

THE TERMS AND CONDITIONS CONTAINED IN THIS PROPOSAL AND SPECIFIED BELOW CONSTITUTE THE ENTIRE AGREEMENT BETWEEN SELLER AND BUYER WITH RESPECT TO ANY SALE OF GOODS CONSUMMATED PURSUANT TO THIS SALES ACKNOWLEDGMENT, AND NO OTHER TERMS AND CONDITIONS SHALL BE OF ANY FORCE OR EFFECT. SELLER'S ACCEPTANCE OF THE BUYER'S PURCHASE ORDER IS EXPRESSLY CONDITIONED UPON ACCEPTANCE BY BUYER OF THESE TERMS AND CONDITIONS. BUYER'S PURCHASE ORDER SHALL ONLY BE UNDERSTOOD BY ATEX TO STIPULATE ACCEPTANCE TO THESE TERMS AND CONDITIONS ONLY AS MODIFIED BY THIS PROPOSAL. BUYER WILL BE DEEMED TO HAVE ASSENTED TO ALL SUCH TERMS AND CONDITIONS IF ANY PART OF THE DESCRIBED GOODS IS ACCEPTED. ANY ADDITIONAL OR DIFFERENT TERMS OR CONDITIONS CONTAINED IN BUYER'S PURCHASE ORDER OR IN ANY OTHER CORRESPONDENCE SHALL BE DEEMED OBJECTED TO BY SELLER AND SHALL BE OF NO FORCE OR EFFECT. UNLESS BUYER AND SELLER SPECIFICALLY AGREE AS PART OF THIS PROPOSAL ON TERMS AND CONDITIONS DIFFERENT FROM THOSE CONTAINED HEREIN.

1. WARRANTY

(a) Seller warrants for a period of twelve (12) months after installation by the Buyer, but not to exceed eighteen (18) months after shipment by the Seller that all goods delivered hereunder by ATEX Explosion Protection, L.P. (hereafter referred to as ATEX) will be free from defects in material and workmanship, and any explosion protection systems specifically engineered by ATEX for the Buyer will diminish the risk of explosions and reduce damage in accordance with the operating conditions provided to ATEX by buyer and the operating requirements stipulated by ATEX herein and in the ATEX Operation and Maintenance manual in keeping with industry standards prevailing in the manufacture of explosion suppression, venting and isolation devices. All goods will be preserved, packaged and shipped in accordance with ATEX normal and customary practice.

(b) Buyer agrees that it will not begin operation of any explosion protection system until ATEX has conducted a final inspection of such system and has notified the Buyer in writing that it is ready for operation. Buyer further agrees that Buyer will install, operate and maintain any explosion protection system in accordance with the system maintenance and operation manual provided by ATEX, which shall contain a description of the system, procedures for its installation, operation and maintenance and any applicable warnings or special requirements. The warranties provided herein shall not apply if Buyer fails to fulfill any of these obligations.

(c) ATEX CANNOT GUARANTEE, AND NO WARRANTY IS MADE, THAT ANY EXPLOSION PROTECTION SYSTEM OR OTHER GOODS DELIVERED BY ATEX WILL PREVENT AN EXPLOSION FROM OCCURRING IN ANY MANUFACTURING OR PROCESSING OPERATION. ENGINEERED SYSTEMS ARE DESIGNED TO DIMINISH BUYER'S RISK OF AN EXPLOSION AND TO REDUCE ANY RESULTING DAMAGE THROUGH USE OF DETECTION, SUPPRESSION, VENTING AND/OR ISOLATION DEVICES. BUYER UNDERSTANDS THAT CORROSION, HEAT, DIRT, DEBRIS, AND CHANGES IN MATERIAL SPECIFICATIONS AND IN THE MANUFACTURING OR PROCESSING ENVIRONMENT, PARAMETERS OR TOLERANCES CAN ALL REDUCE THE EFFECTIVENESS OF ANY EXPLOSION PROTECTION SYSTEM AND ARE OUT OF THE CONTROL OF ATEX.

2. DISCLAIMER OF WARRANTIES - SELLER MAKES NO WARRANTY OF Merchantability OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE GOODS DELIVERED HEREUNDER, NOR IS THERE ANY OTHER WARRANTY, EXPRESSED OR IMPLIED, EXCEPT FOR THE WARRANTIES CONTAINED ABOVE.

ATEX's liability or obligation pursuant to any warranty extends only to products furnished by ATEX as part of this proposal. Equipment installed, operated, maintained, repaired, or altered improperly or otherwise than in conformity to manuals and other applicable instructions or in the case of any explosion

protection system, without ATEX's final inspection is not covered by the above warranty. ATEX assumes no responsibility or liability for the adequacy of any design, specification, drawing, or material furnished or specified by the Buyer.

Buyer acknowledges the use of its own skill and expertise in the selection of the goods delivered hereunder, and the Buyer has not relied on any oral or written statements or representations made by, or samples presented to Buyer prior to or concurrently with the execution of this contract to form the basis of the bargain between the Buyer and the Seller with respect to such goods. ATEX assumes no liability for technical advice given to Buyer (except as otherwise provided herein with respect to Engineered Systems) on the use of the goods purchased hereunder, and Buyer expressly agrees that such advice will be used at its own risk.

3. LIMITATION OF REMEDIES AND LIABILITY - Buyers exclusive remedy against ATEX and for any breach of or default under this contract (including any breach of warranty), any act or omission of ATEX (including its negligence), or any defect in any goods ordered or delivered hereunder (including under strict liability in tort) shall be, at the ATEX's option, (a) the repair or replacement of goods with respect to which claims are made or (b) the refund of the purchase price for such goods, less a reasonable charge for any actual use thereof which has been made by the Buyer. All claims by Buyer against ATEX must be made in writing within the following time periods: (i) all claims for breach of the warranty set forth in items above must be made in writing within 30 days after the alleged defect becomes or should have become apparent to the Buyer and prior to the expiration of the applicable warranty period; (ii) all claims for shortages must be made in writing within 10 days after receipt of the goods in respect of which any such shortage is claimed, and should be accompanied by ATEX's packing slip or Photostat copy thereof; and (iii) all other claims must be made within 30 days of receipt by Buyer of the goods delivered hereunder. All claims will be deemed waived by the Buyer unless made within the periods set forth herein. If the ATEX so requests, the Buyer must either permit ATEX to inspect the goods, or if the goods have not been installed, return to the ATEX any goods with respect to which any claims are made (free and clear of all encumbrances) in accordance with the ATEX shipping instructions and with shipping charges prepaid; provided that ATEX will reimburse Buyer for reasonable shipping charges actually incurred by Buyer at the request of ATEX if it is found that any such returned goods failed to comply with the warranty set forth in Items above. IN NO EVENT SHALL ATEX BE LIABLE TO BUYER OR ANY OTHER PERSON (A) FOR CONSEQUENTIAL, INCIDENTAL OR SPECIAL DAMAGES (INCLUDING WITHOUT LIMITATION LOST PROFITS) OR (B) FOR DIRECT DAMAGE. OTHER THAN FOR THE REPAIR OR REPLACEMENT OF GOODS.

4. TERMS OF PAYMENT - Unless otherwise stated on the face hereof, all payments shall be in United States dollars, and a pro-rata payment shall become due as each shipment is made hereunder if less than all the goods to be delivered under this contract are shipped at any one time. For sales made in Canada and the United States, unless otherwise stated on the face hereof, payment with respect to goods ordered is due 30 days following invoice by ATEX. If the Buyer pays the entire amount due in accordance with ATEX's invoice within ten days following invoice by ATEX, Buyer shall automatically be entitled to a discount of 1/2%, provided that Buyer has paid any and all sums of money previously owed by the Buyer to the ATEX. For sales made in Canada and the United States, all indebtedness outstanding after the date due shall bear interest at the rate of 1-1/2% per month or the highest rate permitted by applicable state law. Whichever is less. The payment terms for sales other than United States and Canada sales shall be as set forth on the face hereof or as expressly agreed by the parties. If ATEX shall be required to institute legal proceedings for the collection of any past due indebtedness. Buyer shall reimburse ATEX for its reasonable costs and expenses. Including without limitation. Attorneys' fees. Incurred in connection therewith.

5. TAXES - in addition to the purchase price. Buyer shall pay to ATEX the amount of any and all applicable duties, sales, use, excise, value added or similar taxes imposed upon ATEX on account of the sale or transportation of the goods delivered hereunder. Unless appropriate exemption certificates are furnished to ATEX. Any such taxes will be added to the invoices as separate items.

6. RETURNS. CANCELLATIONS AND DEFERRED ORDERS - Goods may be returned only with the prior written authorization of ATEX in its sole discretion and subject to such restocking fee as the ATEX

may establish; it being understood, without limiting the generality of the foregoing, that custom-ordered goods may never be returned. Goods returned to ATEX without such prior authorization shall be returned to Buyer freight collect; and in any event, all goods returned to ATEX must be shipped with shipping charges prepaid. Buyer may cancel orders prior to shipment subject to a cancellation charge as determined by ATEX in its sole discretion. Orders may be deferred or modified prior to shipment subject to such revision in price or charge for work already in progress as may be determined by ATEX in its sole discretion. In addition, ATEX may place in storage goods for which (a) an order has been deferred by the Buyer or (b) shipment is delayed by Buyers inability or unwillingness to receive the goods, Storage by ATEX shall be for Buyers account at Buyers expense and the goods so stored shall be at Buyers risk while stored. Notwithstanding anything to the contrary in Item 9. In the event of delay in shipment as herein provided, ATEX shall be entitled to invoice the Buyer when ATEX is ready to ship the goods.

7. DELIVERY AND FORCE MAJEURE - Shipping dates are estimates only and ATEX in no way guarantees that ordered goods will be shipped in accordance with estimated shipping schedules. Without limiting the generality of the foregoing, ATEX may delay delivery of goods without any liability therefor as a result of any delay caused by events outside ATEX's reasonable control that would in any way impair ATEX's ability to deliver the goods in the quantities ordered at the prices quoted. If delivery is thus delayed for more than 120 days. Either Buyer or ATEX may (by notice) cancel an order without liability therefor with respect to any goods remaining undelivered, provided that the remaining provisions of this contract shall remain unaffected.

8. SHIPMENT AND TITLE - The term "shipment" means delivery to the initial carrier in accordance with the delivery terms of the shipping order. ATEX may make partial shipments. All shipments made by ATEX shall be FOB Hamm, Germany, unless otherwise stated on the face hereof. ATEX shall select the method of transportation and route of any shipment. Unless Buyer specifies the method and route and is to pay freight cost in addition to the price. If any shipment is FOB destination or freight allowed to destination, "destination" means common carrier delivery point (within the continental United States, excluding Alaska and Hawaii) nearest the destination. For shipment outside the United States, the ATEX shall arrange for inland carriage to a port of exit. And Buyer shall be responsible for overseas carriage and preparation of any necessary, related documentation. ATEX shall cooperate with Buyer's agents in making such arrangements and preparing such documents. Title to all goods sold hereunder, and, except as provided in item 7 hereof. Risk of loss or damage thereto, shall pass to Buyer at the FOB point.

9. ACCEPTANCE OF ORDERS - ATEX shall have no obligation, nor shall ATEX be bound, with respect to any order unless the order has been accepted, on behalf of the ATEX, by a member of the ATEX's order entry group at ATEXs principal place of business in Kissimmee, Florida. Furthermore, at its discretion, ATEX may elect not to accept any orders submitted by Buyer and may, at any time, change the price of goods under the order. In the event ATEX elects to change the price of any goods for which an order has already been accepted by ATEX, the Buyer may elect to cancel the order without any liability therefore.

10. DISTRIBUTORS - Any Buyer who is a distributor of ATEX, or a purchaser of ATEX's goods for resale, shall have the following additional obligations:

- (a) Buyer shall conduct itself in support of the ATEXs policies, products and business reputation and, in that regard, shall promptly inform the ATEX about any matters related to the goods,
- (b) In soliciting orders and promoting the sales of the goods, the Buyer shall not include in any bid or proposal, sales agreement or order acceptance with any of its customers any warranty that is broader in scope than the express warranties given by the ATEX to the Buyer herein.
- (c) The Buyer shall be an independent contractor. Nothing herein shall be deemed to constitute the relationship between ATEX and the Buyer as one of joint ventures, partnership or any association of any kind or nature other than as independent contractors. All persons employed or retained by the Buyer in connection with its distribution activities shall be considered employees or agents of the Buyer and not ATEX.

11. INDEMNIFICATION - Buyer will defend, indemnify and hold harmless ATEX from and against any and all claims, losses, liabilities, costs and expenses (including without limitation, attorneys' fees and expenses), on account of any injury or death of any person (including Buyer's employees) or any damage to

any property resulting from (a) Buyer's unloading, storage. Handling or use of the goods sold hereunder (except to the extent that such damages are attributable to the ATEXs gross negligence or willful misconduct), (b) Buyers failure to strictly comply with all of ATEX's applicable instructions and warnings (including without limitation any manuals delivered by ATEX to Buyer), or if applicable (c) Buyer's operation of any explosion protection system prior to ATEX's inspection thereof. Buyer's indemnification obligations hereunder shall survive termination of this contract.

12. PATENT INFRINGEMENT - If suit is brought against Buyer. or any of its vendors, alleging that the manufacture or sale of goods sold hereunder infringes any United States patent (except infringement occurring as a result of incorporating a design or modification of the goods at Buyer's request, or occurring as a result of Buyer's failing to use the goods in the manner directed and exclusively for the purpose for which they were sold), then ATEX will defend, indemnify, and hold harmless Buyer and pay any awards against Buyer arising from such infringement (but excluding, without limitation, any attorneys' fees incurred by Buyer); provided, however, that Buyer has given ATEX (a) prompt written notice of any charge of such infringement, (b) the right at ATEXs expense to settle such charge or to defend or control the defense of any suit based upon such charge and (c) all necessary information and assistance in connection therewith. THIS PARAGRAPH SETS FORTH ATEX'S EXCLUSIVE LIABILITY WITH RESPECT TO PATENTS.

13. GOVERNING LAW - This contract shall be governed by and construed in accordance with the laws of the State of Florida.

14. NON-WAIVER - Failure by either party to exercise any of the rights under this contract upon one occasion shall not be a waiver of its right to exercise the same rights on another occasion.