

17. POWELL PRODUCT WARRANTY: (a) ninety (90) days from tender of delivery with respect to Parts and (b) the earlier of (i) eighteen (18) months from tender of delivery or (ii) twelve (12) months from installation with respect to Valves, Powell warrants to Purchaser that the Parts and/or Valves, as applicable, of its own manufacture are free of defects in material and workmanship, under normal use and proper operation. If any such Products fail to comply with such warranty, Powell, at Powell's option, shall either: (i) replace such defective Products; (ii) furnish replacement parts for repairing Products (iii) issue written authorization for Purchaser or others to replace or repair, without charge to Purchaser, at costs comparable to Powell's normal manufacturing costs, those parts proven defective; or (iv) refund all monies paid by Purchaser to Powell for such Products and, at the sole discretion of Powell, have the Products returned to Powell at Powell's expense. Finished materials and accessories purchased from other manufacturers are warranted only to the extent of the manufacturer's warranty to Powell (to the extent transferable by Powell to Purchaser). Any alteration in material or design of the Products or component parts thereof by Purchaser or others and/or the undertaking of repairs or replacements by Purchaser or its agents without Powell's written consent shall relieve Powell of all responsibility herewith.

Powell's obligations under this warranty shall be conditioned upon (a) Purchaser's notifying Powell of any defect(s) in writing that references Purchaser's Order number and provides complete identification of any allegedly defective Products within ten (10) days of the discovery of the damage or defect, and (b) Powell's satisfying itself upon inspection that its warranty has been breached. Purchaser may not bring any action under or arising from an Order or these Terms and Conditions unless such action is commenced within one year after the cause of action accrues.

EXCEPT AS SET FORTH IN THIS SECTION 17, POWELL MAKES NO WARRANTY CONCERNING THE PRODUCTS WHATSOEVER; POWELL DISCLAIMS AND EXCLUDES ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF NON-INFRINGEMENT AND THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THE OBLIGATIONS SET FORTH IN THIS SECTION 17 ARE POWELL'S SOLE OBLIGATIONS AND PURCHASER'S EXCLUSIVE REMEDY. POWELL SHALL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, AND PURCHASER HEREBY WAIVES, FOR ITSELF AND ITS SUCCESSORS AND ASSIGNS, (A) ANY AND ALL CLAIMS FOR PUNITIVE DAMAGES AND (B) ALL CLAIMS OF NEGLIGENCE OR STRICT LIABILITY OR BOTH. WITHOUT LIMITATION TO THE FOREGOING, IN NO EVENT SHALL POWELL BE LIABLE FOR THE LOSS OF USE OF THE PRODUCT OR FOR THE LOSS OF USE OF ANY OTHER PRODUCT, PROCESS, EQUIPMENT, OR FACILITIES OF PURCHASER OR OF THE END-USER, WHETHER PARTIALLY OR WHOLLY DUE TO DEFECTS IN MATERIAL AND/OR WORKMANSHIP AND/OR DESIGN OF POWELL'S PRODUCT, AND IN NO EVENT SHALL POWELL BE LIABLE FOR REMOVAL OF APPURTENANCES OR INCIDENTALS SUCH AS CONNECTIONS, PIPE WORK AND SIMILAR ITEMS OF OBSTRUCTION OR FOR ANY COSTS BROUGHT ABOUT BY NECESSITY OF REMOVING THE PRODUCT FROM ITS POINT OF INSTALLATION.

Purchaser (a) recognizes that the limitations contained in this Section 17 are material factors in Powell's sale of the Products at the price(s) specified, and (b) agrees that any accommodation to Purchaser by Powell, whether for sales policy reasons or otherwise, shall not be taken to establish any liability of Powell or any contract term inconsistent with this Agreement.

Purchaser shall neither make nor purport to make (a) any warranty to any person by or on behalf of Powell or (b) any warranty or representation inconsistent with this Section 17.

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