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## **1 Terms and Conditions of Sale and Delivery**

### **1. Binding Nature of Offers**

All offers, especially those in catalogues, price lists, etc., are non-binding. The contract is established by written confirmation of order by ARBOR or at the latest, by dispatch of the goods.

### **2. Delivery**

The agreed delivery date is based on the conditions at the time of order and is considered to be a guide. If an agreed delivery date is exceeded by more than 3 months, the buyer may withdraw from the contract after an appropriate final deadline set by the buyer. Further claims, especially claims for compensation for damages, for example due to delayed delivery, are excluded. Missed deadlines which are not the fault of ARBOR may not lead to termination of the contract or the lodging of any claims for damages.

If delivery is delayed due to reasons for which the buyer is responsible, ARBOR is entitled to claim any additional costs incurred for storage from the buyer and, after expiry of a period granted to the buyer, may otherwise dispose of the stock to be delivered. The buyer remains bound by the contract. ARBOR may either demand fulfilment of the contract or waive subsequent execution while simultaneously claiming compensation of 50% of the purchase price.

Depending on the size of the order, ARBOR is entitled to supply partial deliveries. ARBOR reserves the right to change the design and form during the delivery period, provided that the function of the item is not considerably altered and the change could be reasonably expected to be acceptable to the buyer.

### **3. Prices, Packaging, Insurance, Shipping**

If not offered otherwise, prices are ex works. The customers' requests for special markings, special documentation, customer drawings, certificates, certifications, special shipping instructions, special packaging etc. will be charged at cost.

### **4. Payment Terms**

Payment must be made within 30 days of the date of invoice without deduction of discounts and rebates, in the agreed currency, unless special payment terms have been otherwise agreed in writing. ARBOR has the right to demand advance payment or payment of a deposit as it sees fit. Partial deliveries and additional equipment delivered subsequently will be invoiced separately, under application of the aforementioned payment terms.

If delivery is delayed at the buyer's request or due to a failure by the buyer to meet the requirements, the invoice will be issued when the consignment is ready for delivery. If the buyer is late with the payments or if there are otherwise doubts concerning the buyer's ability or intention to pay, ARBOR may demand payment in advance and, if this is not provided, may withdraw from the contract after granting an appropriate period of grace and demand compensation for non-fulfilment. Interest will be charged on late payments. Offsetting using anything other than counterclaims accepted without dispute by ARBOR or ruled to be legally

valid by the courts requires express written consent from ARBOR. The buyer may not exert any right of retention over the goods delivered.

Any complaints concerning invoicing by ARBOR must be submitted in writing within 10 days, otherwise the invoice is considered to be correct and accepted.

#### 5. Warranty

The buyer bears sole responsibility for the selection and use of the goods purchased. ARBOR bears no liability for the overall system whatsoever. The buyer bears the burden of clarifying whether the goods supplied by ARBOR are suitable for the purpose intended by the buyer, in particular whether the media are compatible.

#### 6. Complaints

Defects that may be identified by careful scrutiny of the goods must be reported in writing by the buyer within 8 days of receipt of the goods. Other defects must be reported in writing by the buyer immediately on discovery, although no later than one year from receipt of the goods. In the event of a justified complaint, ARBOR will exchange the goods or take them back in exchange for a refund of the purchase price. Further claims for compensation which exceeds the guarantees of our manufacturing plants are expressly excluded – where legally permissible. However, any liability accepted by ARBOR, irrespective of the legal basis on which the buyer's claim relies, is limited to CHF 3,000,000 for any individual claim.

#### 7. Retention of Ownership

The items purchased remain the property of ARBOR until full completion of all obligations arising from the purchase agreement by the buyer. Until such time, ARBOR is entitled to enter a reservation of ownership in accordance with Art. 715 Swiss Civil Code in the reservation of ownership register in the buyer's place of residence; by signing the order confirmation in writing, the buyer gives consent in the sense of Art. 4 of the ruling of the Federal Court concerning registration of reservation of ownership (dated 19.12.1910), so that the seller may register the reservation of ownership without the buyer's involvement. Legal transactions and / or actual injunctions of any kind which could restrict the rights of ARBOR are not permitted. If a third-party lodge a claim against the item purchased, ARBOR must be informed in writing without delay. ARBOR is expressly authorized to inform any hirers of this reservation of ownership.

#### 8. Return of Goods

For goods which were delivered by ARBOR ex warehouse and which are to be returned due to no fault of ARBOR, a fee of 30 % of the value of the goods will be charged for the return to the warehouse. Only new goods in unblemished condition and in their original packaging will be accepted as returns. ARBOR may refuse a return in full or in part at any time.

No return is possible for special parts and components produced or obtained at the customer's request.

#### 9. General

- a) These and any additional terms of Swiss Code of Obligations are applicable to deliveries and services from ARBOR. The buyer's purchasing terms or any differing and additional agreements are only binding for ARBOR if and insofar as they have been acknowledged in writing by ARBOR.
- b) If one of the terms of this contract proves to be unworkable, the validity of the contract in general remains unaffected. The parties undertake to replace the unworkable term with

a workable term whose economic result corresponds as closely as possible to that of the unworkable term.

- c) The customer may not transfer his rights arising from this contract to a third party without express written consent from ARBOR.
- d) The place of jurisdiction and fulfillment is the head office of ARBOR Fluidtec AG. However, ARBOR reserves the right to appeal to the court competent at the customer's place of domicile.
- e) Swiss law applies.
- f) These terms and conditions of sale and delivery are applicable to all sales and deliveries from 1st November 2013 and supersede all previous versions.

## 10. Guarantee

All products enjoy a guarantee against material and manufacturing defects for two years from the date of purchase. For certain products, Swagelok Company provides a lifetime guarantee against material and manufacturing defects.

The buyer's claim is limited to the replacement and installation of parts which have failed due to material or manufacturing faults. The appropriate manufacturers' guarantees apply to all customer specific parts and products from other manufacturers. In this respect, we refer you to the manufacturer's guarantee.

All other guarantees stated, implied or specified are expressly not recognized (including and not limited to guarantees concerning merchantability and suitability for a specific purpose and any demands made by business practice or trade). Neither the seller, supplier nor manufacturer are liable for any damages, whether direct or indirect, resultant or associated.

## 11. Proper Selection of Products

When choosing a product, the whole system design must be taken into account, to ensure safe and problem-free operation. Functionality, material compatibility, appropriate ratings, correct installation, operation and maintenance are the responsibility of the system designer and user.

## 2 Safe Product Selection

When selecting products, the entire system design must be considered to ensure safe, trouble-free operation. The system designer and the user are responsible for their function, material compatibility, performance and limits of use, and for proper handling, operation and maintenance.

## 3 Swagelok's Limited Lifetime Warranty

Swagelok and its authorized sales and service centers hereby warrant to the purchaser of their Products that the non-electrical components shall be free from defects in Swagelok's material and workmanship for the life of the Products. All electrical components installed in or on the Product are warranted to be free from defects in material and workmanship for twelve months from the documented date of purchase.

The purchaser's remedies shall be limited to replacement and, in non-ground vehicle applications, installation of any parts that fail through a defect in Swagelok's material or workmanship. Liability for installation is limited to reasonable costs that have been approved in advance and in writing by Swagelok.

All customer-specified components carry the applicable manufacturer's warranty. The warranty for any firmware or software Products that contain programmable logic or a microprocessor is governed by a separate Swagelok Embedded System End User License Agreement, [MS-13-330](#) accessible from the [www.swagelok.com](http://www.swagelok.com) website.

Warranty coverage hereunder only applies to Products purchased directly from either Swagelok or its authorized sales and service centers and representatives. All other purchases are specifically excluded from any warranty coverage.

ALL OTHER EXPRESS AND IMPLIED REPRESENTATIONS AND WARRANTIES, AND ALL OTHER LIABILITIES, RELATING TO THE CONDITION OR USE OF THE PRODUCT ARE SPECIFICALLY DISAVOWED, AND IN NO EVENT SHALL SWAGELOK AND ITS AUTHORIZED SALES AND SERVICE CENTERS BE LIABLE TO PURCHASER, OR ANY THIRD PARTY, FOR ANY DIRECT OR INDIRECT CONSEQUENTIAL, LIQUIDATED OR INCIDENTAL DAMAGES.

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#### **4 End Use and End Use Location**

ARBOR Fluidtec AG – Swagelok Switzerland are committed to complying with all applicable laws and regulations including those related to U.S. export controls and sanctions. ARBOR Fluidtec AG – Swagelok Switzerland (hereinafter “Seller”) requires the following information from the purchaser (“Purchaser”) prior to acknowledgement of the order. Seller reserves the right to refuse to conduct business with parties who fail to certify the following, who certify false information, or who fail to promptly send a revised certification when required.

##### **Confirmation:**

The Buyer certifies as follows with respect to the products to be provided by Seller:

1. The products, software and/or technology to be provided by Seller (collectively “Products”) may be subject to U.S. export control laws and will not be resold, reexported, or retransferred, directly or indirectly, to any person in violation of the U.S. Export Administration Regulations (“EAR,” 15 C.F.R. Part 730, et. seq.) or the sanctions and embargo laws and regulations promulgated and enforced by the U.S. Department of Treasury’s Office of Foreign Asset Controls (“OFAC” regulations found at Chapter V to 31 C.F.R., et. seq.).
2. The Products will not be resold, re-exported, rented, leased, transferred, diverted, or otherwise disposed of, directly or indirectly, to any person or entity on any U.S. Government restricted party lists, including but not limited to, the Specially Designated Nationals (“SDN”) List, the Entity List, the Sectoral Sanctions List (“SSI”), or the Russia-related CAPTA and Entities Directives in violation of U.S. export controls and sanctions laws, or any other applicable countries’ laws and regulations. (The U.S. restricted party lists can be accessed at: [http://export.gov/ecr/eg\\_main\\_023148.asp](http://export.gov/ecr/eg_main_023148.asp)).
3. The Products will not be licensed, resold, re-exported, rented, leased, transferred, diverted, trans-shipped through or otherwise disposed of in any country or territory sanctioned under U.S. laws (which includes the Crimea region of Ukraine, the so-called Donetsk People’s Republic (“DNR”) and the Luhansk People’s Republic (“LNR”) regions of Ukraine, North Korea, Cuba, Iran and Syria) without prior authorization from the U.S. or any other applicable government.
4. The Products will not be used in the design, development, fabrication, maintenance, operation or testing of the following: nuclear weapons or materials; explosive devices; rocket

or missile systems; unmanned air vehicle systems; chemical, biological, or radiological weapons or delivery systems; cluster munitions; or anti-personnel mines.

5. The Products will not be used, directly or indirectly, in exploration for, or production of, oil or gas in Russian deepwater (greater than 500 feet) or Arctic offshore locations or shale formations in Russia. The Purchaser understands that such items include, but are not limited to, drilling rigs, parts for horizontal drilling, drilling and completion equipment, subsea processing equipment, Arctic-capable marine equipment, wireline and down hole motors and equipment, drill pipe and casing, software for hydraulic fracturing, high pressure pumps, seismic acquisition equipment, remotely operated vehicles, compressors, expanders, valves, and risers.

6. Purchaser's immediate, intermediary and ultimate ownership is as listed in table A below, and no person or entity that is a blocked person on the SDN List, Entity List, SSI List, or Russia-related CAPTA and Entities Directives directly or indirectly owns 50 percent or more in the aggregate of Purchaser. (List all immediate, intermediary, and ultimate owners and corresponding percentage of ownership in Table A below). If Purchaser is not the end user, then to the best of Purchaser's knowledge, the end user's immediate, intermediary and ultimate ownership is as listed in table B below, and no person or entity that is a blocked person on the SDN List, Entity List, SSI List, or Russia-related CAPTA and Entities Directives directly or indirectly owns 50 percent or more in the aggregate of end user. (List all immediate, intermediary, and ultimate owners and corresponding percentage of ownership in Table B below).

7. For transactions involving Russia, Belarus, and/or Ukraine in any way (including but not limited to transactions using banks that are located in and/or with ownership by entities located in Russia, Belarus and/or Ukraine), complete payment information is included in the table below. This information should include any payable-through, correspondent, intermediate accounts and/or banks that have or will issue(d) letters of credit related to the transaction.

8. The Purchaser further certifies that all facts contained in this Declaration are true and correct to the best of its knowledge and belief and does not know of any additional facts inconsistent with this Declaration.

9. The Purchaser will notify Seller immediately in writing if it has reason to believe any statement in this Certification to be untrue, inaccurate or incomplete or if it has any reason to believe that a breach of any obligation of the Purchaser set forth in this Certification has occurred.

10. The Purchaser acknowledges that the making of any false statements or concealment of any material fact in connection with this statement may result in breach of any agreement or contract between the Purchaser and Seller. If Seller determines, reasonably and in good faith, that there has been such a breach, Seller shall have the right to terminate any agreement, purchase order or contract with immediate effect and without any penalty or liability of any kind, by sending written notice of termination to the Purchaser.

## 5 Export Control Classification Number (ECCN) Destination Control Statement

**Table 1:** ECCN Assignments of Dual Use Products:

- ❖ Country Chart with reasons for control to be found: [15 CFR 738](#), [Supplement No. 1 to Part 738](#) – Commerce Country Chart
- ❖ Semiconductor Sanctions: [§744.23](#)

<b>ECCN <u>§774</u></b>	<b>Reason for Control <u>§742.6</u></b>	<b>Examples, not all inclusive</b>
EAR99	Supplement No. 1 to Part 774—The Commerce Control List - Category 1	Tubing, tube fittings, pipe and tube adapter fittings, GTAW welding equipment, hoses.
1C234	Supplement No. 1 to Part 774—The Commerce Control List - Category 2	Zirconium materials and fittings bearing the ZR2 material prefix.
2A226	Supplement No. 1 to Part 774—The Commerce Control List - Category 2	Exotic bellows valves with the smallest nominal inner port diameters* greater than 0.196-in (5-mm). Note – the port diameter excludes the closure element “orifice”.
2A291	Supplement No. 1 to Part 774—The Commerce Control List - Category 2	Products with process sheets and/or suffix codes developed or produced only for end use in nuclear plants.
2A999	Supplement No. 1 to Part 774—The Commerce Control List - Category 2	Stainless steel and brass bellows valves not elsewhere specified.
2B350	Supplement No. 1 to Part 774—The Commerce Control List - Category 2	The smallest nominal inner port diameter of larger exotic ball valves and larger fluoropolymer valves. Note – the port diameter excludes the closure element “orifice”.
2B999	Supplement No. 1 to Part 774—The Commerce Control List - Category 2	Monel valves, regulators, sample cylinders, and pipe (only) fittings Smaller 304 and 316 stainless steel valves, regulators, sample cylinders and pipe (only) fittings Vacuum flanges and pipe (only) fittings for vacuum service and not sold into positive pressure applications. and including austenitic (e.g., 302, 321, 347) and austenitic-ferretic alloys (e.g., Hastelloy, Inconel, 2507)
3B001	Supplement No. 1 to Part 774—The Commerce Control List - Category 3	Primarily high purity products such as valves and fittings developed and produced specifically for semiconductor manufacturing equipment such as MOCVD, ALD, EUV and other forms of deposition, etching, and lithography.
3B991	Supplement No. 1 to Part 774—The Commerce Control List - Category 3	Primarily high purity products such as valves and fittings developed and produced specifically for semiconductor manufacturing equipment such as CVD, PECVD, lithography and other forms of deposition, etching, and lithography.
3B993	Supplement No. 1 to Part 774—The Commerce Control List - Category 3	Primarily high purity products such as valves and fittings developed and produced specifically for semiconductor manufacturing equipment such as CVD, PECVD, lithography and other forms of deposition, etching, and lithography.
5A992	Supplement No. 1 to Part 774—The Commerce Control List - Category 5	Product is a network-capable endpoint device that is limited to securing only non-arbitrary data (e.g. temperatures, pressures, etc). This is specified in Note j.1.a.1 under 5A002

<b>ECCN</b> <a href="#">§774</a>	<b>Reason for Control</b> <a href="#">§742.6</a>	<b>Examples, not all inclusive</b>
8A620	Supplement No. 1 to Part 774—The Commerce Control List - Category 8	Special products developed and produced specifically for military submarines.

All affected products are marked in SAP with the following note:

Controlled Export Commodity: ECCN XXXXX see INFO 032.