

VALVETECH, INC.
TERMS & CONDITIONS – ALL SALES

All quotations issued by ValveTech, Inc. (hereinafter referred to, as "ValveTech") shall be considered an offer to sell the goods described therein (collectively, "Product" or "Products") to the purchaser of such goods ("Customer") (ValveTech and Customer are each a "Party" and collectively the "Parties"). The Parties agree that the Product shall only be the actual, physical device. Any sale of ValveTech's Products will be solely upon these terms and conditions, regardless of any terms set forth in any request for proposal or similar bid proposal document or accepted purchase order. Any acceptance of any offer shall be limited to the terms hereof. Additional or conflicting terms are expressly rejected.

1. ACCEPTANCE OF TERMS OF SALE: These terms and conditions shall control all sales of Products by ValveTech, unless otherwise specifically agreed upon to the contrary, in a separate written document other than any Customer purchase order, quotation or proposal executed by ValveTech. ValveTech will not be bound by any terms of Customer's purchase orders, requests for proposals or terms and conditions that are inconsistent with the terms herein, unless otherwise specifically agreed upon to the contrary, in a separate written document executed by ValveTech, other than any Customer purchase order, quotation or proposal,. All purchase orders issued to ValveTech by Customer shall be subject to and governed only by these terms and conditions notwithstanding any preprinted or other terms and conditions on Customer's purchase order, or terms incorporated therein and any contradictory terms and conditions on Customer's purchase documents are deemed to be material alterations hereto, for which notice of objection is hereby given by ValveTech. Customer's acceptance of the quote or placement of a purchase order constitutes Customer's acceptance of these terms and conditions, all of which are incorporated by reference herein.

Notwithstanding any provision to the contrary, no purchase order shall be binding upon ValveTech until accepted by ValveTech in writing, and ValveTech shall have no liability to Customer with respect to purchase orders that are not accepted.

2. PRICE and PAYMENT TERMS: Prices for Products shall be ValveTech's quoted prices for the quantities specified in such quote or accepted purchase order ("Purchase Price"); however, a quotation or estimate does not constitute a firm offer by ValveTech and may be altered or withdrawn without notice at any time prior to ValveTech's acceptance of a purchase order related thereto from Customer. ValveTech reserves the right to revise a Purchase Price upon written notice to Customer. Price revisions will apply to all purchase orders received after the effective date of the price revision. Unless otherwise specified in any written agreement to the contrary, prices are F.O.B ValveTech's facility in Phelps, New York. Customer shall be responsible for, in addition to the Purchase Price any and all customs duties and sales, use, value added, excise, and/or other taxes payable by reason of the sale of the Products, together with any interest and penalties thereon. Customer shall reimburse ValveTech for any such taxes, including interest and penalties thereon, as may be paid by ValveTech together with any expenses connected therewith.

Payment terms shall be net thirty (30) days from the date of ValveTech's invoice. Customer will make payments in United States dollars by check, wire transfer, letter of credit, or other acceptable payment method as agreed to by ValveTech. Any invoice amount not paid when due shall be subject to a service charge equal to the greater of one and one-half percent (1.5%) per month or the maximum rate permitted by law and Customer shall pay ValveTech's reasonable attorneys' fees and other collection costs of collecting overdue invoices. ValveTech may transmit invoices by facsimile, e-mail or other electronic means.

3. INSPECTION AND ACCEPTANCE: Acceptance shall take place at ValveTech's facility upon completion of agreed acceptance test procedures as set forth in any specifications previously agreed to by the parties ("ATP"). The ATP results may be verified by a representative of the Customer in accordance with the applicable specifications to any purchase order.

Prior to the ATP, ValveTech shall notify Customer that the Product is ready for ATP and if so requested by Customer, shall submit any data package as required by any applicable deliverable requirement previously agreed upon by the parties. If previously agreed upon in any specification or proposal between the Parties and upon execution of the ValveTech facility Non-Disclosure Agreement required for admittance to ValveTech's facility, the Customer shall be permitted to attend the ATP to certify the successful compliance of the Product with the ATP. Upon a showing of compliance to the specifications for the Product as evidenced by the Product's successful passage of the ATP whether witnessed by the Customer or otherwise, the Product shall be deemed accepted by the Customer, ("Acceptance"). Title to the Products and risk of loss for the Product shall pass to Purchaser upon Acceptance of the Product. Customer shall be deemed to have taken possession of the Products upon Acceptance at ValveTech's facility in the State of New York.

4. DELIVERY & SHIPMENT: ValveTech will use commercially reasonable efforts to deliver Accepted Products at the times specified in Customer's accepted purchase order, understanding, however, that all delivery dates are estimates only. Unless otherwise agreed between the Parties, all Products delivered hereunder will be packed for shipment in ValveTech's standard containers, marked for shipment to Customer's address as specified in Customer's purchase order, and shipped FOB, ValveTech's facility located in Phelps, New York. All freight, insurance and other shipping expenses from ValveTech's facility will be borne by Customer unless otherwise agreed to by ValveTech. Unless otherwise specified, for sales outside the United States, Customer shall be the importer of record. No Product or material may be returned by Customer without ValveTech's prior written approval. Product held beyond scheduled shipment date at Customer's request is subject to reasonable storage and incidental charges. Methods and routes of shipment, unless specified by Customer and made a part of the quote, shall be accepted as chosen by ValveTech. Delivery to a common carrier, F.O.B. ValveTech's facility shall constitute delivery to Customer. If Customer or the carrier refuses delivery or delays shipment or acceptance, the Product may be stored according to ValveTech's direction, as Customer's agent, at Customer's risk and expense. During any such period of storage, Customer shall have title to and shall be deemed to be in possession of the Product and shall bear the risk of loss. All costs subsequent to delivery,

including but not limited to the cost of shipment and installation of the Product described herein, shall be borne by Customer unless otherwise specifically agreed in writing by the parties.

5. SUSPENSION OF WORK

(a) Upon receipt of payment in full for all completed work to date, Customer may, by written notice, suspend all or part of the work to be performed under any previously accepted purchase order for a period not to exceed ninety (90) days. Within such period of any suspension of work, Customer may: (i) cancel the suspension of work; (ii) terminate the order in accordance with the "Termination for Convenience" clause; or (iii) with the written consent of the Supplier, extend the stop work period.

(b) Upon ValveTech's receipt of a notice from the Customer that it is cancelling the suspension of work, Customer and Supplier shall negotiate an equitable adjustment in the price or schedule or both if the suspension results in a change in ValveTech's cost of performance or ability to meet the purchase order delivery schedule. Supplier shall submit its fully supported request for equitable adjustment no later than sixty (60) days, or such other time as Buyer may allow, after the suspension is canceled.

6. CANCELLATION: No contract between ValveTech and the Customer is subject to cancellation by Customer without ValveTech's written consent. Such consent will only be granted upon the condition that Customer shall pay ValveTech reasonable cancellation charges determined by ValveTech, including but not limited to all costs incurred by ValveTech to the date of cancellation. Any cancellation or rescission by Customer shall constitute a discharge of any claim by Customer relating to this transaction. Unless otherwise provided in writing by ValveTech, Customer may not cancel or reduce orders, nor can Customer reschedule orders for Products less than thirty (30) days before planned shipment date without incurring ValveTech's reschedule charges, including costs for work in progress and other expenses.

7. CHANGE ORDERS: Customer may from time to time, in writing, request changes within the general scope of any previously accepted purchase order in any one or more of the following: (i) technical requirements and descriptions, specifications, drawing or designs; (ii) shipment or packing methods; (iii) place of delivery or inspection; or (iv) reasonable adjustments in quantities or delivery schedules or both. ValveTech and Customer shall have a dialogue about implementation of the requested changes and any related change to the cost and expense of the changes as well as any impact on the delivery schedule. If any such change causes an increase or decrease in the cost of or the time required for performance of the purchase order, equitable adjustment in the prices and schedules shall be made to reflect such increase or decrease and the purchase order shall be modified in writing accordingly ("Change Order Adjustment"). If ValveTech considers that Customer's conduct has constituted a change hereunder, ValveTech shall promptly notify Customer in writing as to the nature of such conduct and its effect upon ValveTech's performance. Pending mutual agreement of the Parties as to the Change Order Adjustments to the prices and/or schedules, ValveTech shall take no action to implement any such

change. ValveTech reserves the right to stop production of the Product while any Change Order Adjustment is pending. Any added expenses incurred by ValveTech because of delays in receipt of details, specifications, approvals and other pertinent information, because of defects in materials furnished by Customer, or because of changes in material or design requested by Customer, shall be chargeable to Customer.

8. LIMITED WARRANTY

(a) ValveTech designs, manufactures, tests, and qualifies its Products in strict compliance with the specifications provided by the Customer. ValveTech warrants that the Product(s) will function in all material aspects in substantial compliance with Customer's specification for the quoted Product at the time of Acceptance. When ValveTech adheres to designs, drawings and/or specifications furnished or approved by Customer (even if ValveTech prepared or approved the same), ValveTech shall not be responsible for them or their suitability for the application intended. ValveTech further warrants that the Product will be shipped free from material defects in materials and workmanship for one (1) year from the date of Acceptance. These expressed limited warranties do not cover damage or defects to the extent resulting from: (i) accident, disaster, neglect, abuse, misuse or transportation; insufficient or excessive electrical supply, excessive pressurization, abnormal mechanical or environmental conditions, or any unauthorized disassembly; (ii) alterations or modifications made by Customer and/or its contractors, or contract manufacturers; (iii) incorporation of the Product with or into Customer's product if the damage or defect would not have occurred but for such incorporation; or (iv) Customer's or its contractors, or contract manufacturer's failure to provide a suitable environment for incorporating the Product into Customer's product. No employee or agent of ValveTech is authorized to make any warranty other than that which is specifically set forth herein. The foregoing limited warranties extend to Customer only and may be invoked only by Customer. ValveTech will not accept returns of Product or warranty claims from Customer's customers. ValveTech shall provide instructions to the Customer on the handling of the alleged defective Product and Customer shall follow such instructions, which shall include packing and shipping the Product to ValveTech for its review and assessment, or the limited warranty shall be voided.

(b) Customer and ValveTech agree to the following process for warranty claims:

(i) Customer must notify ValveTech, in writing, within ten (10) days after the discovery of an apparent defect or anomaly.

(ii) ValveTech will examine the Product, and upon determination that the Product is defective and that the defect is a qualifying warranty claim, ValveTech shall have the option of refunding the Purchase Price as paid by the Customer, repairing the non-compliant Product, or replacing the non-compliant Product. The cost for the repair or the replacement will be the responsibility of ValveTech.

(iii) ValveTech's testing and verification expenses shall be borne by Customer if Products returned for defective purposes are found to be working properly or if the cause of the defect or anomaly is the result of Customer or Customer's end user's mishandling or misuse of the Product.

(c) THE EXPRESSED WARRANTIES LISTED ABOVE ARE IN LIEU OF ALL OTHER WARRANTIES, INCLUDING ANY EXPRESSED ORAL REPRESENTATIONS REGARDING THE QUOTED PRODUCT(S), ANY EXPRESSED WRITTEN WARRANTY NOT CONTAINED HEREIN OR CONTAINED IN ANY TERM OR CONDITION IN ANY CUSTOMER DOCUMENT OR CONTRACT INCLUDING ANY CUSTOMER END USER CONTRACT, AND ANY IMPLIED WARRANTY INCLUDING WARRANTIES AS TO CONDITION, DESCRIPTION, FITNESS FOR A PARTICULAR PURPOSE, AND MERCHANTABILITY. VALVETECH DISCLAIMS ANY AND ALL OTHER REPRESENTATIONS, WARRANTIES OR CONDITIONS, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

9. LIMITATION OF LIABILITY: IN NO EVENT SHALL VALVETECH BE LIABLE TO THE CUSTOMER FOR ANY CAUSE OF ACTION, WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE, BROUGHT BY THE CUSTOMER AGAINST VALVETECH, OR BROUGHT BY A THIRD PARTY AGAINST CUSTOMER, ARISING OUT OF THE PURCHASE, OR SUBSEQUENT USE, OF THE PRODUCT, FOR DAMAGES, ATTORNEY FEES, OR COURT COSTS THAT EXCEED THE PURCHASE PRICE OF THE QUOTED PRODUCT ACTUALLY RECEIVED BY VALVETECH FROM THE CUSTOMER. IN NO EVENT SHALL VALVETECH BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, PUNITIVE OR SPECIAL DAMAGES ARISING, DIRECTLY OR INDIRECTLY, FROM THE PURCHASE, SUBSEQUENT USE, OR RESALE OF THE QUOTED PRODUCT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL VALVETECH BE LIABLE TO CUSTOMER FOR ANY LOST PROFITS, LOSS OF DATA, OR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR FOR ANY OTHER INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, WHETHER FOR BREACH OF CONTRACT OR WARRANTY OR TORT (INCLUDING NEGLIGENCE) OR THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY PROVIDED FOR HEREIN.

10. APPLICABLE LAW AND CHOICE OF FORUM: This Agreement will be governed by and interpreted in accordance with the laws of the State of New York, without giving effect to its provisions regarding conflicts of laws. The application of the United Nations Convention on Contracts for the International Sale of Goods is expressly excluded in its entirety. The Federal and State courts located in Monroe County, New York will have exclusive jurisdiction and venue over any dispute arising out of any agreement between ValveTech and Customer, and Customer hereby consents to the jurisdiction of such courts.

11. OWNERSHIP: ValveTech retains all proprietary rights in and to all designs, engineering details, and other technology and information pertaining to the Products. The Products are offered for sale and are sold by ValveTech subject in every case to the condition that such sale does not convey any license, expressly or by implication, to manufacture, duplicate, or otherwise copy the Products. The Products are offered and sold to the Customer on the condition that such sale does not convey any license, expressly or by implication, estoppel, or otherwise, under any patent, trademark, copyright or know-how with respect to which Customer can grant licenses. Customer agrees that it shall not disassemble or reverse-engineer any Product.

ValveTech shall own all intellectual property rights in all drawings and specifications prepared by or for it, in connection with the Products. ValveTech shall own all patents and other intellectual property rights in any inventions made by it in the course of its design or manufacturing of the Products, subject to a license to Customer to use the Product for its stated purposes. ValveTech shall be the sole owner of all tooling, dies, jigs, gauges and fixtures used in producing the Product and not supplied by Customer.

12. LIMITED INTELLECTUAL PROPERTY LICENSE: Upon the completed sale of any Product, ValveTech grants to Customer:

(a) A non-exclusive, worldwide and royalty-free right to use (but not to disclose to any third party except as specifically provided otherwise in any accepted purchase order) ValveTech's applicable intellectual property insofar as and only to the most limited extent necessary for the purposes of integration into, verification of, delivery of, and pre-and post-launch support operations of any space vehicle into which the actual Product has been or will be integrated into; and

(b) the right to grant to the ultimate owner of any space vehicle into which the actual Product was integrated, an irrevocable, non-exclusive, worldwide royalty-free right (with the right to grant further limited sub-licenses to any future user or operator of the said spacecraft, ground control or other system) to use the Product. Such right of use is strictly limited to the operation of the space vehicle. In the event of a proposed sale or transfer of the space vehicle, the owner of the space vehicle shall have the right to transfer this right to use the Product as integrated into the space vehicle.

ValveTech grants the Customer and its customer, a worldwide, non-exclusive royalty free limited license and right to use the Product for and in sole support of the systems for which the Products under any purchase order are to be used. The system is to be identified in the purchase order prior to award. Notwithstanding the grant of the license described above, ValveTech does not transfer or assign any of its intellectual property rights to Customer. The Parties hereto agree that all such intellectual property rights are confidential information and are trade secrets.

13. CONFIDENTIALITY: Prior to submission of any quote or response to any request for proposal, the Parties shall have entered into a non-disclosure agreement, the form of which is

attached hereto as Exhibit A, the terms of which are mutually acceptable to the Parties. The terms of Exhibit A are incorporated into this provision as if fully set forth herein.

If the U.S. Government or any subdivision thereof, including but not limited to NASA, makes any request of any Party, pursuant to the terms of any prime contract, for proprietary or confidential information of ValveTech, then Customer shall disclose such fact to ValveTech and ValveTech shall have the right to provide the recipient with the appropriate “form, fit and function data” that would satisfy such governmental submission requirements. Except as specifically permitted, the Customer may only disclose such form, fit and function data to the US Government and shall not disclose any proprietary or confidential information received hereunder to the U.S. Government, or any subdivision thereof, including but not limited to NASA. Each Party acknowledges that proprietary or confidential information of the other Party is being disclosed on a confidential and fiduciary basis and that the disclosing Party may be irreparably harmed if the recipient Party discloses or uses the proprietary or confidential information contrary to this Agreement.

14. EQUITABLE REMEDIES. The Parties hereto agree that in the event Customer fails to comply with any of the terms or provisions contained in this Agreement, ValveTech’s damages would be uncertain and difficult (if not impossible) to accurately estimate because of the parties’ inability to predict future events and other relevant factors. Accordingly, the Parties agree that in the event of any material breach of the terms contained herein, ValveTech’s sole remedy shall be a payment of an amount equal to \$5,000,000 plus any contract amount then due and reasonable attorney fees, and upon payment of the above, the Parties shall be released from further liability to each other hereunder, except for those obligations and liabilities that are expressly stated to survive termination of these terms. **THE PARTIES AGREE THAT IT WOULD BE IMPRACTICAL AND EXTREMELY DIFFICULT TO ESTIMATE THE DAMAGES WHICH VALVETECH MAY SUFFER UPON A CUSTOMER DEFAULT AND THAT THE ABOVE LISTED AMOUNT REPRESENTS A REASONABLE ESTIMATE OF THE TOTAL NET DETRIMENT THAT VALVETECH WOULD SUFFER UPON A CUSTOMER DEFAULT. SUCH LIQUIDATED AND AGREED DAMAGES ARE NOT INTENDED AS A FORFEITURE OR A PENALTY WITHIN THE MEANING OF APPLICABLE LAW.**

The Parties further agree that in the event Customer uses or discloses proprietary or confidential information contrary to the terms of this Agreement, ValveTech shall be entitled to any and all remedies under applicable law, including reasonable attorney fees and an action to seek injunctive relief and an order of specific performance without the necessity of proving actual damages.

15. NOTICE: Any notice required or permitted to be given will be in writing and will be prepaid, and may be personally served, sent by an overnight delivery service, or by first-class mail. Any such notice will be deemed to have been given: (i) if personally given, or sent by a delivery

service, when received; or (ii) if mailed, three (3) business days after deposit in the United States mail with a correct address.

16. EXPORT: Customer will not export any Product or information relating thereto except in compliance with all applicable U.S. laws and regulations controlling the export of technical data. All parties agree to comply with all applicable export laws and regulations, including the requirement for obtaining any export authorization (license or agreement), if applicable. Without limiting the foregoing, the Customer agrees that it will not transfer any export controlled goods, technical data, and/or services, to include transfer to non-U.S. persons (as defined in the ITAR and EAR) employed by or associated with, or under contract to Customer, without the authority of an export license, agreement, or applicable exemption or exception, if required.

17. FEDERAL ACQUISITION REGULATIONS: Unless otherwise agreed in writing by ValveTech, no Federal Acquisition Regulations or other government procurement rules or regulations will apply to any accepted purchase order, and Customer expressly represents and warrants that no Product is being purchased in performance of any U.S. or other government contract that would, or under which Customer is obligated to, subject ValveTech to any of these rules or regulations.

18. FORCE MAJEURE: A Party shall not be liable for any costs, claims, losses or liabilities incurred by the other Party because of any failure to perform this Contract pursuant to its agreed upon terms if such failure arises from causes beyond the control and without the fault of or negligence of the affected Party. If the affected Party is unable to perform any of its obligations as a result of a Force Majeure Event for more than ninety (90) consecutive days, the non-affected Party may terminate the order at any time, without further liability upon the serving of no less than thirty (30) days' prior written notice to the other Party. Force Majeure Event means any circumstance beyond a Party's (the affected Party) reasonable control including but not limited to the following: war or other action of military forces, terrorism, riot, public disorder, civil commotion, insurrection, sabotage, vandalism, explosions, accident, epidemic or pandemic, fire, flood, lightning, storm, hurricane, tornado and/or other natural disaster or occurrences, acts of God, strike, lock-out or other industrial disputes not involving employees of the relevant Party, legislative, government or administrative interference or inaction PROVIDED THAT no circumstances or cause shall be considered to be beyond the reasonable control of a Party if it arises as a result of that Party's failure to take reasonable care;

19. WAIVER: The failure or delay of either Party to insist on strict compliance with any of the terms, covenants or conditions of this Agreement shall not be deemed a waiver of that term, covenant or condition, or a waiver of any other term, covenant or condition; nor shall any waiver or relinquishment of any right or power at any one time or times be deemed a waiver or relinquishment of that right or power for all or for any other times.

20. ENTIRE AGREEMENT: These Terms and Conditions constitute the entire agreement between the Parties with respect to the subject matter hereof and supersede all previous

communications, written or oral, with respect to the subject matter, and no representations or statements of any kind made by any representative of ValveTech that are not stated herein will be binding on ValveTech. No course of dealing or usage of trade or course of performance will be relevant to explain or supplement any of these terms. If the Parties have entered into a written agreement signed by the Parties setting forth the terms and conditions for the sale of Product to Customer by ValveTech, then the terms of such agreement shall control to the extent such terms and conditions are contrary to the terms herein. ValveTech shall have an absolute right to be paid by the Customer, an amount equal to the full measure of any counsel fees, expenses and costs, including all expert fees, if ValveTech has to enforce the terms of this Agreement.

Exhibit A

MUTUAL NONDISCLOSURE and PROPRIETARY RIGHTS AGREEMENT

This **MUTUAL NONDISCLOSURE and PROPRIETARY RIGHTS AGREEMENT** (the “*Agreement*”) is by and between Valve Tech, Inc., a company existing and duly organized under the laws of New York State having its registered office at 1391 Phelps Junction Rd., P.O. Box 118, Phelps, New York 14532 (hereinafter “ValveTech”) and Customer, a company existing and duly organized under the laws of N/A, (hereinafter “Customer”) (ValveTech and Customer are each a “*Party*” and collectively the “*Parties*”).

WHEREAS, in furtherance of any business transactions agreed upon by the Parties and identified in any related purchase offer (the “*Purpose*”), ValveTech and Customer (each as a “*Recipient*”) will receive and review certain Proprietary Information related to the other (as a “*Disclosing Party*”) and its business. For purposes of this Agreement, “*Recipient*” shall mean the Recipient and any affiliate, employee, representative or agent of that Recipient that receives or has access to any Proprietary Information of the Disclosing Party (each, a “*Representative*”). To induce the Disclosing Parties to make available and known Proprietary Information to the Recipient, each Recipient agrees to abide by the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the covenants and promises herein and the proposed business relationship described herein, the Parties agree as follows:

1. Proprietary Information

- 1.1 For the purposes of this Agreement, the term “*Proprietary Information*” is defined as any information or data including, but not limited to, any reports, analyses, compilations, studies, interpretations, assumptions, estimates, projections, forecasts, records, financial records, customers, business strategies and operations, prospects, marketing, planning, programming, technical reports, pricing, legal and other information, ideas, know-how, concepts, designs, specifications and data, manufacturing and research methods and products, techniques, apparatus, equipment and systems, including but not limited to materials and products, product design and specifications, drawings, manufacturing procedures and tolerances, plant layout and design, research tools, test procedures, and test results, whether in written, electronic, photographic and/or other forms relating to and/or disclosed by or on behalf of a Disclosing Party to a Receiving Party, pursuant to this Agreement or any other, subsequent agreement between the parties, including information that by its very nature constitutes information of a type that a reasonable business person would conclude was intended by Disclosing Party to be treated as proprietary, confidential, or private (as illustrated below), regardless of whether such information was marked or identified as proprietary, confidential, or private. Proprietary Information disclosed by the Disclosing Party includes confidential information proprietary to the Disclosing Party and confidential information proprietary to third parties and entrusted to the Disclosing Party.

- 1.2 All Proprietary Information disclosed by a Disclosing Party will be deemed Proprietary Information when disclosed, regardless of whether such information was marked as proprietary or confidential and regardless of the method of disclosure of such information.
- 1.3 Each Party, to the extent of its right to do so, shall request from or disclose to the other Party only such Proprietary Information deemed appropriate to fulfill the Purpose of this Agreement.
- 1.4 Each Party shall ensure that the disclosure of Proprietary Information as contemplated under this Agreement is not contrary to any applicable laws and regulations.
- 1.5 Notwithstanding the definition of Proprietary Information set forth in Section 1.1, the obligations with respect to handling and using Proprietary Information as aforesaid in this Agreement are not applicable to information which a Receiving Party can demonstrate:
 - a) at the time of disclosure is publicly known other than through the fault, breach or negligence by the Recipient;
 - b) can be demonstrated by documentary evidence to have been already lawfully known by Recipient without any obligation owed directly or indirectly to Disclosing Party to hold such information in confidence;
 - c) can be shown by documentary evidence to have been lawfully received by Recipient from a source other than Disclosing Party, which source is not itself known by Recipient to be bound by a confidentiality agreement owed directly or indirectly to Disclosing Party;
 - d) can be shown by documentary evidence to have been independently developed by or for Recipient without the use of Disclosing Party's Proprietary Information; or
 - e) is authorized prior to and in writing by Disclosing Party to be released from the confidentiality obligations herein, but only to the extent of such authorization.
- 1.6 Any Proprietary Information disclosed by a Disclosing Party to a Receiving Party shall remain the property of the Disclosing Party and the Receiving Party shall only have a limited license for the use of the Proprietary Information for the Purpose as set forth herein. It is understood that no license other than as set forth above, patent, copyright, trademark or other proprietary right is granted to the Recipient by this Agreement. The disclosure of Proprietary Information and materials, which may accompany the disclosure, shall not result in any obligation to grant the Recipient rights therein.

2. Handling of Proprietary Information

The Parties' obligations include the following:

- 2.1 All Proprietary Information disclosed will not be used or duplicated, in whole or in part by a Receiving Party, for any purpose, other than the Purpose set forth in this Agreement, without the prior written consent of the Disclosing Party.
- 2.2 All Proprietary Information will be protected and kept in confidence by each Receiving Party which shall use its best efforts, but no less than the same degree of care and safeguard as it uses to protect its own Proprietary Information, to prevent inadvertent disclosure of any Proprietary Information to any third party. Said care shall be no less than commercially reasonable care.
- 2.3 Each Receiving Party shall take reasonable precautions to prevent disclosure of the Disclosing Party's Proprietary Information to other than those employees within the Receiving Party's organization who have a need to know for the Purpose stated herein and shall ensure that such employees shall be bound by the provisions herein. Any release of Proprietary Information, when considered necessary, to any person other than the Parties hereto, including but not limited to any third-party customer of a Receiving Party, must be approved by the Disclosing Party prior to release. Subject to the limitations in the preceding sentence, such release shall only be made subject to said persons' written agreement not to make further disclosure and to use Proprietary Information solely for the Purpose of this Agreement.
- 2.4 Each Receiving Party acknowledges and agrees that, other than as stated in the Purpose, Receiving Party will not use such Proprietary Information for Receiving Party or for others, and will not disclose to others nor sell to others, in whole or in part, any such Proprietary Information. Each Receiving Party specifically agrees not to manufacture, repair (or enable a third party to manufacture or repair), alter, modify, decompile, disassemble, reverse engineer, translate or create derivative works of Disclosing Party's products or Proprietary Information, or make the Disclosing Party's Proprietary Information subject to delivery under a contract or make subject to a "rights in data" or equivalent clause. Each Receiving Party will take every reasonable precaution necessary to keep such Proprietary Information secret, and to ensure that any employee, consultant, or agent of Receiving Party who receives Proprietary Information is bound by this Agreement in like manner.
- 2.5 If a Receiving Party becomes aware of any dissemination of Proprietary Information of the Disclosing Party in breach of the terms of this Agreement, it shall immediately inform the Disclosing Party, trying then jointly to find a remedy to the situation.
- 2.6 If the U.S. Government or any foreign government or any subdivision thereof, including but not limited to, NASA, makes any request of any Party, pursuant to the terms of any prime

contract, for Proprietary Information, then each Receiving Party must disclose such fact to the Disclosing Party and the Disclosing Party shall have the right to provide to the Receiving Party the appropriate “form, fit, and function data” that would satisfy such governmental submission requirements. Except as specifically permitted by the Disclosing Party in writing, the Receiving Party may only disclose such “form, fit and function data” to any government or any subdivision thereof and shall not disclose the Proprietary Information received hereunder to the government, or any subdivision thereof, including, but not limited to, NASA. If the U.S. Government or any subdivision thereof specifically requests the Proprietary Information, the Receiving Party must notify the Disclosing Party pursuant to Section 3.

- 2.7 In the event any governmental or judicial body that has subpoena or other compulsory order powers requires the disclosure of Proprietary Information, the recipient of such request for disclosure of Proprietary Information shall promptly, but in any event prior to such disclosure, notify the Disclosing Party of the requirement and provide reasonable aid and assistance if the Disclosing Party decides to oppose such governmental or judicial order.
- 2.8 The Purpose of this Agreement shall be kept confidential by the Parties hereto and shall not be disclosed by any Party hereto without the prior written consent of the other parties.
- 2.9 Each Receiving Party represents and warrants that no Proprietary Information furnished by a Disclosing Party shall be exported from the United States without first complying with all requirements of the International Traffic in Arms Regulations (“ITAR”) and the Export Administration Regulations (“EAR”), regulations issued thereunder and any subsequent amendments thereto, including the requirement for obtaining any export license, if applicable. Each Receiving Party shall first obtain the written consent of Disclosing Party prior to submitting any request for authority to export any such Confidential Information subject to ITAR and EAR requirements.

3. Authorized Recipients of Proprietary Information

- 3.1 In accordance with the terms and conditions of this Agreement, it is expressly understood and agreed that the employees designated from time to time by each Party shall, on behalf of the respective Parties hereto, be the exclusive individuals authorized to receive and/or transmit Proprietary Information under this Agreement. Each Party shall be responsible for any breach of this Agreement by any of its agents, employees and other representatives.
- 3.2 Each Party designates herewith the following address and person in its organization to receive written disclosures and identifications of Proprietary Information hereunder, and to be responsible for ensuring the observance of this Agreement:

Valve Tech, Inc.

Customer

1391 Phelps Junction Rd.
P.O. Box 118
Phelps, New York 14532
To the attention of:
Erin Mullally
Tel.: (315) 548-4040
E-mail: EMFaville@valvetech.net

3.3 Notices hereunder shall be deemed validly given if delivered by and /or sent by fax or post (registered mail, with proof of posting) to the above authorized persons at the address of the intended recipient as shown above, and shall be deemed effective upon the date of dispatch.

3.3 Any Party may change its respective authorized recipients by written notice to the other Party.

4. Term and termination

4.1 The effective date of this Agreement shall be the date first above written or if the terms herein are incorporated into a separate agreement, the effective date shall be the effective date of such separate agreement.

4.2 This Agreement shall expire five (5) years from the final termination date of any relationship between the Parties, unless earlier terminated by any Party without liability at any time, upon thirty (30) days written notice to the other Party.

4.3 The expiration or termination of this Agreement shall not relieve a Receiving Party from complying with the obligations imposed by Section 2, with respect to the use and protection of Proprietary Information received prior to the date of termination or expiration of this Agreement. Such obligations shall continue indefinitely from the date of disclosure of the Proprietary Information.

4.4 Upon the termination of the business relationship related to the Purpose or the program, if applicable, between the Parties for any reason, each Receiving Party shall immediately return all documents and other written, graphical or electromagnetic records or documentation, and any and all other material of any kind, relating to any of the Proprietary Information, and will not retain any copies, extracts or other reproductions of any such materials, in whole or in part. Each Receiving Party shall utilize its best and good faith efforts to return all documents, drawings and writings disclosing Proprietary Information and all copies thereof that were disclosed upon receipt of a written request from the Disclosing Party.

5. Mutual Disclaimer

5.1 It is understood that this Agreement constitutes a Non-Disclosure Agreement only. It shall not be construed as a teaming, joint venture or other such arrangement. Nothing in this Agreement shall grant to any Party the right to make commitments of any kind for or on behalf of any other Party without the prior written consent of the other Party.

5.2 It is expressly agreed between the Parties that the disclosure and provision of Proprietary Information under this Agreement by any Party to any other Party shall not be construed as granting to the Receiving Party any right, either express or implied by license or otherwise on the matters, inventions or discoveries to which such Proprietary Information pertains or any patent, copyright, trademark or trade secret rights to the Proprietary Information itself. This provision shall be controlling over any other provision contained in any other agreement between the Parties, including but not limited to any purchase order, quote, invoice or any other listing of standard terms and conditions of the Parties hereto.

5.3 Without restricting the generality of the foregoing, each Disclosing Party makes no representations or warranties as to merchantability or fitness for a particular purpose of any Proprietary Information disclosed hereunder unless provided for otherwise in any definitive agreement entered into between the parties.

5.4 THE PARTIES ACKNOWLEDGE AND AGREE THAT ALL CONFIDENTIAL INFORMATION IS PROVIDED ON AN "AS IS" BASIS, AND THAT DISCLOSING PARTY HAS NOT MADE ANY EXPRESS OR IMPLIED WARRANTY WHATSOEVER WITH RESPECT TO CONFIDENTIAL INFORMATION INCLUDING WITHOUT LIMITATION, WARRANTIES OF ACCURACY, COMPLETENESS, PERFORMANCE INFRINGEMENT OR MISAPPROPRIATION OF PATENT, COPYRIGHT, TRADE SECRET, PRIVACY, MORAL, PUBLICITY OR OTHER RIGHTS OF OTHERS.

6. Miscellaneous

6.1 This Agreement represents the entire understanding and agreement of the Parties with respect to the Purpose and supersedes and cancels all prior representations, negotiations, commitments, undertakings, communications whether oral or written, acceptances, understandings and agreements between the parties with respect to or in connection with any of the matters or things to which such Agreement applies or refers.

6.2 Nothing in this Agreement may be construed as compelling any Party to disclose any Proprietary Information to the other or enter into any further contractual relationships.

6.3 This Agreement and the rights and obligations hereunder may not be transferred or assigned by any Party without the prior written approval of the other Parties. Notwithstanding the above, the obligations of a Receiving Party contained in this Agreement shall be binding upon any

and all affiliates, subsidiaries, parent companies and any other entity or individual that the Receiving Party discloses the Proprietary Information to.

6.4 The rights and obligations provided by this Agreement shall take precedence over specific legends or statements associated with Proprietary Information when received.

6.5 No amendment or modification to this Agreement shall be binding or effective unless made in writing and signed on behalf of both Parties by their respective duly authorized representatives.

6.6 No failure or delay by a Disclosing Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall a single or partial exercise thereof preclude any other or further exercise of any right, power or privilege hereunder.

6.7 The failure of either Party to insist on strict compliance with any of the terms, covenants or conditions of this Agreement shall not be deemed a waiver of that term, covenant or condition, or a waiver of any other term, covenant or condition, nor shall any waiver or relinquishment of that right or power for all or for any other times.

6.8 Notwithstanding the expiration or termination of this Agreement, each Receiving Party hereby acknowledges that the Proprietary Information comprises trade secrets, and that disclosure of such trade secrets would cause irreparable harm to the Disclosing Party and damages would be uncertain and difficult (if not impossible) to accurately estimate because of the parties' inability to predict future events and other relevant factors. Accordingly, the Receiving Party agrees that:

a) Disclosing Party will have the right to obtain an immediate injunction, or the functional equivalent thereof in the jurisdiction of the Receiving Party, against any breach or threatened breach of this Agreement, as well as the right to pursue any and all other rights and remedies available at law, contract, tort or in equity for such a breach, without the need to provide any security or bond therefor; and

b) the Parties agree that in the event of any material breach of the terms contained herein, the Disclosing Party shall have no obligation to prove a damages amount. The Parties agree that an amount equal to \$5,000,000 plus attorney fees, shall be the minimum amount of damages and upon payment of such amount, the Parties shall be released from further liability to each other hereunder, except for those obligations of ongoing confidentiality as set forth in Section 2 of this Agreement and the return of all Proprietary Information as set forth in Section 4, as well as any liabilities that are expressly stated to survive termination of these terms.

7. Applicable Law and settlement of disputes

7.1 This Agreement shall be governed by, interpreted and enforced in accordance with the laws of the United States of America and the State of New York, regardless of conflict of laws principles, and the Parties hereby unconditionally and irrevocably submit to (and waive any objection on the grounds of inconvenient forum or otherwise) the exclusive jurisdiction of the Supreme Court of the State of New York, County of Monroe or the United States District Court, Western District, of New York, which courts shall have exclusive jurisdiction to adjudicate and determine any suit, action or proceeding regarding or relating to this Agreement. A judgment, order or decision of those courts in respect of any such claim or dispute shall be conclusive and may be recognized and enforced by any courts of any state, country or other jurisdiction.

IN WITNESS WHEREOF, the Parties have duly executed this Agreement intending to be bound by its terms.