

VALVESOURCE LTD - TERMS & CONDITIONS

1. Definitions

In these Conditions of Sale:

- 1.1 "The Company" means Valvesource Limited
- 1.2 "The Customer" means the person, firm or company purchasing the Goods;
- 1.3 "The Goods" means the goods or materials to be supplied by the Company to the Customer under this Contract.

2. Acceptance of Order

- 2.1 All orders are accepted by the Company subject to these Conditions of Sale. These Conditions of Sale are the only terms or conditions upon which the Company sells or supplies the Goods and they shall form part of and govern every Contract between the Company and the Customer for the supply of Goods.
- 2.2 No terms and conditions referred to or imposed by the Customer and no addition to or variation of these Conditions of Sale shall have effect save to the extent that it was expressly agreed to in writing and signed by a duly authorised representative of the Company. In particular orders submitted on Customers' own purchase order forms will be accepted by the Company only upon condition and with the express understanding that the liabilities of the Company shall be determined solely by these Conditions of Sale and in accepting and consummating any such order the Company shall be deemed not to have in any way changed, enlarged or modified its liabilities or obligations as fixed by these Conditions of Sale.
- 2.3 The Company has a policy of continuous improvements to its products and reserves the right to alter the specifications, types or models of Goods at any time without notice provided such changes shall not effect the validity of the Contract.
- 2.4 Where Goods are sold packed the extent of packing and/or protection will be at the Company's discretion unless the Customer stipulates special packing, in which case such packing will be charged extra.

3. Quotations

- 3.1 Quotations indicate the price at which the Company will be willing to supply Goods if a firm order is placed within 30 days unless otherwise specified in the quotation.
- 3.2 A quotation is not an offer to supply Goods and no Contract shall arise between the Company and the Customer until a firm order by the Customer has been accepted in writing by the Company and the date of such acceptance shall be the Contract date.
- 3.3 Goods are offered subject to availability and to them being unsold.
- 3.4 Quotations cover only the work and/or items specified therein, and all additions, alterations, waiting time and any additional costs due to modified instructions shall be charged to the Customer at ruling prices.

4. Price

- 4.1 The price of the Goods shall be in accordance with the Company's prices for such Goods ruling at the date of delivery or in accordance with the quotation (as varied in accordance with clause 4.2 below) if a firm order is received within the 30 day period referred to in clause 3.1 above.
- 4.2 The price stated in the quotation is subject to variation at the discretion of the Company at any time before delivery, if there is any increase in the cost to the Company of labour, materials or overheads required for the manufacture of Goods or of the purchase or importation of any part of the Goods or if the Company would otherwise suffer loss as a result of currency fluctuations, provided always that the Company shall give the Customer notice of any such variation and the Customer shall have the right to cancel the order within seven days of such notice if the increased price is too high in relation to the price stated in the quotation. Any such variation shall not be made to solely meet increased costs which would not have occurred but for the failure of the Company to proceed with work within reasonable despatch.
- 4.3 Save where otherwise agreed in writing any specified price shall be the price of the Goods ex-works and the Customer shall in addition to the price payable for the Goods pay all duties, charges and taxes on the Goods including for the avoidance of doubt any VAT payable thereon.

5. Payment Terms

- 5.1 Unless otherwise expressly agreed in writing payment for Goods will be due within 30 days after the end of the month of the relevant invoice date.
- 5.2 Notwithstanding the above the Company may at any time require the Customer to make payment in advance of delivery or otherwise provide adequate security for the payment of all amounts payable under the Contract. In default, the Company may amend the terms of delivery or payment and/or cancel any outstanding balance of order.
- 5.3 Where payment is to be made by installments, if the Customer fails to pay any installment on the due date, the Company may treat such failure as a repudiation of the entire Contract and recover the damages for such breach of Contract.
- 5.4 The Company reserves the right, without prejudice to any other rights which it may have, to charge interest at the rate of 4 per cent above the Bank base rate per annum from time to time in force on overdue accounts such interest to run from day to day and to accrue after as well as before any judgment and/or to suspend or terminate the supply of Goods and provision of credit to the Customer, where payment of the Company's invoice is overdue.
- 5.5 Any query to be raised by the Customer on any invoice issued by the Company shall be made within 30 days of the date of the invoice or the parties shall be deemed to have accepted the invoices.
- 5.6 The Customer shall not withhold any payment for any reason nor may any counterclaim of the Customer be set-off against any payment due under the Contract without the written consent of a duly authorised officer of the Company.

6. Delivery

- 6.1 Delivery is ex-works unless otherwise agreed in writing in which case the Company shall use reasonable commercial endeavours to arrange delivery of the Goods in accordance with the Customer's instructions and to deliver and/or, where required, install them within any time estimate given. However time for delivery and installation shall not be of the essence of the Contract and delay shall not entitle the Customer to repudiate. In any event the Company shall not be liable to the Customer for any loss or damage whatsoever suffered or sustained by it as a result of any failure by the Company to adhere to such times or dates or consequent upon any other delay howsoever caused.
- 6.2 The Customer is responsible to reimburse to the Company all costs of delivery, insurance, transportation and storage incurred by the Company. The Company shall be entitled to deliver the Goods by single delivery or installment at its option and, without prejudice to the provisions of clause 6.1, non-delivery of any installment or delay in delivery shall not affect the balance of the Contract nor entitle the Customer to repudiate the same.
- 6.3 The Company shall be entitled to levy additional delivery, insurance, transportation, storage and handling charges in the event of the Customer failing or refusing for any reason to take delivery of the Goods at any time during normal working hours and shall be entitled to determine the Contract if the Customer then fails to take delivery within 14 days of a written request requiring him to do so.
- 6.4 The Customer will be responsible for obtaining any import licences and complying with all regulations governing admission of Goods into the country of destination and for payment of all customs duties, port dues and other charges.

7. Passing of Risk to Customer

The Goods shall be at the Customer's risk:

- 7.1 Where delivery is ex-works from the time when the Goods are loaded onto the collecting vehicle;
- 7.2 In the case of F.O.B. export Contracts from the time the Goods are loaded on board at the port of shipment;
- 7.3 In any other case from the time the Goods are unloaded at the point of delivery.

8. Passing of Property to Customer

- 8.1 The title to Goods supplied under the Contract shall not pass to the Customer until the Company has received payment in full of all sums

invoiced under each and every current Contract between the Company and the Customer together with any interest accrued thereon and other charges. In the meantime the Company shall retain the full legal and beneficial title to the Goods and the Customer shall hold such goods in a fiduciary capacity as the Company's bailee free from any charge, lien or other encumbrance, shall store the Goods separately (in such a way that they can be clearly identified as the Company's property) and shall keep them fully insured with a reputable insurer. During this period, the Company shall be entitled without restriction to lawfully enter upon the premises of the Customer for the purpose of removing the Goods. The Customer shall pay all costs and expenses incurred by the Company in exercising this right. Notwithstanding that title may not have passed to the Customer, the Company may maintain an action for the price of Goods supplied.

- 8.2 Pending the passing of title in the Goods to the Customer the Company shall by concession permit the Customer to sell the Goods or use them. However that permission shall be deemed automatically withdrawn upon the occurrence of any of the events specified in clause 12 and is in any event revocable at any time upon notice to the Customer.

9. Warranties

- 9.1 The Company warrants to the Customer that the Goods correspond with their specification at the time of delivery and will be free from defects in material and workmanship for a period of 12 months from delivery.
- 9.2 The Company shall not be liable under this warranty (or any other warranty, condition or guarantee) if:-
- 9.2.1 the total price for the Goods and Services has not been paid by the due date for payment; or
- 9.2.2 any defect arises from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Company's instructions (whether oral or written) or maintenance requirements, misuse or alteration or repair of the Goods without the Company's prior approval; or
- 9.2.3 the Goods have been improperly installed or connected (unless the Company carried out the installation and connection).
- 9.3 Any claim by the Customer which is based on any defect in the quality or condition of the Goods or their failure to correspond with specification must (whether or not delivery is refused by the Customer) be notified to the Company within thirty days from the date of delivery or, where the defect or failure was not apparent on reasonable inspection, within a reasonable time after discovery of the defect or failure.
- 9.4 In no event shall the Buyer be entitled to reject the Goods on the basis of any defect or failure which is so slight that it would be unreasonable for the Buyer to reject them.
- 9.5 If the Customer does not notify claims in accordance with condition 9.3 then:-
- 9.5.1 the Customer shall not be entitled to reject the Goods; and
- 9.5.2 the Company shall have no liability for such defect or failure; and
- 9.5.3 the Customer shall be bound to pay the full price for the Goods.
- 9.6 In the event the Customer has a valid claim which has been notified to the Company pursuant to condition 9.3, the Company shall be entitled to repair or replace the Goods free of charge or, at the Company's option, refund to the Customer the price of the Goods (or a proportionate part of the price), but the Company shall have no further liability to the Customer.
- 9.7 If the Customer is entitled to reject the Goods because all or part of the Goods are defective, the Customer must reject all of the Goods and cannot keep some of the Goods and reject the remainder.

10. Limitation of liability *THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CONDITION*

- 10.1 Subject to condition 9, the following sets out the entire liability of the Company (including any liability for the acts or omissions of its employees, agents or subcontractors) to the Buyer in respect of any breach of these Conditions of Sale, any representation or statement made or act or omission relating to or done in connection with the Contract and in respect of any contemplated performance or lack of performance including negligence and other tortious liability.
- 10.2 All warranties, conditions or other terms implied by statute, common law, trade usage or otherwise are excluded to the fullest extent permitted by law but this exclusion does not apply to any implied condition that the Company has or will have the right to sell the Goods when the property is to pass.
- 10.3 Nothing in these Conditions of Sale excludes or limits the Company's liability for death or personal injury caused by the Company's negligence or for fraudulent misrepresentation or excludes or limits any other liability to the extent such liability may not be excluded or limited as a matter of law.
- 10.4 Subject to conditions 10.2 and 10.3:-
- 10.4.1 the Company shall not be liable to the Customer for:-
- (a) any loss of profit, loss of production, financial loss, depletion of goodwill; and
- (b) any indirect loss, damage, costs or expenses whatsoever
- 10.4.2 in each case which arise out of or in connection with the Contract or its contemplated performance or lack of performance; and subject to condition 10.4.1, the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise, arising in connection with the performance or contemplated performance or lack of performance of the Contract shall be limited to the contract price.

11. Loss or Damage in Transit

- 11.1 Claims for damage or partial loss of Goods in transit must be made to the carrier immediately on delivery of the Goods and confirmed by facsimile telex or letter to the Company and to the carrier so as to reach both within three days of arrival of the Goods.
- 11.2 Claims for non-delivery of Goods must be made within twenty eight days of the due date of arrival.

12. Force Majeure

Every effort will be made to perform any Contract between the Company and the Customer in accordance with its terms, but due performance is subject to such variation (including suspension or cancellation) as the Company may find necessary as a result of inability to secure labour, materials or supplies or as a result of any Act of God, war, strike, lock-out or other labour dispute, fire, flood, drought, legislation or order of any public authority or other cause (whether of the foregoing class or not) beyond the control of the Company or its suppliers and the Company shall not be liable for any inability to deliver in accordance with the Contract caused by any such contingency.

13. Assignment and Termination

- 13.1 The Customer may not assign the benefit or burden of this Contract or any of its rights herein without the prior written consent of the Company.
- 13.2 This Contract may be terminated by the Company (without prejudice to any other remedy it may have) forthwith by notice in writing to the Customer if:
- a) the Customer is in breach of the terms of these conditions; or
- b) the Customer (being an individual) dies or has a bankruptcy order made in respect of him or if the Customer (being a body corporate) goes or is put into liquidation otherwise than by voluntary liquidation for the purpose only of amalgamation or reconstruction or shall enter into an arrangement or composition with its creditors or if a receiver, administrative receiver or a similar officer is appointed in respect of the Customer's assets or undertaking or any part thereof or the Customer is subject to any similar action in any jurisdiction to which it is subject; or
- c) The Customer has failed to pay any sum due hereunder to the Company for a period in excess of 30 days from the date of invoice.
- 13.3 Upon a lawful determination of the Contract the Company shall be entitled to immediately recover from the Customer (notwithstanding any period of credit extended to the Customer may not have expired) all sums then due to the Company under the Contract (including accrued interest and any other charges properly levied) and all losses arising to the Company as a result of such determination.
- 13.4 The Company may suspend performance of any Contract for the sale of Goods incorporating these terms in the event that the Customer is in breach of any Contract with the Company until such time as any such breach has been remedied to the reasonable satisfaction of the Company.

14. Law

These conditions and all other express terms of the Contract shall be governed and construed in accordance with the laws of England and any dispute shall be settled in the English Courts.

15. Headings

The headings to the clauses of these terms and conditions are inserted for convenience or reference only and shall not affect their interpretation.