

CONDITIONS OF SALE

CONTRACT, TERMS VARIATIONS AND REPRESENTATIONS

1. (a) In these conditions, "the Company" means R.P. VALVES LTD and "the Customer" means the individual, firm, partnership, company or other party with whom the Company contracts. "Supply" includes (but is not limited to) any supply under a contract of sale. "Force majeure" means any cause or circumstances (including, but not limited to, act of God, fire, storm, flood, drought, earthquake, malicious damage, embargo, riot, strike, lock-out, trade dispute, civil disturbance, war, compliance with any law or government order, rule or direction or any other event or accident) beyond the reasonable and direct control of the Company. "International supply contract" means such a contract as is described in section 26(3) of the Unfair Contract Terms Act 1977.
- (b) No order in pursuance of any quotation or otherwise shall be binding on the Company unless and until such order is accepted by the Company. The Company may reject any order in whole or part without giving reasons. A contract between the Company and the Customer is concluded once the Company issues a telephone, electronic or written order confirmation to the Customer. Any contract made between the Company and the Customer shall be subject to these conditions and save as aftermentioned no representative or agent of the Company has authority to agree any terms or make any representations inconsistent with them or to enter into any contract except on the basis of them. Any such term representation or contract will bind the Company only if in writing and signed by a director.
- (c) Unless otherwise agreed in writing by the Company these conditions shall apply to the exclusion of any terms and conditions stipulated or referred to by the Customer in his order or pre-contract negotiations or any inconsistent terms implied by law or trade custom, practice or course of dealing.
- (d) Any general description contained in the Company's catalogues or other advertising material shall not form a representation or be part of the contract.
- (e) Where the Company has not give a written acknowledgement of the Customer's order these conditions will nonetheless apply to the contract provided that the Customer has had prior notice of them.
- (f) The Company may correct any clerical or typographical errors made by its employees at any time.

SPECIFICATION, INSTRUCTIONS AND/OR DESIGN

2. If goods are made to a specification, instruction or design supplied by the Customer or any third party on behalf of the Customer then:-
 - (a) the suitability and accuracy of that specification, instruction and/or design will be the Customer's responsibility;
 - (b) the Customer will indemnify the Company against any infringement or alleged infringement of any third party's intellectual property rights including but not limited to patent, design right, registered design, trademark, tradename or copyright and any loss, damage or expense which it may incur by reason of any such infringement or alleged infringement in any country; and
 - (c) the Customer will indemnify the Company against any loss, damage or expense in respect of any liability arising in any country by reason of the goods being made to such specification, instruction or design.

QUOTATIONS AND PRICES

3. (a) The Company shall be entitled to increase its prices at any time to take account of any increase in the cost to the Company of purchasing any goods or material or manufacturing working on or supplying any goods (including but not limited to any such increase arising from any error or inadequacy in any specification, instructions, or design provided by the Customer, any modification carried out by the Company at the Customer's request or any change in exchange rates) and such increased prices ruling at the date of despatch by the Company shall be substituted for the previous contract price.

- (b) If the price increase is unrelated to any act, omission or instruction of the Customer then the Customer may cancel the contract which will then be regarded as null and void without any further liability on either party.
- (c) All prices quoted are exclusive of VAT and the Customer shall pay any and all taxes duties and other government charges payable in respect of the goods.

DELIVERY

- 4. (a) Unless otherwise agreed in writing by the Company:
 - (i) The Company shall deliver the goods by the means most convenient to the Company to the address or addresses specified by the Customer at the time of placing his order or (in the event that the Customer fails so to specify an address) to any address at which the Customer resides or carries on business.
 - (ii) The Company shall be entitled to add to the contract price a reasonable charge for packaging, delivery and insurance. Off-loading shall be at the Customer's expense.
- (b) If the contract requires the Customer to take delivery of the goods at the Company's premises:
 - (i) For the purposes of this sub-clause "the goods" shall mean the whole or any instalment of the goods and "the collection date" shall mean the date on which the goods are or will be ready for delivery.
 - (ii) The Company shall notify the Customer of the collection date and the Customer shall take delivery of the goods within seven days of the collection date. If the Customer fails to take delivery within 7 days then the Company may make a reasonable storage charge and/or sell the goods to another customer without cancelling the contract.
 - (iii) Loading of the goods shall be at the Customer's expense.
- (c) If the contract is an international supply contract it shall be deemed to incorporate the latest edition of Incoterms current at the date of the contract save that in the event of any inconsistency between Incoterms and any express term of the contract the latter shall prevail. The Company shall be under no obligation to give the Customer the notice specified in section 32(3) of the Sale of Goods Act 1979.
- (d) Should the Company be delayed in or prevented from make delivery of the goods due to Force Majeure. the Company shall be at liberty to terminate the contract or suspend the order placed by the Customer without incurring any liability for any loss or damage arising therefrom, but without prejudice in any such case to rights accrued to the Company in respect of deliveries already made.
- (e) While the Company will endeavour to deliver the goods by any date or within any period agreed upon, such dates and periods are estimates only given in good faith and the Company will not be liable for any failure to deliver by such a date or within such a period. Time for delivery shall not be of the essence of the contract. Moreover, the Company shall be entitled to defer delivery until any monies due from the Customer have been received.
- (f) If the Company fails to deliver within 3 months of the date or period agreed for a reason other than non payment by or other fault of the Customer then the Customer shall be at liberty to terminate the contract and recover any sums paid without any further liability on either party.

RISK IN THE GOODS

- 5. (a) Save in the case of international supply contracts and subject to any agreement in writing by the Company, the risk in goods which the Company agrees to supply shall pass to the Customer on (i) delivery or (ii) the date on which the Customer defaults (which expression shall have the meaning set out in sub-clause 6(a)(iii) hereof) or (iii) the date on which, the goods being ready for delivery, delivery is postponed at the Customer's request whichever shall first occur. Delivery shall be deemed to be completed before offloading or (in the case of delivery at the Company's premises) loading of the goods.
- (b) All other goods shall be at the Customer's sole risk at all times and shall be insured by the Customer. The Company shall not be liable for any loss of or damage sustained by any goods left with the Company howsoever caused and whether or not attributable to negligence on the part of the Company or negligence or wilful default on the part of any employee or agent of the Company.

PAYMENT

6. (a) for the purposes of this clause:
- (i) "the goods" shall mean the whole or any instalment of the goods which the Company has agreed to supply or to which the Company has agreed to carry out work;
 - (ii) "the relevant date" shall mean the date on which
 - (A) the Company despatches the goods;
 - (B) the Customer takes delivery of the goods;
 - (C) the Customer defaults; or
 - (D) the Company completes the services;whichever occurs first; and
 - (iii) the Customer defaults if he fails to provide an address for delivery as required by the contract or (if it is agreed that the Customer shall take delivery at the Company's premises) he fails to take delivery in accordance with such agreement.
- (b) Unless otherwise specified in writing by the Company payment shall be made by the Customer net cash not later than 30 days after the relevant date notwithstanding that property in the goods has not passed to the Customer. Time for payment shall be of the essence of the contract. Without prejudice to any other rights of the Company interest will be payable on all overdue accounts at Barclays Bank plc base rate plus 3% and for the purposes of paragraphs 7 and 10 hereof the full purchase price of the goods shall include all interest payable hereunder.

FAILURE TO PAY, CANCELLATION OR DEFERMENT

7. (a) For the purposes of this clause "an intervening event" shall mean any such event as is described in sub-clause (c) hereof.
- (b) If there shall be an intervening event the Company may, within a reasonable time thereafter, defer or cancel any further deliveries or services, stop any goods in transit and treat the contract of which these conditions form part as determined but without prejudice to its rights to recover the full purchase price for goods delivered and services supplied and costs and damages for any loss suffered in consequence of such determination.
- (c) An intervening event shall be any of the following:
- (i) A failure by the Customer to make any payment when it becomes due.
 - (ii) A breach by the Customer of any of the terms or conditions of the contract.
 - (iii) The Customer's proposal for or entry into any composition or arrangement with the Customer's creditors.
 - (iv) The presentation against the Customer of any Petition for Bankruptcy Order, Administration Order, Winding-Up Order, or any similar process.
 - (v) The appointment of an Administrator, Administrative Receiver or Receiver in respect of the business or any part of the assets of the Customer.
 - (vi) The Company forming the opinion that the Customer has become or is likely in the immediate future to become unable to pay his, her or its debts (adopting, in the case of a company, the definition of that term set out in section 123 of the Insolvency Act 1986).
- (d) Cancellation by the Customer shall only be accepted at the discretion of the Company and in any case on condition that any costs or expenses incurred by the Company up to the date of cancellation and all loss or damage resulting to the Company by reason of such cancellation will be paid by the Customer to the Company forthwith. Acceptance of such cancellation will only be binding on the Company if in writing and signed by a director.
- (e) Any costs incurred by the Company due to cancellation suspension or deferment of any order by the Customer or in the event that the Customer defaults in collecting, or giving instructions for the delivery of, any goods shall be payable by the Customer forthwith on demand.

LIABILITY

8. Subject to clause 9 the Company will be liable for:-

- (a) damage in transit, shortage of delivery or loss of goods, if the the Company is responsible for delivery and Customer shall have given to the Company written notice of such damage, shortage or loss with reasonable particulars thereof within three working days of receipt of the goods or (in the case of total loss) of receipt of the invoice or other notification of despatch.
- (b) any defect in or failure of goods supplied or work done or any error in any weight, dimension, capacity, performance or other description which has formed a representation or is part of a contract if (in the case of defects failures or errors apparent upon inspection) within 28 days and (in the case of defects failures or errors not so apparent) within 18 months of delivery to the Customer or 12 months of the date of installation of the goods by the Customer, whichever occurs first;the Customer shall have given to the Company written notice of such defect failure or error

Provided That in any case the Customer shall allow the Company's employees or agents safe access to inspect the goods within 14 days of request.

LIMITATION OF LIABILITY

- 9. (a) In any of the events or occurrences set out in Clause 8 the Company shall incur no liability unless the goods are unable to perform in accordance with the contract and the Company's liability shall be limited (at the Company's option) to:-
 - (i) making up any shortfall;
 - (ii) replacing or (in its discretion) repairing or paying for the repair or replacement of goods; or
 - (ii) refunding the price of the goods.
- (b) The Company shall have no other or further liability in contract or tort in respect of any direct indirect or consequential loss or damage sustained by the Customer and in particular but without limitation no liability for the Customer's:-
 - (i) loss of turnover;
 - (ii) loss of profits;
 - (iii) loss of business;
 - (iv) loss of goodwill; or
 - (v) any other economic loss.
- (c) Where the Company agrees to repair or replace goods any time specified for delivery under the contract shall be extended for such period as the Company may reasonably require.
- (d) All goods sold by the Company are supplied with the benefit of the terms implied by section 12 of the Sale of Goods Act 1979 (as amended). Subject thereto, and whether or not the contract is a contract of sale, all other conditions, warranties and other terms express or implied, statutory or otherwise, are expressly excluded, save insofar as contained herein or as otherwise expressly agreed by the Company in writing PROVIDED that if and insofar as any legislation or any order made thereunder shall make or have made it unlawful to exclude or purport to exclude from the contract any term or shall have made unenforceable any attempt to exclude any such term, the foregoing provisions of this paragraph will not apply to any such term.
- (e) The Company shall not have any liability to the Customer, if the Company is prevented or delayed from fulfilling any of its obligations under this contract by reason of any Force Majeure.
- (f) Nothing in these conditions shall exclude or restrict any mandatory liability that the Company may have by virtue of section 2(1) of the Unfair Contract Terms Act 1977 or the Consumer Protection Act 1987.
- (g) In the event of any negligence or wilful default on the part its employees or agents in or in connection with the supply of any goods or the design or manufacture thereof or in the carrying out of any work the Company shall have no liability to the Customer save as otherwise provided in these conditions.

RETENTION OF TITLE

10. The following provisions shall apply to all contracts other than international supply contracts and to all goods which under the contract the Company agrees to supply to the Customer. No failure by the Company to enforce strict compliance by the Customer with such provisions shall constitute a waiver thereof and no termination of the contract shall prejudice limit or extinguish the Company's rights under this paragraph.
- (a) Upon delivery of the goods the Customer shall hold the goods solely as bailee for the Company and the goods shall remain the property of the Company until such time as the Customer shall have paid to the company and the Company shall have received cleared funds for the full purchase price of all goods or services supplied whether under this contract or otherwise. Until such time the Company shall be entitled to recover the goods or any part thereof and for the purpose of exercising such rights the Customer hereby grants a licence to the Company its employees and agents with appropriate transport to enter upon the Customer's premises and any other location where the goods are situated and remove the goods.
 - (b) The Customer is hereby granted a licence by the Company to incorporate the goods in any other products.
 - (c) The licence granted under sub-clause (i) hereof shall extend to detaching the goods from any property to which they are attached or into which they have been incorporated or from any other products or goods to which they have been attached pursuant to the licence granted under sub-clause (ii) hereof.
 - (d) The Customer is hereby licenced to agree to sell on the goods and any products incorporating any of them on condition that the Customer shall inform its customer of the provisions of sub-clauses (i)-(iii) hereof. The Customer acts as the Company's bailee in respect of any such sale and shall, immediately upon receipt of the proceeds of sale, and whether or not payment has become due under clause 6 hereof, remit to the Company the full purchase price of the goods sold on less any part thereof which has already been paid and until such amount has been so remitted shall hold such amount as trustee and agent for the Company.
 - (e) The Customer shall maintain all appropriate insurance in respect of the goods from the date or dates on which the risk therein passes to him. In the event of any loss of damage occurring while the goods remain the property of the Company the Customer shall immediately on receipt of the insurance monies, remit to the Company the full purchase price of the goods lost or damaged less any part thereof which has already been paid and until such amount has been so remitted shall hold such amount as trustee and agent for the Company. For the avoidance of doubt the provisions of this sub-clause do not affect the Customer's obligations under clause 6 hereof.
 - (f) The licences granted under sub-clause (ii) and (iii) above shall be terminable forthwith at any time upon notice by the Company to the Customer.

In the case of international supply contracts, property in the goods shall pass to the Customer on delivery.

GENERAL

- 11.
- (a) The place of performance of the contract shall be the Company's premises.
 - (b) The proper law of all contracts with the Company shall be English law which shall govern in all respects the construction and effect of such contracts and of these conditions. The Customer agrees that in the event of any dispute arising out of the contract or the performance thereof he will submit to the jurisdiction of the English Court.
 - (c) The headings to the paragraphs of these conditions are for ease of reference only and shall not affect the interpretation or construction thereof.
 - (d) If any provision of these conditions shall be prohibited by law or adjudged by a court to be unlawful, void or unenforceable such condition shall to the extent required be severed from these conditions and rendered ineffective as far as possible without modifying the remaining conditions and shall not in any way affect any other circumstances of or the validity or enforcement of these conditions .
 - (e) Failure by the Company to enforce strict compliance with these conditions by the Customer will not constitute a waiver of any of the provisions of these conditions.

- (f) Any reference in these conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

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