



*Valves and Pumps for Extreme Environments*

## **Doering Company LLC, Terms and Conditions**

All sales of goods and/or services by Doering Company LLC, Inc. are made subject to the following “Terms & Conditions of Sale”, as such terms and conditions may be revised from time to time by Doering, and regardless of whether these terms and conditions are specifically objected to or rejected in any customer request for proposal, purchase order form, or any other document or location. All contrary, conflicting, and/or additional terms and conditions which may appear on a customer’s request for proposal, purchase order form or any other location are expressly rejected.

### **Terms and Conditions of Sale**

- I. **Contract:** Doering Company LLC. (Doering) sells goods and services (“Deliverables”) only on the following terms and conditions, which constitute the entire agreement between a customer/buyer (“Buyer”) and Doering regarding Doering’s sale of the applicable Deliverables (the “Contract”). All modifications and/or contradictory terms and conditions shown on any forms, purchase orders, documents or instruments of Buyer are void unless specifically agreed to in writing by Doering’s authorized representative. In the event of a conflict between these terms and conditions and any other forms, purchase orders, documents or instruments of Buyer, these terms and conditions of sale shall prevail and will be binding on Buyer.
  
- II. **Prices; Taxes:** Agreed upon prices supersede all previous quotations and proposals. Unless otherwise specified, prices quoted do not include any applicable present or future property, sales, use, privilege or other taxes, or any export or import taxes, customs duties, brokerage fees, freight, insurance, container packing or the like, all of which shall be for the account of and be paid by Buyer. Applicable taxes, if any, shall be paid by the Buyer either directly to the taxing authority or, if collected by Doering, to Doering upon receipt of Doering’s invoice for the amount of the tax. In the case of controversy as to whether a transaction is taxable, Buyer agrees to remit the amount of the tax to the Doering pending a specific ruling from the taxing authority which assesses or collects the tax.



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- III. **Payments:** Terms of payment shall be as agreed upon in writing. If completion of manufacture or shipments are delayed by Buyer, Doering reserves the right to regard date of completion as date of shipment and require payment based upon percentage of completion. Goods held as a result of Buyer's inability or refusal to accept delivery are at the risk and expense of Buyer, including, without limitation, all of Doering's rehandling, reshipping, restocking and storage charges. Interest at the rate of one and one-half percent (1 1/2%) per month (not to exceed the maximum interest allowable by law) shall be paid on the unpaid balance of any invoice not paid in full by Buyer within twenty (20) days of the due date thereof. Such interest shall be in addition to the purchase price payable hereunder. Doering, without notice, may change or withdraw extensions of credit at any time, in which event Doering may require cash payments and/or collateral security for account balances. Doering may refuse to sell to Buyer until overdue accounts are paid in full. If Buyer fails to make any payment when due, in addition to all other sums payable hereunder, Buyer shall pay Doering the reasonable costs and expenses incurred by Doering in connection with any actions taken to enforce collection of such unpaid amounts and to protect Doering's rights hereunder, whether by legal proceedings or otherwise, including, without limitation, reasonable attorneys' fees, court costs and other expenses.
- IV. **Shipment:** Shipment/delivery dates are approximate. Unless otherwise agreed in writing, all Deliverables will be shipped F.O.B. point of shipment. Title and risk of loss shall pass to Buyer upon delivery to common carrier. If freight must be prepaid, payment will be made for the account of Buyer. In the event Deliverables require extra or special packaging due to the nature of the Deliverables, the manner in which they will be transported or otherwise, Buyer is responsible for the extra charges therefore. DOERING SHALL NOT BE LIABLE FOR SHIPMENT DELAYS, OR ANY LOSS OR DAMAGE TO GOODS WHILE IN TRANSIT, AND ALL CLAIMS THEREFORE SHALL BE MADE IMMEDIATELY BY BUYER TO THE CARRIER. Specified shipping date(s) are approximate only. DOERING reserves the right to deliver goods in installments. Installment deliveries will be invoiced by DOERING at time of shipment unless otherwise agreed in writing by DOERING. Delay in any installment delivery shall not relieve Buyer of its obligation to accept all remaining installment deliveries



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- V. **Returns:** Deliverables may be returned by Buyer only when authorized by Doering and only in accordance with the following procedure: Buyer, within ninety (90) days from Buyer's receipt of the Deliverables, must request, in writing, a Return Material Authorization Number ("RMA") from Doering's Customer Service Department. Each request shall contain (1) the applicable order number and date, (2) an itemization of the Deliverables being returned, (3) the reason for the requested return and (4) an attached copy of the invoice. If Doering issues a RMA to Buyer, then Buyer may return such goods but only within sixty (60) days from the date of the issuance of the RMA. Deliverables must be returned properly crated or packaged and shipped freight prepaid to Doering. Special order, made-to-order, modified catalog items and discontinued goods are not subject to return unless due to Doering's breach of warranty as provided for herein or by special arrangement authorized by Doering. If Doering provides Buyer with a RMA, and if Buyer has returned the Deliverables as described in this Section 5, then Doering will issue a credit to Buyer equal to Buyer's actual purchase price of the returned goods, less a minimum of 30% service charge for handling, inspection, repackaging and restocking.
- VI. **Cancellation:** A purchase order may be cancelled by Buyer only with the written consent of Doering and upon Buyer's reimbursement for any and all expenses and other losses incurred by Doering as a result of such cancellation, including Doering's actual out of pocket costs, overhead and anticipated profit. Orders for special or custom Deliverables cannot be cancelled by Buyer, unless the Deliverables have not yet been manufactured, and then only upon Doering's receipt of Buyer's written notice of cancellation and payment of Doering's invoice for Doering's engineering and manufacturing work and any special materials Doering ordered after acceptance of the Buyer's order but prior to Doering's receipt of Buyer's written cancellation. Cancellations of orders must be in writing to be effective.
- VII. **Permits, Etc.:** Buyer will secure and provide, at its own expense, any and all necessary licenses, permits and inspections necessary to permit the lawful purchase, installation and use of the Deliverables.



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- VIII. **Changes:** Doering reserves the right to make, at any time, such changes in Deliverables' design, selection or components, construction, arrangement or equivalent as in its judgment shall constitute an improvement over former practice. Changes in materials, supplies, labor and/or changes made at the request of Buyer shall be at the expense of Buyer. Buyer hereby agrees to pay for the same upon receipt of Doering's invoice. Changes or alterations made by Buyer or made by DOERING (over its recommendation against the same) shall be Buyer's risk and responsibility.
- IX. **Retained Security Interest; Subordination Agreements:** Until such time as the entire purchase price of the Deliverables has been paid, Buyer hereby grants to Doering a security interest in the Deliverables to secure the payment of same. The rights and remedies of Doering, as a secured party with respect to the Deliverables shall be governed by the Uniform Commercial Code, or equivalent statute(s) of the State in which the Deliverables are located. Buyer authorizes Doering to execute and record on behalf of Buyer such financing statements and other instruments as Doering may deem necessary to perfect or protect its security interest in the Deliverables. Upon demand, Buyer agrees to deliver to Doering subordination agreements from landlords, mortgagees or others on whose property the Deliverables is located or installed by which any landlord lien, or mortgagee lien, or other interest or claim of such party shall be subordinated to Doering's security interest in the Deliverables. Until Doering has been paid in full, Buyer shall maintain all risk insurance on the Deliverables, protecting against any loss or damage thereto and Doering shall be named as loss payee thereof with respect to the Deliverables. Buyer shall provide Doering proof of such insurance upon demand.
- X. **Loss, Damage or Delay; Force Majeure:** Doering shall not be liable for breach of any covenant or condition, loss, injury, delay, damages or other casualty due to causes beyond its reasonable control, such as labor disturbances, embargoes, riots, storms, fires, explosions, acts of God, war, acts of hostility, inability to obtain necessary labor or raw materials from usual suppliers, breakdown of manufacturing facility, or change in economic conditions. Doering shall not be liable for any damages or penalties whatsoever, whether direct or indirect, special, incidental or consequential, resulting from Doering's failure or the failure of its suppliers to perform or delay in performing. Buyer agrees that any loss, damage or



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delay shall not affect the validity of any purchase orders or these terms and conditions.

- XI. **Limited Warranty; Disclaimers:** Doering represents and warrants to Buyer that, at the time of shipment, the Deliverables shipped by Doering to Buyer shall be free from faulty workmanship and defective materials. The foregoing warranty shall be limited to a twelve (12) month period commencing on the date of installation or eighteen (18) month period commencing on the date of shipment whichever occurs first and shall be valid provided that the Deliverables have been properly cared for and operated under normal conditions and in accordance with Doering's specifications and further provided that the Buyer promptly notifies Doering in writing of any warranty claim hereunder within said warranty period. In the event the Deliverable(s) fails to meet the foregoing warranty within said warranty period, Doering's sole obligation shall, in Doering's sole discretion, be to either repair or replace the non-conforming Deliverable. Doering shall not be liable for any repairs or alterations made by the Buyer or others without the Doering's written consent. The foregoing warranties provided by Doering are the only warranties provided by Doering with respect to the Deliverables sold hereunder, and may be modified or amended only by a written instrument signed by DOERING and accepted by Buyer. EXCEPT FOR THESE EXPRESS WARRANTIES, DOERING MAKES NO WARRANTY, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR PURPOSE OR DESIGN. Any sample or literature exhibited to Buyer was to illustrate the general type of goods and not an affirmation that the Deliverables will conform. No employee or representative of Doering has authority to bind Doering to any representation, affirmation or warranty not specifically included herein.
- XII. **Limitation of Liability:** Doering's aggregate liability in connection with Deliverables, regardless of the form of action giving rise to such liability (whether in contract, tort or otherwise), shall not exceed the amount actually paid by Buyer to DOERING for such Deliverables. IN NO EVENT SHALL DOERING BE LIABLE FOR ANY EXEMPLARY, SPECIAL, INDIRECT, CONSEQUENTIAL OR INCIDENTAL DAMAGES OF ANY KIND, INCLUDING WITHOUT LIMITATION, LOST PROFITS, EVEN IF DOERING HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. All remedies of Buyer arising out of this transaction or with respect to the Deliverables shall be limited exclusively and in lieu of any



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and all other remedies to those contained in these terms and conditions, whether based upon breach of warranty, contract, negligence, strict

liability or any other theory. Doering's liability is limited to the repair or replacement of defective or nonconforming goods as hereunder described.

- XIII. **Confidential Information:** Technical information contained in plans, drawings, specifications, photographs and other documents disclosed or furnished by DOERING constitutes confidential and proprietary property of DOERING. Buyer, in the absence of express prior written permission of DOERING, shall hold all such confidential and proprietary information in confidence and may not sell or dispose of any portion thereof.
- XIV. **Default:** If Buyer shall fail to pay all or any part of the sums due or to become due to DOERING, keep and perform any of Buyer's obligations herein, become insolvent or become a party to any federal or state insolvency proceeding or receivership, or become a judgment debtor, any sum due or to become due may, at the option of the DOERING, become immediately due and payable in full and concurrently, or in the alternative DOERING may at its option, in addition and without prejudice to its other lawful rights and remedies (i) defer further shipments of goods until each default has been corrected to DOERING's satisfaction, or (ii) terminate this Contract and exercise any other remedies available under applicable law. Waiver of any default shall not be a waiver of any other subsequent default. No course of conduct, nor any delay of DOERING in exercising any rights hereunder, nor DOERING's acceptance of a payment from Buyer with knowledge of an existing default or breach, shall waive any rights of DOERING or be deemed a modification of the Contract.
- XV. **Indemnification:** The term "Loss" means every loss, liability, cost, damage and expense, including attorney's fees and court costs. Buyer shall indemnify and hold DOERING harmless from all Losses incurred in connection with any action or proceeding commenced against DOERING or to which DOERING is made a party, relating in any manner to the Deliverables, including by way of example only, Buyer's or Buyer's customer's purchase, installation, use, or ownership of any Deliverables, except only to the extent it is determined that DOERING's acts or omissions has directly caused any damages to the party or parties seeking recovery for the same.





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- XVI. **Notices:** Notices may be delivered by overnight courier or fax, with proof of delivery, or by United States mail, registered or certified mail, with postage prepaid.
- XVII. **Not Transferable:** A Contract is not transferable or assignable by Buyer without the prior written consent of DOERING. Any purported assignment in violation of this Section 17 is void. Paragraph captions are for convenience only and shall not be construed to define or limit the operative provisions of this contract.
- XVIII. **Amendments:** No amendment, change to, or modification of a Contract, or any of schedules or attachments hereto, shall be valid or binding unless the same shall be in writing and signed by the party or parties to be charged therewith.
- XIX. **Applicable Law; Dispute Resolution:** Each Contract shall be governed by the laws of the State of Minnesota. Any and all actions and proceedings relating to or arising from a Contract shall be commenced and shall remain in Minnesota Supreme Court. Each order and these terms and conditions shall be construed to be between merchants. Any question concerning its validity, construction or performance shall be governed by the laws of the State of Minnesota, United States of America. The exclusive venue for the resolution of all disputes shall be the state and federal courts located in the State of Minnesota, regardless of where any order was placed or filled, the place of delivery of the goods or where any other act or performance occurred, and Buyer hereby consents to the personal jurisdiction of such courts.