

## AGREEMENT FOR PURCHASE AND SALE OF GOODS

**THIS AGREEMENT FOR PURCHASE AND SALE OF GOODS (the "Agreement")** is made this **1<sup>st</sup> day of June, 2005** by and between **Valve and Controls, Division of Power and Pumps, Inc., whose address is 400 Pittman Street, Orlando, FL 32801** ("Seller") and **THE CITY OF NAPLES**, a Florida municipal corporation, the address of which is 735 Eighth Street South, Naples, Florida 34102 ("Buyer"). In consideration of the mutual covenants and agreements hereinafter set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, Buyer and Seller agree as follows:

1. **Description of Goods; Sale and Delivery.** Seller shall sell, transfer, and deliver to Buyer the goods described on the Description/Proposal attached hereto and made a part of as Exhibit "A" subject to such terms as are set forth in the Description/Proposal and in this Agreement.

2. **Acceptance; Purchase.** Buyer shall accept the goods and pay a **total amount of \$33,142.85** for the goods in accordance with the terms of this Agreement.

3. **Identification of Goods.** Identification of the goods shall not be deemed to have been made until both Buyer and Seller have agreed that the goods in question are to be appropriate to the performance of this Agreement.

4. **Rate and Time of Payment.** Unless otherwise specified, Buyer shall make payment to Seller for the goods within 30 days after the goods are received by Buyer.

5. **Receipt of Goods.** The goods shall be deemed received by Buyer when delivered to Buyer at City of Naples, **380 Riverside Circle Naples, Florida 34102**. Delivery of the goods to Buyer shall occur on a business day and shall not occur after 3:15 p.m. on the delivery day.

6. **Risk of Loss.** The risk of loss from any casualty to the goods, regardless of the cause, shall be on Seller up to the time of receipt of the goods by Buyer at the place of delivery, but only after any proper inspection has been completed without rejection of the goods. Thereafter, such risk shall be on Buyer, including any goods thereafter returned to Seller until their receipt by Seller.

7. **Warranty Against Encumbrances.** Seller warrants that the goods are now free, and at the time of delivery shall be free, from any security interest or other lien or encumbrance.

8. **Warranty of Title.** Seller warrants that at the time of signing this Agreement, Seller neither knows, nor has reason to know, of the existence of any outstanding title or claim of title hostile to the rights of Seller in the goods.

9. **Product Warranty.** Seller provides general warranties of fitness and general warranties, attached hereto and made a part of as Exhibit "B", that the goods are free from defects, for 1 year from acceptance of the goods, except as may otherwise be set forth in the Description/Proposal, or other attached warranty.

10. **Right of Inspection.** Buyer shall have the right to inspect the goods at the time and place of delivery, and within 5 business days after delivery, Buyer must give notice to Seller of any claim for damages on account of the condition, quality, or grade of the goods, and Buyer must specify in detail the

basis of such claim. The failure of Buyer to comply with these conditions shall constitute irrevocable acceptance of the goods by Buyer.

11. **Procedure as to Rejected Goods.** On receipt of notification of rejection, Seller will immediately arrange to receive back the goods for shipment and return. However, within 5 days, Seller may have an agent inspect such goods for nonconformity; otherwise, such inspection will be made on return to Seller's storage facility. When such goods are confirmed or acquiesced in as nonconforming, Seller will ship conforming goods within 30 days of the notice of rejection unless Buyer earlier notifies Seller to forgo such shipment.

12. **Governing Law.** The parties acknowledge that the transaction that is the subject matter of this Agreement bears a reasonable relation to the State of Florida and agree that the law of the State of Florida will govern their rights and duties. The parties specifically intend that the provisions of Article 2 of the Florida Uniform Commercial Code will control as to all aspects of this Agreement and its interpretation, and that all the definitions contained therein will be applicable to this Agreement except where this Agreement may expressly provide otherwise.

13. **Notices and Address of Record.** All notices required or made pursuant to this Agreement to be given by Seller to Buyer shall be in writing and shall be delivered by overnight courier, by hand or by United States Postal Service Department, first class mail service, postage prepaid, return receipt requested, addressed to the following:

To Buyer:

City of Naples  
Attention: Dr. Robert E. Lee, City Manager  
735 Eighth Street South  
Naples, Florida 34102-3796

All notices required or made pursuant to this Agreement to be given by Buyer to Seller shall be made in writing and shall be delivered by overnight courier, by hand or by the United States Postal Service Department, first class mail service, postage prepaid, return receipt requested, addressed to the following:

To Seller:

**Valve and Controls  
Division of Power & Pumps, Inc.  
Attention: Darren Lanier  
400 Pittman Street  
Orlando, FL 32801**

Either party may change its address of record by written notice to the other party given in accordance with requirements of this Article.

14. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original as against any party who signature appears thereon and all of which shall together constitute one and the same instrument.

15. **Effective Date.** This Agreement shall take effect on the day of execution by the last party to execute this agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day first written above.

ATTEST:

\_\_\_\_\_  
(Print Name: \_\_\_\_\_)

ATTEST:

By: \_\_\_\_\_  
Tara A. Norman, City Clerk

Approved as to form and legal sufficiency:

By: \_\_\_\_\_  
Robert D. Pritt, City Attorney

"SELLER":

**Valve and Controls, Division of Power and  
Pumps, Inc.**

(Corporate Seal)

By: \_\_\_\_\_  
Authorized Representative

"BUYER"

City of Naples, Florida

By: \_\_\_\_\_  
Dr. Robert E. Lee, City Manager



## Valve & Controls

Division of Power & Pumps, Inc.  
400 Pittman Street  
Orlando, FL 32801

E-MAIL: [dlanier@valveandcontrols.com](mailto:dlanier@valveandcontrols.com)

Office: (407) 423-1247 Fax: (407) 423-9786

To: City of Naples  
1000 Fleischman Blvd.  
Naples, FL 34102  
Attn: Barry Stein  
Phone 239-213-3002  
Fax: 239-213-3001

Quotation: 4CN021405SDr1  
Date: 2/14/05  
Terms: Net 30 days  
Delivery: 4-6 weeks  
FOB: Spring House, PA.  
Freight: Prepay and add

Barry,

Valve and Controls is pleased to quote the following for your purchase and consideration.

Item	Qty.	Description	Unit Price
1	1	<b>7ME6510-4HJ11-1AA0</b> Mag5100W Flowmeter Size - 6 in Hard Rubber Liner AISI 316 Ti electrodes & grounding electrodes Carbon Steel Flanges - ANSI Class 150 Maximum Temperature - 200F	\$1150.45
2	1	<b>7ME6910-1AA10-1BA0</b> Mag 5000 Signal Converter (115-230v)	\$1102
3	1	<b>FDK:085U1001</b> Remote Mount Kit	\$163
4	40ft	<b>FDK:001STCAB</b> Cable - Standard - 2 lengths will be needed for the 6" Flowmeter	\$54
5	1	Estimated Freight	\$80

If I may be of further assistance, please don't hesitate to call, 800 780 7930 x 4220, or your outside sales person Bob Lontoc, that can be reached at 813 376 6500.

Please make all purchase orders to Valve and Controls-Orlando, FL.

Sincerely,

*Darren Lanier*

Darren Lanier  
Sales Engineer

**SIEMENS**

Tuesday, May 10, 2005

City of Largo  
Clearwater, FL 33760

Attn: Brian Reich

Fax: 727-507-4476

Subject: Sole Source Letter

Dear Brian,

We are pleased with your continuous consideration of Siemens products to solve your process measurement needs. The representative contracts are with Siemens Energy and Automations with the authorization to sell Siemens-Milltronics and Siemens-Moore brand name equipment.

Valve and Controls is your contracted representative and your sole source for Siemens-Milltronics brand, Siemens-Moore and Siemens-Danfoss Flow named equipment in your area.

Please contact me if you have additional questions.

Very respectfully,

*Jim Frazier*

Jim Frazier  
Regional Sales Manager  
Southeast Region USA  
Siemens Energy & Automation  
(813)779-2485

# SIEMENS

## Siemens Energy & Automation, Inc. (Seller) Standard Terms and Conditions of Sale (1-10-2003)

1. **WARRANTY** - (a) Seller warrants that on the date of shipment the goods are of the kind and quality described herein and are free of non-conformities in workmanship and material. This warranty does not apply to goods delivered by Seller but manufactured by others.  
(b) Buyer's exclusive remedy for nonconformity in any item of the goods shall be the repair or the replacement (at Seller's option) of the item and any affected part of the goods. Seller's obligation to repair or replace shall be in effect for a period of twenty-four (24) months from initial operation of the goods but not more than thirty (30) months from Seller's shipment of the goods, provided Buyer has sent written notice within that period of time to Seller that the goods do not conform to the above warranty. Repaired and replacement parts shall be warranted for the remainder of the original period of notification set forth above, but in no event less than 12 months from repair or replacement. The warranty period for refurbished goods shall be as stated in 1 (f). At its expense, Buyer shall remove and ship to Seller any such nonconforming items and shall reinstall the repaired or replaced parts. Buyer shall grant Seller access to the goods at all reasonable times in order for Seller to determine any nonconformity in the goods. Seller shall have the right of disposal of items replaced by it. If Seller is unable or unwilling to repair or replace, or if repair or replacement does not remedy the nonconformity, Seller and Buyer shall negotiate an equitable adjustment in the contract price, which may include a full refund of the contract price for the nonconforming goods.  
(c) SELLER HEREBY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, EXCEPT THAT OF TITLE. SPECIFICALLY, IT DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, COURSE OF DEALING AND USAGE OF TRADE.  
(d) Buyer and successors of Buyer are limited to the remedies specified in this article and shall have no others for a nonconformity in the goods. Buyer agrees that these remedies provide Buyer and its successors with a minimum adequate remedy and are their exclusive remedies, whether Buyer's or its successors' remedies are based on contract, warranty, tort (including negligence), strict liability, indemnity, or any other legal theory, and whether arising out of warranties, representations, instructions, installations, or non-conformities from any cause.  
(e) Note: This article 1 does not apply to any software, which may be furnished by Seller. In such cases, the attached Software License Addendum applies.  
(f) All refurbished goods sold shall have a limited ninety (90) day warranty from the date of shipment provided Buyer has sent written notice to Seller within the ninety (90) day period. Nonconforming refurbished goods shall be repaired or replaced at Seller's option if determined to be nonconforming by Seller. Any repaired or replaced refurbished goods shall be warranted for the remainder of the original ninety (90) day period but in no event less than forty-five (45) days from the repair or replacement. Refurbished equipment offered for sale shall have a 90 day warranty from the time of shipment. Non-performing equipment shall be repaired or replaced at seller's option if determined defective by seller.
2. **PATENTS** - Seller shall pay costs and damages finally awarded in any suit against Buyer or its vendees to the extent based upon a finding that the design or construction of the goods as furnished infringes a United States patent (except infringement occurring as a result of incorporating a design or modification at Buyer's request), provided that Buyer promptly notifies Seller of any charge of infringement, and Seller is given the right at its expense to settle such charge and to defend or control the defense of any suit based upon such charge. Seller shall have no obligation hereunder with respect to claims, suits or proceedings, resulting from or related to, in whole or in part, (i) the use of software or software documentation, (ii) compliance with Buyer's specifications, (iii) the combination with, or modification of, the goods after delivery by Seller, or (iv) the use of the goods, or any part thereof, in the practice of a process. THIS ARTICLE SETS FORTH SELLER'S ENTIRE LIABILITY WITH RESPECT TO PATENTS.
3. **PERFORMANCE; DELAYS** - Timely performance by Seller is contingent upon Buyer's supplying to Seller, when needed, all required technical information and data, including drawing approvals, and all required commercial documentation. If Seller suffers delay in performance due to any cause beyond its reasonable control, the time of performance shall be extended a period of time equal to the period of the delay and its consequences. Seller will give to Buyer notice within a reasonable time after Seller becomes aware of any such delay.
4. **SHIPMENT, TITLE AND RISK OF LOSS** - Unless the delivery terms of this contract expressly provide for F.O.B. destination, shipping/delivery will be F.O.B. Seller's point of shipment with title to the goods and risk of loss or damage passing to Buyer at that point. Buyer will be responsible for shipment during transit and for filing any damage or loss claims directly with the carrier. Seller may make partial shipments.
5. **TAXES** - Any applicable duties or sales, use, excise, value-added or similar taxes will be added to the price and invoiced separately (unless an acceptable exemption certificate is furnished).
6. **TERMS OF PAYMENT** - (a) unless otherwise stated, all payments shall be in United States dollars, and a pro rata payment shall become due as each shipment is made. If Buyer delays shipment, date of notice of readiness for shipment shall be deemed to be date of shipment for payment purposes.  
(b) On late payments, the contract price shall, without prejudice to Seller's right to immediate payment, be increased by 1 1/2% per month on the unpaid balance, but not to exceed the maximum permitted by law.  
(c) If any time in Seller's judgment Buyer is unable or unwilling to meet the terms specified, Seller may require satisfactory assurance or full or partial payment as a condition to commencing or continuing manufacture or making shipment, and may, if shipment has been made, recover the goods from the carrier, pending receipt of such assurances.
7. **NONCANCELLATION** - Buyer may not cancel or terminate for convenience, or direct suspension of manufacture, except with Seller's written consent and then only upon terms that will compensate Seller for its engineering, fabrication and purchasing charges and any other costs relating to such cancellation, termination or suspension, plus a reasonable amount for profit.
8. **NUCLEAR** - Buyer represents and warrants that the goods covered by this contract shall not be used in or in connection with a nuclear facility or application. If Buyer is unable to make such representation and warranty, then Buyer agrees to indemnify and hold harmless Seller and to waive and require its insurers to waive all right of recovery against Seller for any damage, loss, destruction, injury or death resulting from a "nuclear incident", as that term is defined in the Atomic Energy Act of 1954, as amended, whether or not due to Seller's negligence.
9. **LIMITATION OF LIABILITY** - Neither Seller, nor its suppliers shall be liable, whether in contract, warranty, failure of a remedy to achieve its intended or essential purposes, tort (including negligence), strict liability, indemnity or any other legal theory, for loss of use, revenue or profit, or for costs of capital or of substitute use or performance, or for indirect, special, liquidated, incidental or consequential damages, or for any other loss or cost of a similar type, or for claims by Buyer for damages of Buyer's customers. Seller's maximum liability under this contract shall be the contract price. Buyer and Seller agree that the exclusions and limitations set forth in this article are separate and independent from any remedies that Buyer may have hereunder and shall be given full force and effect whether or not any or all such remedies shall be deemed to have failed of their essential purpose.
10. **GOVERNING LAW AND ASSIGNMENT** - The laws of the State of Georgia shall govern the validity, interpretation and enforcement of this contract, without regard to its conflicts of law principles. The application of the United Nations Convention on Contracts for the International Sale of Goods shall be excluded. Assignment may be made only with written consent of both parties; provided, however, Seller may assign to its affiliate without Buyer's consent.
11. **ATTORNEY FEES** - Buyer shall be liable to Seller for any attorney fees and costs incurred by Seller in enforcing any of its rights hereunder.
12. **DISPUTES** - Either party may give the other party written notice of any dispute arising out of or relating to this contract and not resolved in the normal course of business. The parties shall attempt in good faith to resolve such dispute promptly by negotiations between executives who have authority to settle the dispute. If the matter has not been resolved within 60 days of the notice, either party may initiate non-binding mediation of the dispute.
13. **STATUTE OF LIMITATIONS** - To the extent permitted by applicable law, any lawsuit for breach of contract, including breach of warranty, arising out of the transactions covered by this contract, must be commenced not later than twelve (12) months from the date the cause of action accrued.
14. **PRICES** - In the event of a price increase or decrease, the price of goods on order will be adjusted to reflect such increase or decrease. This does not apply to a shipment held by request of Buyer. Goods already shipped are not subject to price increase or decrease. Orders on a bid or contract basis are not subject to this article. Orders amounting to less than \$100.00 net will be invoiced at \$100.00 plus transportation charges for goods covered by discount schedules. Seller's prices include the costs of standard domestic packing only. Any deviation from this standard packing (domestic or export), including U.S. Government sealed packing, will result in extra charges. To determine such extra charges, consult Seller's sales offices.
15. **ADDITIONAL TERMS OF PAYMENT** - (a) Invoice payment terms are as shown on latest discount sheets as issued from time to time. Cash discounts are not applicable to notes or trade acceptances, to prepaid transportation charges when added to Seller's invoices or to discountable items if there are undisputed past due items

## SIEMENS

on the account. Portions of an invoice in dispute should be deducted and the balance remitted with a detailed explanation of the deduction. Cash discounts will only be allowed on that portion of the invoice paid within the normal discount period.

(b) Freight will be allowed to any common-carrier free-delivery point within the United States, excluding Alaska and Hawaii, on shipments exceeding \$1,000 net or more providing Seller selects the carrier. On shipments to Alaska and Hawaii, freight will be allowed to dockside at the listed port of debarkation nearest the destination point on shipments of \$1,000 net or more. Buyer shall pay all special costs such as cartage, stevedoring and insurance. Special freight allowances are as shown on latest discount sheets as issued from time to time. Cataloged weights are estimated, not guaranteed. Seller assumes no responsibility for tariff classifications on carriers.

16. **CHANGES IN LAWS AND REGULATIONS** - Seller's prices and timely performance are based on all applicable laws, rules, regulations, orders, codes, standards or requirements of governmental authorities effective on the date of Seller's proposal. Any change to any law, rule, regulation, order, code, standard or requirement which requires any change hereunder shall entitle Seller to an equitable adjustment in the prices and any time of performance.