

# Customer Terms and Conditions

## 1. Contracts

By ordering or accepting any goods from Summit Valve and Controls Inc. (hereafter referred to as "Summit"), Buyer agrees to the terms and conditions set forth herein and in any attachments hereto. It is agreed that any purchase order or other document made or issued by Buyer incorporates these terms and conditions and excludes all other terms and conditions. Purchase orders and other documents which modify, make additions to, contradict, or are in any way inconsistent with the terms and conditions stated herein are not considered accepted, and thus a contract, until acknowledged in writing by Summit and delivered to Buyer. Subject to the foregoing, any different or additional terms in a purchase order or other document of Buyer are hereby expressly rejected, notwithstanding Summit's act of shipping or delivering goods or similar act of Summit. Summit's agreement to provide Goods is expressly conditioned upon Buyer's acceptance of the terms and conditions contained herein. Quotations by Summit are for immediate acceptance unless Summit states in writing a definite time period of validity within which the quotation may be accepted (in whole) to be valid.

## 2. Prices

**LIST PRICES AND DISCOUNT SCHEDULES OF ALL SUMMIT PRODUCTS ARE SUBJECT TO CHANGE WITHOUT NOTICE. ALL ORDERS WILL BE INVOICED AT THE PRICES IN EFFECT AT THE TIME AN ORDER IS ACCEPTED BY SUMMIT.** Any order whose delivery is delayed as per Buyer's request or is scheduled by Summit in excess of one hundred and twenty days will be invoiced at the published list prices and discounts effective at the shipment time or at the prices specifically agreed upon at the time of order acceptance by Summit.

## 3. Taxes

Unless otherwise indicated, prices are exclusive of all municipal, provincial and federal taxes, customs, duties and other levies. All taxes, customs, duties and other levies, either present or future that Summit may be required to pay or collect under any existing or future law upon or with respect to the sale, purchase, delivery, shipment, storage, processing, use or consumption of any of the Goods, including but not limited to taxes upon or measured by the receipts from sale, use, excise, value added and other similar taxes, thereof, shall be for the account of Buyer. Buyer shall indemnify Summit for any amounts which Summit is required to make payment of due to Buyer's failure to do so.

## 4. Ownership

Title and ownership of all Goods will remain with Summit until full payment to Summit of all accounts due with respect to the Goods. However, all risk of loss of the Goods will be assumed by Buyer upon delivery to Buyer in accordance with these terms and conditions. Buyer shall keep the Goods fully insured with loss payable to Summit from the time of passage of risk until the purchase price has been fully paid by Buyer. Upon request, Buyer shall furnish to Summit evidence of insurance as required by this section 4.

## 5. Intellectual Property

Summit and its third party suppliers retain all right, title and interest in and to the specifications for and other technical information regarding the Goods and any other intellectual property rights in the Goods.

## 6. Clerical Errors

Summit reserves the right to correct all clerical errors or omissions in any documents whether quotations, invoices, etc.

## 7. Warranty

All products sold by Summit are manufactured by persons other than Summit. **SUMMIT MAKES NO WARRANTIES OF ANY KIND AND DISCLAIMS ALL EXPRESSED AND IMPLIED WARRANTIES REGARDING THE GOODS WHETHER CONTRACTUAL, LEGAL, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION, ALL IMPLIED**

**WARRANTIES OF MERCHANTABILITY, QUALITY, DURABILITY OR FITNESS FOR A PARTICULAR PURPOSE. IF ANY MODEL OR SAMPLE WAS SHOWN TO OR PROVIDED BY BUYER, SUCH MODEL OR SAMPLE WAS USED MERELY TO ILLUSTRATE THE GENERAL TYPE AND QUALITY OF GOODS AND NOT TO REPRESENT THAT THE GOODS WOULD NECESSARILY CONFORM TO THE MODEL OR SAMPLE AND THERE IS NO WARRANTY MADE THEREBY.** To the fullest extent permitted by law and by the manufacturers, Summit extends to Buyer the manufacturer's warranty given to Summit by the manufacturer(s) of the Goods, however, Summit does not in any way represent, warrant or guarantee that any such manufacturer's warranties are enforceable or effective to remedy any defect in such Goods. Claims under any manufacturer's warranty must be made in accordance with the manufacturer's requirements regarding the return, repair, or replacement. Summit agrees to use reasonable efforts to cooperate with Buyer in processing any such claims.

## **8. LIMITATION OF LIABILITY AND REMEDIES**

**THE TOTAL LIABILITY OF SUMMIT AND THE MANUFACTURERS OF THE GOODS WITH RESPECT TO THIS AGREEMENT AND THE GOODS FURNISHED HEREUNDER, AND IN CONNECTION WITH THE PERFORMANCE OR BREACH THEREOF, AND FROM THE MANUFACTURE, SALE, DELIVERY, INSTALLATION, REPAIR, REPLACEMENT OR TECHNICAL DIRECTION OR SERVICES COVERED BY OR FURNISHED UNDER THIS AGREEMENT, WHETHER BASED ON CONTRACT, WARRANTY, TORT, NEGLIGENCE, INDEMNITY, STRICT LIABILITY OR OTHERWISE, SHALL NOT EXCEED THE PURCHASE PRICE OF THE GOODS UPON WHICH SUCH LIABILITY IS BASED. IN ADDITION, AND NOT IN LIMITATION OF ANY OTHER TERM OF THESE TERMS AND CONDITIONS, SUMMIT SHALL NOT BE LIABLE TO BUYER OR ANY OTHER PERSON FOR ANY CONTINGENT, SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES, SUCH AS, BUT NOT LIMITED TO LOSS OF GOODWILL, PROFITS, REVENUE OR SALES, FOR THE LOSS OF THE USE OF PROCESS, FACILITIES, EQUIPMENT, PLANT, OR PRODUCT OF BUYER OR THE END USER REGARDLESS OF CAUSE, INCLUDING WITHOUT LIMITATION, THAT ARISING OUT OF, WHETHER PARTIALLY OR OTHERWISE, DEFECTS, BREACH OF WARRANTY OR CONTRACT OR NEGLIGENCE, BY OPERATION OF LAW OR OTHERWISE. THE REMEDIES OF BUYER SET FORTH HEREIN ARE EXCLUSIVE, AND IN LIEU OF ANY OTHER RIGHTS OR REMEDIES AVAILABLE TO BUYER AT LAW, IN EQUITY OR OTHERWISE.**

## **9. Force Majeure**

In no event shall Summit be liable for any losses, costs, damages or other expenses resulting from failure or delay in delivery due to (i) orders bearing priority rating established pursuant to law, (ii) strikes, lockouts, differences with workmen, local labour shortages or other labour dispute, (iii) fire, flood, severe weather conditions or other casualty or other acts of God, (iv) riots, strife, war, insurrection, civil disturbance or acts of terrorism (including impeding threat of any of the foregoing), (v) government regulations or requirements or acts of government (foreign or domestic) including embargoes or blockades, (vi) interruption, delay, shortages or failure of raw materials, supplies, fuel, power, or transportation, breakdown of equipment, or (vii) any other causes beyond Summit's control, whether similar or dissimilar to those enumerated. Summit shall have such additional time as may be reasonably necessary to perform its obligations hereunder in the event of the occurrence of any of the events described above.

## **10. Default**

If Buyer fails to fulfill the terms of payment related to the Goods, Summit may at its option (i) defer further deliveries or shipments relating to any other order until such payments are made, (ii) cancel this sale or any other order, (iii) repossess the Goods; (iv) recover all costs of collection including, but not limited to, reasonable attorneys' fees; and (v) combine any of the rights and remedies described in this document as may be permitted by applicable law, such remedies being in addition to all other remedies available at law or in equity. Summit further reserves the right, even after partial delivery or shipment on account of any order, to require from Buyer satisfactory security for performance of Buyer's obligations, and refusal to furnish such security will entitle Summit to suspend deliveries or shipments until such security is furnished, and, at Summit's option to cancel any order.

## **11. Claims Notice**

Upon receipt of shipments from Summit, Buyer should inspect all Goods for shortages and incorrect materials. Any claims for shortages or incorrect materials must be filed in writing and received by Summit within ten (10) days from the time

such shipment was received by Buyer and, in such case, Buyer must afford Summit the opportunity to inspect same or the Goods will be conclusively deemed to have been received by Buyer without shortage or defect and with conformity with order and no claims will be allowed. Any claim, whether receiving or warranty in nature, must be made in writing and received by Summit within ten (10) days from the time such shipment was received by Buyer or such claim will be forever waived. Buyer waives any right to revoke its acceptance of Goods.

## **12. Delivery**

Delivery times are approximate only and shall depend on prompt receipt by Summit of all information necessary to proceed with the Goods immediately and without interruption. If the Parties agree in writing to require Summit's delivery to Buyer's premises or jobsite, the price quoted and delivery is conditional upon free ingress and egress to the location and upon the location being readily accessible. Summit reserves the right to make delivery in installments, and a delay with respect to any installment shall not affect any other installments. Any delivery of Goods that is delayed at Buyer's request, by causes within Buyer's control or due to Buyer's inability to accept delivery may be placed in storage by Summit at Buyer's risk, and Buyer shall be responsible for all freight, storage, insurance, and other expenses incurred thereby. In no instance does Summit guarantee delivery times, nor will Summit assume any and Buyer releases Summit for a liability for damages, losses, or expenses resulting from Summit's failure to deliver products within estimated delivery times. Any orders on hold more than sixty days may be treated by Summit as a canceled order and returned goods.

## **13. Change Orders or Cancellations**

Orders received and accepted by Summit may not be changed or canceled except on terms satisfactory to Summit which prevent Summit from incurring any loss. Changes or cancellations of products considered non-standard or special, including without limitation, orders for Goods specially built or manufactured to Buyer specifications or orders for substantial quantities, will not be accepted without full reimbursement of all related expenses incurred to date. All cancellations and change orders must be made in writing to and approved by Summit subject to appropriate charges to Buyer.

## **14. Return of Goods**

No Goods will be taken back and credited without prior written approval from Summit. Any return of Goods to Summit shall be subject to Summit's approval and to such Goods being in the same condition as when they originally left Summit's facility for shipment to Buyer. In issuing credits, Summit will deduct up to 50% restocking fees, shipping and reconditioning expenses from the Buyer's credit.

## **15. Design Changes**

Summit and its manufacturers reserve the right to change, discontinue, or alter the design and construction of any product without prior notice and to have no obligation or liability for such changes, alterations, or discontinuance of products previously or subsequently sold.

## **16. Shipments**

All prices are quoted FCA (Incoterms) Summit. Summit's responsibility for Goods ends upon delivery to the stated delivery point. Summit does not insure shipments beyond the point to such transportation company and, therefore, all claims of lost or damaged products in transit must be filed directly with the transportation company by Buyer.

## **17. Miscellaneous Charges**

The minimum billing per order is \$75.00. Any extra expenses incurred by Summit such as engineering, tagging, taxes, service calls, export crating, or other expenses will be added to the invoice after notification to Buyer of the extra costs.

## **18. Payment Terms**

All invoices for Canadian buyers are due and payable in the lawful currency of Canada thirty (30) days from the date printed on the invoice unless otherwise stated by Summit. All amounts past due of Buyer will be charged interest at the lesser of

the rate of 1¾ % per month (21% per annum) or the maximum annual rate allowable by law. The acceptance of any Buyer's order is subject to approval of Summit's Credit Department, and Summit may at any time decline to make any shipment or delivery or perform any work except upon receipt of payment or security or upon terms and conditions satisfactory to Summit's Credit Department. Credit card payments for past due invoices or credit card transactions over \$5,000 will be subject to a 3% processing fee.

## **19. Published Data**

All published dimensions, weights, temperatures, pressure ratings, and other data are approximate.

## **20. Quotations**

The quantities listed on our quotations are to be considered estimates only; actual quantities should be confirmed based on the requirements of the project.

## **21. Conflict with Applicable Law; Severability**

If any provision of these terms and conditions shall be judged by a court or body of competent jurisdiction to be invalid, illegal or unenforceable in any respect, such adjudication shall not effect or modify any other provision of these terms and conditions and the effect thereof shall be confined to the provision as to which such adjudication is made.

## **22. Set-off**

Buyer shall not set off against any amounts due to Summit, any amounts claimed by Buyer against Summit for any reason whatsoever.

## **23. Import/Export**

All Goods sold and shipments made hereunder shall at all times be subject to the export control laws and regulations of Canada and any other applicable jurisdictions, and any amendments thereof. Buyer is responsible for compliance with all import and export control laws and regulations. Buyer will obtain import, export, and re-export approvals and licenses required for the Goods delivered and will retain documentation evidencing compliance with those laws and regulations. Buyer agrees that it shall not, except as said laws and regulations expressly permit, make any disposition of Canadian origin Goods or technical information obtained from Summit (directly or indirectly), by way of trans-shipment, re-export, diversion or otherwise, other than in and to the ultimate country of destination specified in the invoice or order and/or declared as the country Buyer's freight forwarder will export on Buyer's behalf and Buyer will be responsible for any failure of Buyer's freight forwarder to comply with all applicable export requirements.

## **24. Assignment**

This document and Buyer's obligations hereunder may not be delegated or assigned by Buyer without Summit's written consent, and any assignment attempted without such consent shall be deemed to be null and void and shall effect, at Summit's option, a cancellation of all of Summit's obligations hereunder. Summit may assign this document and its interest therein, without the consent of Buyer.

## **25. Interpretation**

This document shall be governed by and construed in accordance with the laws of the Province of the Summit division through which the transaction takes place, and the Parties agree to attorn to the exclusive jurisdiction of the courts located in such Province. The application of the United Nations Convention on Contracts for the International Sale of Goods is excluded.

## **26. Acceptance Of Waivers And Limitations**

Buyer acknowledges that: (i) he, she or it is a sophisticated purchaser of goods of the types described herein, (ii) he, she or it fully understands the nature and extent of the waivers and limitations on Buyer's rights and remedies set out herein and

it accepts such waivers and limitations, and (iii) any rule of construction to the effect that any ambiguity contained herein is to be resolved against a drafting party shall not be applicable to the interpretation of these terms and conditions.

## 27. Electronic Transactions

The Parties agree to permit and recognize the execution or acceptance of this document and the order by means of an “electronic signature” as that term or similar term is defined in the Electronic Transactions Act or equivalent legislation of the governing jurisdiction. Accordingly, the absence of a manual signature in ink by any Party hereto shall not affect the written electronic communication that constitutes this Agreement in any respect, provided that an electronic signature is transmitted herewith. Notices required or permitted hereunder may be delivered in an electronic form, and if so delivered, shall satisfy the notice requirements set forth herein or arising under applicable law.

## 28. Language

Buyer and Summit hereby declare that they have specifically requested and do hereby confirm their request that the present order and terms and conditions be drafted and executed in the English language. *Les parties aux présentes déclarent qu'elles ont spécifiquement demandé que la présente commande et ses modalités soient rédigés en langue anglaise, et par les présentes confirme leur dite demande.*

### **Summit Valve and Controls Inc.**

6703 – 68 Avenue NW  
Edmonton, AB T6B 3E3  
Ph: 780-468-6900  
GST#: 87211 1299 RT0001

### **Summit Valve and Controls (BC) Inc.**

Unit 1110, 1971 Broadway Street  
Port Coquitlam, BC V3C 0C9  
Ph: 778-285-7590  
GST#: 84677 1111 RT0001  
PST#: 1000-2002

### **Summit Valve and Controls (SK) Inc.**

#107, 343 – 70th Street E  
Saskatoon, SK S7P 0E1  
Ph: 306-373-4134  
GST#: 82599 8206 RT0001  
PST#: 2477479 RST#: 09384