

Terms and Conditions of Sale

1. General. These Terms and Conditions of Sale ("Terms and Conditions") constitute an offer by Blacoh Fluid Controls, Inc. ("Seller") identified in the services agreement, quotation, acknowledgment or invoice ("Invoice") to provide the products and/or services described in such Invoice (the "Products") to the buyer identified in such Invoice ("Buyer"), subject to the terms, covenants and conditions contained herein. Seller agrees to provide the Products to Buyer only on these Terms and Conditions, notwithstanding any language in Buyer's purchase order, if one exists, or other writing or oral representation previously, simultaneously or hereafter received by Seller which purports to amend, add to, modify or replace these terms, covenants and conditions with any different or additional terms, covenants or conditions, each and all of such additional or different terms, covenants, and conditions are hereby objected to and rejected. SELLER'S AGREEMENT TO PROVIDE THE PRODUCTS IS EXPRESSLY CONDITIONED ON BUYER'S ASSENT TO ALL OF THE TERMS AND CONDITIONS SET FORTH HEREIN.

2. Buyer's Acceptance. Buyer shall be deemed to have made an unqualified acceptance of these Terms and Conditions and it shall become the agreement between the parties on the earliest of the following to occur: (i) Seller's receipt of Buyer's purchase order number or Buyer's signing or acknowledgment of Seller's Invoice or these Terms and Conditions; (ii) Buyer's payment of any amounts due to Seller; (iii) Buyer's delivery to Seller of any material to be furnished by Buyer; (iv) Buyer's receipt of the Products; or (v) any other event constituting acceptance under applicable law.

3. Quotations and Orders. Written quotations are void unless accepted within the earlier of the period stated in the quotation or 30 days from date of issue. Seller reserves the right to accept or reject Buyer's purchase orders in its sole discretion. Any accepted purchase orders shall be governed by these Terms and Conditions and no additional or different terms in any such purchase order shall be part of the parties' agreement.

4. Cancellation or Modification. Buyer may not cancel or modify its order except upon terms accepted in writing by Seller. In the event of such cancellation or modification, Buyer shall compensate Seller for any and all resultant costs and damages. All orders for undelivered Products may be cancelled by Seller, without incurring any liability to Buyer, if production becomes impracticable.

5. Delivery. Buyer may select the mode of transportation, routing and carrier for delivered orders. If Buyer does not provide Seller with shipping instructions, then Seller shall select the mode of transportation for delivered orders. Buyer shall provide Seller with a minimum lead time of 10 days to make shipping arrangements. Seller will use its reasonable business efforts to meet the scheduled dates, but does not guarantee to meet such dates. Time for delivery shall not be of the essence. Failure by Seller to make any shipments by scheduled dates does not constitute a cause for cancellation and/or for damages of any character. In the event of delay in delivery requested by Buyer or caused by Buyer, Seller will store all Products at Buyer's risk and expense. Storage fees will be assessed to Buyer equal to Seller's actual cost plus 10% of the actual cost for administration or, if stored at Seller's facilities, the fair market value of such

storage, as determined by Seller, plus 10% of said fair market value for administration. In no event will Products be warehoused more than 3 months. Upon expiration of 3 months, all amounts relating to such stored Products, including but not limited to storage costs, administration fees, and payment for Products, shall be due and payable along with any attendant fees. Upon payment in full of all such amounts, the Products shall be released to Buyer. Should Buyer decline release of the Products, or in the event that Buyer is in arrears on amounts owed to Seller, Seller may elect to dispose of the Products as it sees fit and assess any additional cost of such disposal to Buyer.

6. Risk of Loss; Title; Inspection. Seller shall deliver the Products to the Delivery Point. Unless otherwise stated in Seller's Invoice, the "Delivery Point" shall be F.O.B. Seller's manufacturing facility. Regardless of any freight payment by Seller on Buyer's behalf (for which Buyer agrees to reimburse Seller), all risk of loss or damage in transit shall pass to Buyer upon delivery to the Delivery Point. Seller is not responsible for any loss, damage, or delay which may occur after Seller delivers the Products to the Delivery Point. Any claims for damage in transit shall be filed by Buyer directly with the carrier. Buyer shall inspect the Products upon receipt and any claims for shortages or other errors must be noted at the time of delivery on all carrier documents and supported by signed documentation. Claims for shortages or other errors must be made in writing to Seller within 10 business days after Seller's delivery of the Products to the Delivery Point. Failure to timely give such notice shall constitute unqualified acceptance and a waiver of all such claims by Buyer. No Products may be returned to Seller for any reason without Seller's prior written authorization.

7. Insurance. Buyer shall obtain and maintain adequate insurance for Products, covering them from the Delivery Point until Seller has received payment in full for all Products naming Seller as an additional insured, and shall annually provide to Seller a certificate of insurance evidencing compliance with this requirement. Such insurance shall be reasonably satisfactory to Seller and shall provide that it may not be cancelled or modified without prior written notice to Seller.

8. Prices. All prices, discounts and transportation charges are in U.S. Dollars and are subject to change without notice. If no price is stated on Seller's Invoice, prices shall be Seller's current prices in effect on the date of acceptance of orders by Seller (or, in Seller's sole discretion, on the date of shipment) as set forth on price lists issued or modified by Seller from time to time. All general or special taxes, duties, fees, freight and insurance costs and any other charges of any nature whatsoever, imposed on, in connection with or measured by any transaction between Seller and the Buyer shall be paid by the Buyer in addition to the prices quoted or invoiced.

9. Payment. Unless otherwise stated in an Invoice issued from Seller to Buyer, payment terms are 50% of the total order amount due upon acceptance of such order, 45% of the total order amount due upon delivery and the remaining 5% of the total order amount due upon commissioning. Terms of payment on all orders are subject to the written approval of Seller's credit department. If Buyer does not pay Seller any amount when such amount is due, or if Buyer defaults in the performance of these Terms and Conditions or any Invoice issued from Seller to Buyer, Seller may, without incurring liability and without prejudice to Seller's other lawful remedies and at Seller's sole

option: (i) terminate Seller's obligations under these Terms and Conditions and any Invoice issued from Seller to Buyer; (ii) declare immediately due and payable all of Buyer's obligations to Seller; (iii) change credit terms with respect to any further work; (iv) suspend or discontinue any further work until Buyer pays all overdue amounts; and/or (v) repossess the Products. Buyer agrees to reimburse Seller for all costs incurred by Seller in collecting any sums owed by Buyer to Seller, including without limitation, attorneys' fees and costs of proceedings. Buyer agrees to pay a late payment fee of 1.5% per month (18% per annum) on all amounts not paid in full when due. Seller reserves the right to require payment in advance or other secured form of payment from time to time.

10. Security Interest. As partial consideration for Seller's sale of the Products to Buyer, Buyer hereby grants to Seller and Seller hereby retains a security interest in all Products sold to Buyer now or hereafter in the possession of or under the control of Buyer, title to which might at any time be determined to have passed to Buyer, including, without limitation, all Products and materials thereof, returns or repossessions and the proceeds of all of the foregoing, to secure all of Buyer's obligations to Seller under these Terms and Conditions and any Invoice issued from Seller to Buyer and all other obligations of Buyer to Seller. Buyer agrees to execute such financing statements, continuation statements and other documents and to take such actions as may be required by Seller to evidence or perfect the security interest granted herein and the interest of Seller as the owner of the Products. If Buyer fails to perform any of its duties set forth in these Terms and Conditions or any Invoice issued from Seller to Buyer, Seller is authorized in Buyer's name or otherwise to take such actions including, without limitation, signing Buyer's name, and Buyer hereby appoints Seller as its attorney-in-fact for such purpose.

11. Limited Warranty. Seller warrants to Buyer that its Products will be free from material defects in workmanship and materials under normal use and service, for the period stated in Seller's quotation or if none is stated then the shorter of twelve (12) months after commissioning or eighteen (18) months after delivery (the "Warranty Period"). There is **NO WARRANTY** in cases of damage in transit, negligence, abuse, abnormal usage, misuse, accidents, altered Products, failure to follow Seller's instructions or improper storage. **SELLER'S SOLE AND EXCLUSIVE OBLIGATION (AND BUYER'S SOLE AND EXCLUSIVE REMEDY) UNDER THIS WARRANTY SHALL BE, UPON PROMPT WRITTEN NOTICE RECEIVED BY SELLER DURING THE WARRANTY PERIOD OF ANY BREACH, TO EITHER, AT SELLER'S OPTION, REPAIR, CORRECT OR REPLACE WITHOUT CHARGE, F.O.B. SELLER'S FACILITY, ANY DEFECTIVE PRODUCT EXPRESSLY WARRANTED HEREIN BY SELLER AGAINST DEFECTS AND FOUND BY SELLER IN ITS SOLE DISCRETION TO BE DEFECTIVE AND COVERED BY THIS WARRANTY, OR CREDIT BUYER FOR THE PURCHASE PRICE PAID FOR SUCH PRODUCT. SELLER SHALL NOT BE LIABLE TO BUYER, OR TO ANYONE CLAIMING UNDER BUYER, FOR ANY OTHER OBLIGATIONS OR LIABILITIES, INCLUDING, BUT NOT LIMITED TO, OBLIGATIONS OR LIABILITIES ARISING OUT OF BREACH OF CONTRACT OR WARRANTY, NEGLIGENCE OR TORT OR ANY THEORY OF STRICT**

LIABILITY, WITH RESPECT TO THE PRODUCTS OR SELLER'S ACTS OR OMISSIONS OR OTHERWISE. This warranty covers only replacement, correction or repair of defective Products at Seller's main facility and does not include the cost of inspection, removal, delivery or field service travel and living. The remedy described in this Section is Buyer's exclusive remedy and is in lieu of any other remedy otherwise available at law or in equity.

12. Limited Liability. Prior to using Products, Buyer or user shall determine the suitability of the Product for the intended use and Buyer shall assume all risk and liability whatsoever in connection therewith. **IN NO EVENT SHALL SELLER BE LIABLE FOR INCIDENTAL, INDIRECT, COMPENSATORY, PUNITIVE, CONSEQUENTIAL, SPECIAL OR OTHER DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS. SELLER'S AGGREGATE LIABILITY WITH RESPECT TO A DEFECTIVE PRODUCT AND THESE TERMS AND CONDITIONS AND ANY INVOICE ISSUED FROM SELLER TO BUYER SHALL BE LIMITED TO THE MONIES PAID BY BUYER TO SELLER FOR THE DEFECTIVE PRODUCT.**

13. Disclaimer of Warranties. **SELLER AND BUYER AGREE THAT THE WARRANTY IN SECTION 11 IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES WITH RESPECT TO THE PRODUCTS FURNISHED BY SELLER HEREUNDER. SELLER HEREBY DISCLAIMS AND EXCLUDES ALL OTHER EXPRESS OR IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND ALL WARRANTIES WITH RESPECT TO THE PRINTING OR REPRODUCTION OF UNIVERSAL PRODUCT CODE INFORMATION.** Any oral or written description of the Products is for the sole purpose of identifying the Products and shall not be construed as a warranty.

14. Other Manufacturers' Warranties. For Products furnished by Seller, but produced or manufactured by others, the written warranty of the manufacturer, if any, will be assigned to Buyer if assignment is permitted and reasonably practicable. However, Seller does not adopt or guarantee or represent that the manufacturer will comply with any of the terms of the warranty of the manufacturer whether or not assigned.

15. Engineering Data and Design Information. Except for data, information and drawings provided by Buyer to Seller, all engineering data, dimensional drawing, design information, and plans used or created in connection with Buyer's order are and shall remain Seller's property unless and until final payment of all amounts relating to Buyer's order have been received by Seller, at which time such materials shall become the property of Buyer. Notwithstanding the foregoing, except for data, information and drawings provided by Buyer to seller, all of Seller's trademarks, patents, test results and other intellectual property used, incorporated into, or created in connection with Buyer's order are and at all times shall remain Seller's exclusive property and Buyer shall not use, copy, reproduce, distribute, publish or communicate to any third party such intellectual property without Seller's prior written consent.

16. Buyer's Drawings, Designs or Descriptions. Orders manufactured to drawings, designs or specifications provided by or on behalf of Buyer are executed only with the understanding that Buyer releases and agrees to indemnify, defend and hold harmless Seller and each of Seller's Indemnified Parties (as defined below) from and against any and all Damages (as defined below) sustained by or against any of them, resulting from, in connection with or relating to any action or threatened action concerning: (i) infringement of the patents, trademarks, copyrights or other intellectual property or proprietary rights of any other person or entity; or (ii) injury to person or property, including death, relating to the drawings, designs or specifications provided by or on behalf of Buyer.

17. Indemnification. Buyer hereby releases and agrees to indemnify, defend and hold harmless Seller, its shareholders, directors, officers, partners, members, contractors, employees, affiliates, agents, successors and assigns (collectively, "Seller's Indemnified Parties") from and against any and all direct and indirect claims, demands, actions, liabilities, judgments, damages, losses, fines, penalties, forfeitures, costs and expenses, including, without limitation, reasonable attorneys' fees and costs of proceedings (collectively, "Damages"), arising out of, in connection with, resulting from or relating to: (i) breach of these Terms and Conditions, any Invoice issued from Seller to Buyer, or any law by Buyer or any of Buyer's shareholders, directors, officers, partners, members, contractors, employees, representatives, agents, successors or assigns ("Buyer's Parties"); (ii) any damage to or destruction of property, or injury to or death of persons caused, or alleged to have been caused, in whole or in part, by any intentional, reckless, negligent or other act (or failure to act) of Buyer or any of Buyer's Parties; (iii) losses, damages or injuries caused by, arising out of or relating to the Products or the handling or use of the Products; and/or (iv) any infringements of any patent, trademark, copyright or other intellectual property rights of any other party by the Products either alone or in combination with other products.

18. Force Majeure. Seller will endeavor to fill all accepted orders as soon as it is practical and consistent with production schedules. Seller shall not be responsible for delay in delivery or failure to fill orders or other default or damage where such has been caused by an act of God, war, major disaster, terrorism, insurrection, riot, flood, earthquake, fire, strike, lockout or other labor disturbance, delay by carriers, shortage of fuel, power, materials or supplies, operation of statutes, laws, rules or rulings of any court or government, demand for goods exceeding Seller's available supply, or any other cause beyond Seller's control affecting production or delivery. In the event of any delay in shipment or nonperformance caused by any of the foregoing, Seller may, at its option and without liability, cancel all or any portion of its obligations to Buyer and/or extend any date upon which performance is due.

19. Final Written Expression. These Terms and Conditions and any Invoice issued from Seller to Buyer (if any), constitute the final written expression of the terms between Seller and Buyer regarding the Products and, together, are a complete and exclusive statement of those terms. Any negotiations or understandings between Seller and Buyer, which are not contained in these Terms and Conditions or any Invoice issued

from Seller to Buyer, shall have no force or effect. In the event of a conflict among the provisions of these Terms and Conditions any Invoice issued from Seller to Buyer, the order of priority shall be: (i) these Terms and Conditions; (ii) the quotation; (iii) the acknowledgment; (iv) the Invoice.

20. Governing Law. These Terms and Conditions and any Invoice issued from Seller to Buyer shall be governed and construed according to the internal laws of the State of California, including, without limitation, the Uniform Commercial Code as adopted in California, without regard to conflict of laws principles. Subject to Section 25 below, any cause of action, claim, suit or demand by Buyer allegedly arising from or related to these Terms and Conditions, any Invoice issued from Seller to Buyer, or the relationship of the parties shall be brought exclusively in a court situated in the State of California, County of Riverside. Both parties hereby irrevocably submit to the exclusive jurisdiction of said court and consent to venue therein. **ANY ACTION BROUGHT BY BUYER MUST BE COMMENCED WITHIN THE WARRANTY PERIOD AFTER THE DELIVERY OF THE PRODUCTS NOTWITHSTANDING ANY STATUTORY PERIOD OF LIMITATION TO THE CONTRARY.**

21. Miscellaneous. The invalidity or unenforceability of any provision of these Terms and Conditions or any portion thereof or any Invoice issued from Seller to Buyer shall not affect the validity or enforceability of any other provision or portions thereof. Seller reserves the right to correct clerical or similar errors relating to price or any other term shown in these Terms and Conditions or any Invoice issued from Seller to Buyer. Failure of either party to insist, in any one or more instances, upon performance of any term, covenant or condition of these Terms and Conditions or any Invoice issued from Seller to Buyer shall not be construed as a waiver or relinquishment of any right granted hereunder or of the future performance of such term, covenant or condition. Seller reserves the right to amend these Terms and Conditions from time to time. Seller's sales representatives are without authority to change, modify, or alter these Terms and Conditions. These Terms and Conditions shall survive the termination or cancelation of any Invoice issued from Seller to Buyer.

22. Benefit; No Assignment by Buyer. These Terms and Conditions and any Invoice issued from Seller to Buyer are binding upon and inure to the benefit of Buyer and Seller and their respective successors and assigns. Notwithstanding the foregoing, Buyer may not assign these Terms and Conditions or any Invoice issued from Seller to Buyer, or any part thereof, without Seller's prior written consent. Any such attempted assignment is null and void unless with Seller's prior written consent.

23. Alternative Dispute Resolution. It is the policy of Seller to attempt to settle all disputes through alternative dispute resolution techniques and to use litigation only as a last resort to settle any dispute, except in the case of collection of past-due accounts or when other circumstances dictate that litigation is advisable. Buyer agrees to make a good faith attempt to settle any disputes arising out of the purchase of the Products by Buyer through the use of alternative dispute resolution before instituting any litigation against Seller.