

TERMS OF SALE

Effective Date: February 6, 2022

The following Terms of Sale (these “**Terms**”) shall apply to the purchase and sale of products and/or related services (collectively, “**Products**”) offered by Flushmate LLC and its Affiliates (together Flushmate LLC and its Affiliates shall be referred to herein as, “**Flushmate**”). These Terms, along with the Flushmate order confirmation delivered to you upon submission of your purchase order (the “**Order Confirmation**”), and any other additional guidelines, terms, and agreements provided by Flushmate or executed by both parties that are applicable to such Products (collectively, the “**Other Agreements**”), constitute the entire integrated agreement between the purchaser of such Products (“**Buyer**” or “**you**”) and Flushmate, concerning such Products. By ordering the Products, you represent and warrant that you have read, understood, and accepted these Terms. No change, modification, amendment or other agreement with regard to these Terms shall be binding upon Flushmate unless made in writing and signed by an authorized officer of Flushmate. For purposes herein, the term “**Affiliate**” means Sloan Valve Company, Sloan Global Holdings, LLC and any entity that is controlled by, or is under common control or ownership with, Flushmate, or either of such Sloan entities, where the term “control” means possession, directly or indirectly, of fifty percent (50%) or more of the voting securities in the entity or the power to direct or cause the direction of the management and policies of an entity, whether through ownership of voting securities, by contract interest or otherwise.

- 1. Construction and Order of Precedence.** Except with respect to those provisions in any written agreement signed by both Buyer and Flushmate which govern the purchase of the same Products described in an Order Confirmation (the “**Master Purchase and Sale Agreement**”), and which provisions are expressly to the contrary, these Terms shall apply to, and are incorporated into, all Other Agreements, all oral or written contracts, obligations, understandings, commitments, leases, licenses, purchase orders, bids, arrangements and/or transactions between or among you and Flushmate, existing on the date hereof or hereafter executed and supersede all previous communications, Other Agreements and understandings that are inconsistent with these Terms. All documents other than the Master Purchase and Sale Agreement, including any documents, forms, or other terms or conditions provided heretofore or hereafter by Buyer to Flushmate, which are not signed by an authorized representative of Flushmate, are not part of these Terms and shall have no effect on the parties. These Terms, the Order Confirmation and the Other Agreements between you and Flushmate (together with, if applicable, the Master Purchase and Sale Agreement) contain the entire understanding of Flushmate and Buyer with respect to the subject matter thereof and may not be supplemented or modified by course of dealing, course of performance, any oral communication between the parties, or any response by Buyer, whether oral or written, purporting to modify or supplement the terms of any of the foregoing documents unless such response is in writing and executed or consented to in writing by an authorized representative of Flushmate. Any ambiguity, conflict or inconsistency among the documents for the purchase and sale of any Product shall be resolved according to the following order of precedence: (a) the Order Confirmation; (b) any written agreement pertaining to the purchase and sale of the Products signed by both Buyer and Flushmate or if applicable, the Master Purchase and Sale Agreement; and (c) these Terms.
- 2. Order Confirmation.** Once an Order Confirmation has been issued, you will confirm that the Products listed on the Order Confirmation, as well as the fees, are accurate and complete. IF YOU FAIL TO NOTIFY US OF ANY ALLEGED INACCURACY IN THE ORDER CONFIRMATION WITHIN TEN (10) DAYS OF RECEIPT, YOU WILL BE DEEMED TO HAVE IRREVOCABLY ACKNOWLEDGED THE ACCURACY OF THE ORDER CONFIRMATION. The minimum order value is \$150.00 net. In the event an order is received under the stated minimum order value, a \$25.00 service charge will be applied to the order. All service charges are non-refundable. Any order cancellations shall be subject to Flushmate’s cancellation policy found at: [INSERT HYPERLINK]
- 3. Prices.** You agree to pay Flushmate the purchase price set forth on the Order Confirmation together with all applicable sales taxes, use taxes, excise taxes, export duties and tariffs, and all freight, handling, and shipping charges. All prices, discounts, and promotions quoted by Flushmate are subject to change by Flushmate without notice. Unless expressly stated otherwise, prices for all Products are in US Dollars. Flushmate strives to display accurate price information, however we may, on occasion, make inadvertent typographical errors, inaccuracies or omissions related to pricing and availability. Flushmate reserves the right to correct any errors, inaccuracies, or omissions at any time and to cancel any

orders arising from such occurrences.

4. **Payment.** Terms of payment are within our sole discretion. Unless stated otherwise in your Order Confirmation, payment shall be made within thirty (30) days of the date of invoice. Payments are to be made via “Electronic Funds Transfer” (“EFT”), ePayables (credit card settlement), in which case Buyer shall complete and deliver such applications and authorizations as Flushmate customarily requires for these purposes, or via check to Flushmate, strictly net, without any deduction, offset or discount other than as expressly stated in the relevant Order Confirmation or as otherwise authorized by Flushmate. Payments made via check shall be mailed to the following address:

9134 PAYSPHERE CIRCLE

CHICAGO, ILLINOIS 60674

If reflected in the Order Confirmation, Flushmate shall provide Buyer with an early payment discount in the amount of two percent (2%) of the net invoiced amount (excluding taxes, freight, freight handling or shipping charges) if Buyer pays the full amount of the invoice within thirty (30) days of the invoice date. Payments made after the thirty first (31st) day from the invoice date shall be deemed late and subject to a late fee in the amount of the lesser of one percent (1%) of the unpaid balance per month or the highest amount permitted by applicable law, until the invoice has been paid in full.

5. **Shipment and Delivery.** Unless stated otherwise in the Order Confirmation, all prices are FOB Flushmate facility as such term defined in the Uniform Commercial Code. Products shall be shipped via Flushmate’s designated carrier under the following terms:

(i). For orders of products meeting the following order value thresholds, the shipping terms shall be prepaid freight within the United States (contiguous), to be based on the lowest rate medium of transportation:

- a. All orders of Products which exclude sinks and vitreous china-only orders of \$5,000.00 net and above;
- b. All vitreous china-only orders over \$10,000.00 net; and
- c. All Flushmate sink(s) shipment over \$15,000.00 net.

(ii). For all orders not meeting the minimums set forth in Section 5 (i) above, shipping terms shall be freight prepaid, charged back to Buyer.

(iii). For all international orders, the shipping term shall be ExWorks Flushmate’s facility, as that term is defined in INCOTERMS 2020.

A one-time \$50.00 freight handling fee will be applied to all orders that qualify for prepaid freight.

Notwithstanding the foregoing, if Buyer chooses its own carrier, then delivery shall be ExWorks Flushmate’s facility, as that term is defined in INCOTERMS 2020. Flushmate shall have no obligation or risk of loss of or damage to Products following delivery at the facility, even if Flushmate agrees to arrange for transportation as a courtesy to Buyer. Any such transportation shall be at Buyer’s sole risk and expense.

Additional freight services, such as construction site delivery, lift gate delivery service, re-consigned freight or notification charges, are not included in FOB terms, and will result in additional freight charges. Buyer shall promptly notify Flushmate of any claims for damage in transit or non-delivery and any such claims must be filed against the carrier by Flushmate.

6. **Lead Time.** Any lead times are expressed in business days. Flushmate shall use its commercially reasonable efforts to meet such lead times. Notwithstanding the foregoing, stated lead times are based on normal production levels. Actual lead times may vary due to production schedules, quantities ordered, seasonality and higher than normal production levels. Accordingly, all lead times referenced in the Order Confirmation are subject to change by Flushmate, and failure by Flushmate to meet any delivery date does not constitute a cause for cancellation or a claim for damages of any kind. Buyer agrees and acknowledges that time for delivery shall not be of the essence.

7. **Return and Refund Policy.** For Flushmate’s return and refund policy, please see <https://www.Flushmate.com/resources/product-resources/warranty-information>.

8. **Modification.** Flushmate may, at any time, delete, modify or supplement any of the Products without prior notice. Flushmate reserves the right, for any reason, at its sole discretion, to terminate, change, suspend or discontinue any aspect of the Products.

9. **Intellectual Property.** Certain Products or materials provided therewith may contain or incorporate trademarks, trade names, patents, designs, content, technology, features, functionality, video, audio, images, displays, works of authorship, text, files, photos, designs, and other materials of Flushmate ("**Flushmate Content**"). Flushmate Content and all intellectual property rights thereto are protected by United States and international copyright, trademark, patent, trade secret and other proprietary or intellectual property laws and Flushmate or its licensors is and shall at all times remain the sole and exclusive owner of the Flushmate Content and all intellectual property rights thereto. Flushmate hereby grants you a limited, revocable, nonsublicensable license to reproduce and display the Flushmate Content (excluding any software code) solely for your use of our Products. Except as expressly authorized by Flushmate, you agree not to modify, copy, frame, scrape, rent, lease, loan, sell, distribute or create derivative works based on the Products or the Flushmate Content, in whole or in part. Any rights not expressly granted herein are reserved by Flushmate. The name "**Flushmate**" and all other Flushmate marks, logos, product and service names, designs, and phrases that we use in connection with our Products are trademarks, service marks, or trade dress of Flushmate or licensors. You may not use such marks without the express written prior permission of Flushmate.

10. **Limited Warranty.** For information regarding any limited warranty that may be applicable to the Products, please see: [INSERT HYPERLINK]

11. **Indemnification.** You agree to indemnify and hold harmless Flushmate and their respective officers, directors, employees, managers, agents, successors and assigns from and against any claim or demand (including reasonable attorneys' and experts' fees and costs) made by any party due to or arising out of your (a) breach of these Terms, (b) improper use of the Products, or (c) breach of any law or the rights of a third party.

12. **Compliance with Laws.** Buyer agrees to comply with all laws and regulations applicable to the purchase, transport, use, storage, purchase, resale, lease and/or disposal of the Products, including, without limitation, to the extent applicable, the U.S. Export Administration Act and all regulations thereunder, and Buyer shall cause its employees and agents to comply with such laws and regulations.

13. **Limitation of Liability.** TO THE FULLEST EXTENT PERMITTED BY LAW, IN NO EVENT SHALL FLUSHMATE BE LIABLE FOR ANY SPECIAL, INDIRECT, PUNITIVE, COVER, INCIDENTAL OR CONSEQUENTIAL DAMAGES, HOWEVER CAUSED, WHETHER IN CONTRACT OR TORT OR UNDER ANY OTHER THEORY OF LIABILITY, INCLUDING WITHOUT LIMITATION, LOSS OF REVENUE, ANTICIPATED PROFITS, BUSINESS OR SALES, ANY LOSS OF GOODWILL OR REPUTATION, OR THE COSTS OF SUBSTITUTE GOODS OR PRODUCTS, EVEN IF FLUSHMATE OR AN AUTHORIZED REPRESENTATIVE THEREOF HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NOTWITHSTANDING ANYTHING CONTAINED HEREIN TO THE CONTRARY, IN NO EVENT SHALL THE TOTAL LIABILITY OF FLUSHMATE TO YOU OR ANY THIRD PARTY FOR ALL DAMAGES, LOSSES, AND CAUSES OF ACTION (WHETHER IN CONTRACT OR TORT, INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE, PRODUCT LIABILITY OR OTHERWISE) ARISING FROM THESE TERMS OR YOUR PURCHASE OR USE OF THE PRODUCTS EXCEED, IN THE AGGREGATE, THE THEN-ACTUAL VALUE OF THE PRODUCTS THAT YOU PURCHASED FROM FLUSHMATE AND FULLY PAID FOR, WHICH PRODUCTS GIVE RISE TO THE LIABILITY.

14. **Limitation on Time to File Claims.** TO THE FULLEST EXTENT PERMITTED BY LAW, ANY CAUSE OF ACTION OR CLAIM YOU MAY HAVE ARISING OUT OF OR RELATING TO THESE TERMS OR YOUR USE OF OUR PRODUCTS MUST BE COMMENCED WITHIN SIX (6) MONTHS AFTER THE CAUSE OF ACTION ACCRUES, OTHERWISE, SUCH CAUSE OF ACTION OR CLAIM IS PERMANENTLY BARRED.

15. **Governing Law.** By purchasing any of the Products, you agree that these Terms and your use of the Products shall be governed exclusively by the laws of the State of Illinois without regard to conflict of laws principles, regardless of your location when purchasing the Products. These Terms are construed for all purposes as entered into and performed in Chicago (Cook County), Illinois (USA). These Terms do not give rise to personal jurisdiction over Flushmate, either specific or general, in jurisdictions other than Illinois.

16. **Dispute Resolution.** The parties shall attempt to resolve any disputes and claims that may arise under these Terms and/or any Order Confirmation ("**Disputes**") through good faith business negotiations or facilitative mediation in Chicago, Illinois. Unless

Flushmate requests otherwise (in which event disputes shall be handled in courts located in Cook County, Illinois), all Disputes shall be fully and finally settled by arbitration in accordance with the then effective Commercial Rules of the American Arbitration Association; provided, that the arbitrator shall not have authority to issue injunctions. The arbitration shall be conducted before a single arbitrator, the seat of the arbitration shall be Chicago, Illinois and the proceedings shall be conducted only in the English language. Judgment upon the award may be entered in any court having jurisdiction thereof. Other legal proceedings, if any, shall be initiated and maintained in Cook County, Illinois. The parties expressly submit to the exclusive personal jurisdiction and venue of arbitration and these courts and waive any objection on the grounds of personal jurisdiction, venue, or *forum non conveniens*. Further, you hereby agree that you shall not pursue any claims arising under these Terms or any order placed with Flushmate, on a class or other representative basis and will not seek to coordinate or consolidate any arbitration hereunder with any other proceeding.

17. Attorneys' Fees and Costs. If any litigation or other court action, arbitration, or similar adjudicatory proceeding is commenced by any party against the other party to enforce its rights under these Terms or otherwise in connection with the Products or the purchase thereof, all fees, costs and expenses, including, without limitation, cost of arbitration, reasonable attorneys' fees and court costs, incurred by Flushmate, if it is the prevailing party in such litigation, action, arbitration or proceeding, shall be reimbursed by you; provided, that if Flushmate prevails in part, and loses in part, the court, arbitrator or other adjudicator presiding over such litigation, action, arbitration or proceeding shall award a reimbursement of the fees, costs and expenses incurred by Flushmate on an equitable basis.

18. Severability. If any provision of these Terms is held by an arbitrator or court of competent jurisdiction to be invalid or unenforceable, then such provision shall be enforced to the maximum extent permissible so as to not affect the intent of these Terms, and the remainder of these Terms shall continue in full force and effect.

19. No Waiver. The failure by Flushmate to exercise or enforce any rights or provisions of these Terms shall not constitute a waiver of such right or provision.

20. No Partnership. No partnership, joint venture, franchisor-franchisee, or agency relationship is intended or created by these Terms.

21. Amendment. Flushmate reserves the right to amend these Terms at any time and from time to time, upon providing you with reasonable notice, including by posting the revised terms on its website at the URL [INSERT HYPERLINK] which amended terms and conditions shall be binding upon you.

22. Assignment. You may not assign or transfer these Terms or your obligations hereunder in whole or in part, whether by sale, merger, change in control, by operation of law, or otherwise, without Flushmate's prior written consent. In the event of a permitted transfer, these Terms shall bind and inure to the benefit of the parties, their respective successors and permitted assigns. To the extent any novation is required for Flushmate to assign these Terms, you hereby appoint the officers of Flushmate as your attorney-in-fact to execute all documents necessary to consummate such novation. Flushmate may assign or transfer these Terms or its obligations hereunder in whole or part, whether by operation of law or otherwise, without your consent.

23. UCC and INCOTERMS. The meaning of any trade term referenced in Section 5, and the rights and obligations of parties with respect to shipment and delivery of the Products shall be, as applicable, determined in accordance with the current edition of Incoterms published by the International Chamber of Commerce, or the most recent iteration of the Uniform Commercial Code as ratified and adopted by a majority of states, to the extent such section references the specified terms covered by the UCC or INCOTERMS. In the event of any conflict between these Terms and the UCC or INCOTERMS, as applicable, these Terms shall govern.

24. Force Majeure. Flushmate's delay or failure to perform any duties or obligations will not be considered a breach of these Terms if such delay or failure is attributable to (each a "**Force Majeure Event**"): a labor dispute, market shortage of materials or equipment, fire, earthquake, flood, pandemic or any other event beyond the control of Flushmate, provided that Flushmate uses reasonable efforts, under the circumstances, to resume performance as soon as reasonably practicable. If Flushmate is unable to perform its obligations under any Order Confirmation due to a Force Majeure Event, then it may terminate such order upon notice to Buyer, without liability.

25. **Credit Inquiry.** Buyer hereby authorizes Flushmate from time to time to obtain Business and Consumer Credit Reports on Buyer or any principals of Buyer or to obtain credit and funding information from any other source. Flushmate shall have no obligation to commence or continue performance of its obligations until adequate credit and funding information has been provided, at any time upon the request of Flushmate. Flushmate may reduce any line of credit available to Buyer and/or stop the manufacture or supply of any Products when it, in its sole discretion, determines that Buyer is in breach of these Terms or any other contract with Flushmate, or Flushmate reasonably believes that Buyer may be unable to make timely payments with respect to any ordered Products, until such time as payment has been made and any such payment insecurity has been resolved.

26. **Bankruptcy, Insolvency.** Flushmate shall have the right to terminate any Order Confirmation and cease delivery of any Products immediately if the Buyer becomes insolvent or bankrupt or makes arrangements with its creditors or suffers a receiver to be appointed or enters into liquidation (other than in connection with a reconstruction or amalgamation) in any of which cases Flushmate shall have no further obligation hereunder and the price for all Products delivered and work done shall become immediately due and payable.

UPON SUBMISSION OF YOUR PURCHASE ORDER TO FLUSHMATE AND YOUR RECEIPT OF AN ORDER CONFIRMATION FROM FLUSHMATE, YOU ACKNOWLEDGE RECEIPT AND ACCEPTANCE OF THESE TERMS AND CONDITIONS.