



*Valves and Pumps for Extreme Environments*

## **DOERING COMPANY TERMS AND CONDITIONS OF SALE**

**1. Applicability.** These terms and conditions (“Terms”) govern the sale of all Doering Company products (“Products”) by Doering Company and its subsidiaries and affiliates (collectively, “Doering Company”) and apply to all purchases of Products from Doering Company by any purchaser (“you” or “your”) with notice of these Terms, however gained, including the use of Doering Company’s website.

These Terms, Supplementary Terms (if any), and terms contained in the accompanying confirmation of sale, constitute the entire agreement (the “Agreement”) between the parties related to the sale of the Products specified in such confirmation of sale. If you are purchasing through use of Doering Company’s website, you also agree to the terms of Doering Company’s Terms of Use and Privacy Policy, which will be deemed part of the Agreement between you and Doering Company.

This Agreement can be accepted only on the exact terms set forth herein and no terms which are in any manner whatsoever additional to or different from those set forth herein (including any of your general terms and conditions of purchase regardless of whether or when you submitted your Purchase Order (“Order”)) shall become a part of or in any way alter or add to the Agreement without the express written consent of Doering Company. Doering Company rejects any additional or different terms provided by you that are contrary to these terms. Notwithstanding anything herein to the contrary, if a written contract signed by both parties is in existence covering the sale of the Products covered hereby, the terms and conditions of said contract shall prevail to the extent they are inconsistent with this Agreement.

BY PLACING YOUR ORDER, YOU ACCEPT AND AGREE THAT YOU ARE BOUND BY THE TERMS OF THIS AGREEMENT. YOU AFFIRM THAT IF YOU PLACE AN ORDER ON BEHALF OF AN ORGANIZATION OR COMPANY, YOU HAVE THE LEGAL AUTHORITY TO BIND ANY SUCH ORGANIZATION OR COMPANY TO THE TERMS OF THIS AGREEMENT.

**2. Price, Taxes and Payment.** All prices are in US currency, unless otherwise agreed in writing signed by Doering Company. For orders placed through the Doering Company website, you will pay Doering Company the Product prices in effect at the time of Order placement. Unless otherwise agreed by Doering Company in writing, payment must be received by Doering Company before Doering Company’s acceptance of an Order. For all other orders, payment terms are net thirty (30) days after the date of Doering Company’s invoice.

In addition to the purchase price and taxes paid at the time of your Order, you will reimburse Doering Company for all taxes (other than net income taxes), duties, tariffs and other charges of any kind imposed by any governmental authority that result from your payment of any amounts to Doering Company, or the use of the Products upon receipt of an invoice from Doering Company. You shall reimburse Doering Company for all costs incurred in collecting any late payments, including, without limitation, attorneys’ fees. Doering Company reserves all rights with respect to delivered Products, including the rights of rescission, repossession, resale, stoppage in transit, and account suspension or termination until the full amount due has been paid.

**3. Order Cancellation, Modification, and Returns.** Changes in specifications or designs relating to any Products, changes in delivery schedules or reschedules or cancellations of Orders are not permitted unless Doering Company has accepted same in writing, has determined the additional charge to be made, if any, and the same has been paid by you. There are no cancellations and no returns (“NCNR”) on any accepted Orders of Doering Company non-standard or custom Products. No returns will be accepted without prior written authorization from Doering Company (“RMA”). Contact your Sales Engineer or Doering Company’s Customer Service at [customerservice@doering.com](mailto:customerservice@doering.com) to request the RMA.

**4. Delivery.** Doering Company will deliver the Products “FCA” (as defined in INCOTERMS 2020) Doering Company’s designated facility indicated in the Doering Company confirmation of sale. You shall, at your sole cost and expense, be responsible for obtaining all licenses and permits and for satisfying all formalities as may be required to import the Products into any other country in accordance with then prevailing laws, rules and regulations. Any



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extra charge incurred for additional services, including loading, storage and handling, will be paid by you. Title to the Products and risk of loss or damage to Products shall pass to you upon Doering Company's tender to carrier, to you or your designated agent, whichever occurs first. If you have not specified a carrier in your Order, Doering Company may select the carrier but will not be deemed thereby to assume any liability in connection with the shipment nor will the carrier be construed to be an agent of Doering Company. Quoted shipping and delivery dates are approximate and are based on prompt receipt of all information and approvals from you to allow release of the Products for production. Delays in securing your approval of any matter shall, at Doering Company's discretion, extend the date of delivery. Doering Company reserves the right to ship prior to the quoted ship date or to ship in installments.

**5. Inspection and Acceptance.** You shall inspect the Products upon arrival and notify Doering Company in writing within 5-days of delivery of any claims that the Products do not conform to specifications or of damage. Failure to give such written notice during such period will constitute satisfactory shipment by Doering Company and irrevocable acceptance by you of all Products. Notwithstanding the foregoing, claims for loss or damage of Products which Doering Company determines occurred in transit must be made to the carrier and not to Doering Company.

**6. Doering Company Documentation and Technical Information.** Documentation ("Doering Company Documentation") is provided with some Doering Company Products. All of the Doering Company Documentation that is provided with the Products is subject to these Terms and Conditions. Doering Company hereby grants to you a single, personal, non-sublicensable, and nonexclusive license to use Doering Company Documentation to the limited extent necessary for the installation and use of the specific Product to which it relates, and to copy Doering Company Documentation as necessary for those purposes. Except as provided in this Section, no license to any Doering Company Documentation is granted to you. All updates, modifications and enhancements to Doering Company Documentation that are made available to you will be deemed part of that Doering Company Documentation and will be governed by these Terms and Conditions. You must not remove, delete, alter, or obscure any trademarks or any copyright, trademark, patent, or other intellectual property or proprietary rights notices provided on or with the Doering Company Software or Documentation, including any copy thereof.

## **7. Limited Warranty.**

**Product Warranty.** Doering Company warrants to you, the original purchaser, that its Products are free from defects in material and workmanship for a period of twelve (12) months from the date of manufacture of the Products (evidenced by Doering Company's Product manufacture date code) (the "Limited Warranty Period"). Your sole remedy and Doering Company's sole obligation for any Products that are nonconforming when delivered to you, or are found to be defective during the Limited Warranty Period, will be, in Doering Company's sole discretion, to replace the nonconforming Product or provide you with a credit equal to the purchase price of the nonconforming or defective Product.

You must notify Doering Company in writing within the Limited Warranty Period if you discover that a Product is nonconforming or defective and provide a description of the nonconformity or defect, together with pictures of the Product, and a completed Doering Company Return Material Authorization form provided by Doering Company ("RMA"). If Doering Company determines that the Product is nonconforming or defective and the claim is made within the Limited Warranty Period, Doering Company will instruct you to either dispose of or return the nonconforming or defective Product to Doering Company together with the completed Doering Company RMA. No Product returns will be accepted without a Doering Company approved RMA. Returned Products must be sent to Doering Company's designated facility at Customer's cost.

This limited warranty does not cover and Doering Company will have no obligation to replace any Product if (i) replacement is required as a result of normal wear and tear, or causes external to the Product, (ii) the Product has been altered other than by an authorized Doering Company representative, (iii) the Product has not been properly installed, used or maintained; or (iii) the replacement is requested after the Limited Warranty Period has expired.



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THIS LIMITED WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES WHETHER EXPRESS OR IMPLIED (INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OR ARISING FROM COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE, ALL OF WHICH DOERING COMPANY HEREBY EXPRESSLY DISCLAIMS.

**8. LIMITATION OF LIABILITY.** IN NO EVENT WILL DOERING COMPANY BE LIABLE TO YOU OR ANY OTHER PERSON OR ENTITY FOR ANY INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES OF ANY KIND, OR LOST PROFITS OR REVENUE, HOWEVER CAUSED, WHETHER RESULTING FROM ANY PRODUCT, SOFTWARE OR DOCUMENTATION DEFECT OR FROM THE USE OR INABILITY TO USE THE PRODUCT, SOFTWARE OR DOCUMENTATION, WHETHER ARISING IN CONTRACT OR WARRANTY, STATUTE, TORT, STRICT LIABILITY, NEGLIGENCE OR OTHERWISE, AND WHETHER OR NOT DOERING COMPANY WAS ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGES. IN NO EVENT WILL DOERING COMPANY'S LIABILITY OF ANY KIND WITH RESPECT TO DOERING COMPANY PRODUCTS, OR OTHERWISE ARISING OUT OF OR RELATING TO THIS AGREEMENT, EXCEED THE AGGREGATE AMOUNT PAID BY YOU TO DOERING COMPANY UNDER THIS AGREEMENT FOR THE PRODUCT THAT GAVE RISE TO THE CLAIM.

**9. Your Indemnification.** You will indemnify, defend and hold harmless Doering Company and Doering Company's employees, officers, directors and suppliers against all loss, cost, damage and expense (including reasonable attorney's fees and cost of suit) arising out of or related to (i) claims of negligence, strict liability, product liability, breach of warranty (except warranty claims properly made by you) or otherwise with respect to the Products that are bought by you, your successors or assigns, or any third party, and (ii) your use of the Products.

**10. Intellectual Property.** Except to the extent you have supplied specifications, drawings or other intellectual property owned or controlled by you prior to the purchase of the Products ("Pre-Existing Intellectual Property") to Doering Company for the development of Products specifically for you that incorporate your Pre-Existing Intellectual Property, you acknowledge and agree that as between you and Doering Company, Doering Company is the sole owner of all intellectual property associated with Doering Company Products, including trade secrets, know-how, copyrights, trademarks, service marks, trade dress, and patents, and you will not directly or indirectly do anything to assert an interest in or to claim any rights to Doering Company's intellectual property. To the extent you submit Pre-Existing Intellectual Property to Doering Company for the development of Products, you hereby grant Doering Company a non-exclusive license to the extent necessary to develop the Products for you.



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**11. Confidentiality.** “Confidential Information” means all information that is disclosed or otherwise made available by either party under this Agreement, or to which the other party has access under this Agreement, that the receiving party knows or should reasonably be expected to know is proprietary or confidential to the other party.

A party receiving Confidential Information agrees to not disclose such Confidential Information to any third party without the express written consent of the disclosing Party. The parties agree to use the Confidential Information strictly in performance of the receiving party’s obligations and the exercise of the receiving party’s rights under this Agreement. During the term of this Agreement and thereafter, the receiving party will safeguard against disclosure of the Confidential Information to third parties using at least the same degree of care to prevent disclosure as it uses to protect its own information of like importance, but at least reasonable care. Each party must provide the other with notice of any governmental, judicial, or administrative order or proceeding to compel the disclosure of Confidential Information received under this Agreement, as promptly as the circumstances of such order or proceeding reasonably permit. Each party will return the other’s Confidential Information promptly after the other party’s request. Each party, as receiving party, shall be responsible for the breach by any of its employees or contractors of receiving party’s obligations under this Section.

Neither party will be obligated to maintain any information in confidence or refrain from use if (i) the information was in the receiving party’s possession or was known to it prior to its receipt from the disclosing party without obligation of nondisclosure, (ii) the information is independently developed by the receiving party without the utilization of Confidential Information of the disclosing party, (iii) the information is or becomes public knowledge without fault of the receiving party, or (iv) the information is or becomes available on an unrestricted basis to the receiving party from a source other than the disclosing party.

In addition to the protections and remedies available to Doering Company under this Agreement, proprietary, trade secret and Confidential Information of Doering Company are protected by the Minnesota Uniform Trade Secrets Act, Minnesota Statutes Section 325(c), et. al., by the U.S. Defend Trade Secrets Act (“DTSA”) and violations can give rise to both civil and criminal liability.

**12. Compliance with Law.** The parties agree to conduct their businesses in an ethical manner and in compliance with all applicable laws, including, without limitation, the U.S. Foreign Corrupt Practices Act and U.S. export control laws and regulations, including regulations relating to sanctions. You agree that you will not resell or transship the Products or any technical information regarding the Products: (a) into any U.S. embargoed countries or (b) to anyone on the U.S. Treasury Department’s list of Specially Designated Nationals or the U.S. Department of Commerce Denied Person’s List or Entity List. You further agree to disclose to Doering Company the full and correct company name and registered address of your company and any parent company, as well as true and correct information concerning the ultimate beneficial owners of your company, including any parent or intermediary companies, upon Doering Company’s request. Doering Company reserves the right to cancel any Orders the fulfillment of which would violate the laws of the United States or any other country in which Doering Company does business.

**13. Force Majeure.** Doering Company will be excused from, and will not be liable for any non-performance under this Agreement that is caused by or arises from, in whole or in part, an occurrence beyond the control of Doering Company or Doering Company’s suppliers, including but not limited to acts of war (declared or not), terrorism, sabotage, insurrection, riot or other act of civil disobedience, accident, fire, explosion, flood, storm or other act of God, epidemic, pandemic, change in government regulation or other government action that results in an increase in costs to Doering Company of more than three percent (3%), or that renders performance impossible or commercially impractical, shortage of labor, fuel, raw materials, shipping containers or ships or other modes of transportation used to deliver the Products, or delays at ports of entry, or machinery, or technical or yield failure.

**14. Termination.** Either party may terminate this Agreement by giving notice in writing to other party if the other party materially breaches these Terms and does not cure the breach within thirty (30) days of receipt of written notice of the breach. Doering Company may cease work, terminate an Order, otherwise discontinue any ongoing supply to or business with you, in whole or in part, at any time, without liability, if you file a petition of any type as to your bankruptcy, are declared bankrupt, become insolvent, make an assignment for the benefit of creditors, or go into liquidation or receivership. In all cases, Doering Company’s rights are cumulative, are not exclusive and in addition to all other rights and remedies it may have at law or in equity. No termination shall affect any accrued rights or obligations of either party as of the effective date of such termination, including Doering Company’s right to payment



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of the price of Products that are shipped and any damages Doering Company might suffer. The provisions of this Agreement which, by their nature, would continue beyond the termination or expiration of this Agreement will survive the termination or expiration of this Agreement.

**15. Governing Law and Disputes.** This Agreement will be governed by and construed in accordance with the laws of the State of Minnesota, United States of America, excluding its conflicts of law provisions and expressly excluding the United Nations Convention of the International Sale of Goods. All controversies and claims arising out of or relating to this Agreement, or the breach thereof, will be settled by arbitration in Minneapolis, Minnesota administered by the American Arbitration Association under its Commercial Arbitration Rules. The arbitration panel will be made up of three (3) arbitrators, all of whom have experience with commercial contracts and manufacturing. Within fifteen (15) days of the delivery of the notice of arbitration, each party shall choose one arbitrator, and the two arbitrators chosen by the parties will choose a third arbitrator. The award of the arbitrator will be issued within thirty (30) days of the completion of the arbitration hearing, shall be in writing, and shall state the reasoning on which the award is based. Judgment upon the award rendered in the arbitration may be entered by either party in any court of competent jurisdiction.



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**General.**

These Terms may not be altered, amended or otherwise modified without the written agreement signed by the parties hereto.

You may not assign or otherwise transfer your rights and obligations under this Agreement except with the prior written consent of Doering Company. A successor to Doering Company by assignment of this order, or to the assets or business of Doering Company by merger, operation of law, purchase or otherwise, will acquire all interest of Doering Company hereunder. Any prohibited assignment will be null and void.

Notices permitted or required to be given hereunder will be deemed sufficient if given by (i) registered or certified mail, postage prepaid, return receipt requested, or (ii) email. Notices given by mail will be effective on the fifth (5th) business day following the date the notice was posted. Notices given by e-mail will be effective on the date given. Notices to you will be sent to the address or email addresses designated in your order. Notices to Doering Company must be sent to Doering Company, Attention: Customer Service at PO Box 300, Clear Lake, MN 55319 USA.

If any part of this Agreement is held illegal, void or ineffective, the remaining portions will remain in full force and effect. No failure by either party to take any action or assert any right under this Agreement will be deemed to be a waiver of that right in the event of the continuation or repetition of the circumstances giving rise to that right.