

## ADANAC VALVE SPECIALTIES LIMITED TERMS AND CONDITIONS OF SALE

These are the terms and conditions upon which Adanac Valve Specialties are prepared to sell the Goods to you the Buyer and the Buyer's attention is in particular drawn to the provisions of condition 11.4.

### 1. INTERPRETATION

1.1 The definitions and rules of interpretation in this condition apply in these conditions.

**Contract:** any contract between us and the Buyer for the sale and purchase of the Goods, incorporating these conditions.

**Goods:** any goods agreed in the Contract to be supplied to the Buyer by us (including any part or parts of them).

### 2. APPLICATION OF TERMS

2.1 Subject to any variation under condition 2.2, the Contract shall be on these terms and conditions to the exclusion of all other terms and conditions. No terms or conditions supplied by the Buyer shall form part of the Contract and the Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of us which is not set out in the Contract.

2.2 Any variation to these conditions and any representations about the Goods shall have no effect unless expressly agreed in writing by us or are contained in our additional terms and conditions of sale included as an addendum to the our quotation and which shall take precedence over these standard terms and conditions in-so-far as there is an inconsistency between the terms contained herein.

### 3. DESCRIPTION

The quantity and description of the Goods shall be as set out in our quotation or acknowledgement of order and all samples, drawings, descriptive matter, specifications and advertising issued by us are for the sole purpose of giving an approximate idea of the Goods. They shall not form part of the Contract and this is not a sale by sample.

### 4. DELIVERY

4.1 Delivery of the Goods shall take place at our place of business. Where we agree an alternative place of delivery the Buyer shall be responsible for unloading the Goods at its own expense.

4.2 Any dates specified by us for delivery are estimates and time for delivery shall not be made of the essence by notice. Any delay shall not entitle the Buyer to terminate or rescind the Contract unless such delay exceeds 180 days.

4.3 If for any reason the Buyer fails to accept delivery of any of the Goods within 7 days of being giving notice that the Goods are ready for delivery or we are unable to deliver the Goods due to the actions or inactions of the Buyer then the Goods shall be deemed to have been delivered and we may store the Goods until delivery at the Buyer's expense.

4.4 If we deliver to the Buyer a quantity of Goods of up to 10% more or less than the quantity ordered, the Buyer shall not be entitled to object to or reject the Goods or any of them by reason of the surplus or shortfall and shall pay for all such goods at the pro rata Contract

rate.

- 4.5 We may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the Contract and shall be a separate Contract. No cancellation or termination of any one Contract relating to an instalment shall entitle the Buyer to repudiate or cancel any other Contract or instalment.

**5. NON-DELIVERY**

- 5.1 The quantity of the Goods as recorded by us on despatch shall be conclusive evidence of the quantity delivered to the Buyer unless the Buyer can provide conclusive evidence proving the contrary.

- 5.2 We shall not be liable for any non-delivery of the Goods (even if caused by our negligence) unless the Buyer gives written notice to us of the non-delivery within 14 days of the date when the Goods would ordinarily have been delivered. Any liability for non-delivery of the Goods shall be limited to replacing the Goods or issuing a credit note at the pro rata Contract rate.

**6. RISK/TITLE**

- 6.1 The Goods are at the risk of the Buyer from the time of delivery but ownership of the Goods shall not pass to the Buyer until we have also received in full (in cash or cleared funds) all sums due in respect of the Goods. We shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed.

- 6.2 Until ownership of the Goods has passed, the Buyer shall at its own cost hold the Goods on a fiduciary basis as our bailee, store the Goods separately from all other goods in such a way that they remain readily identifiable as our property, not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods and shall maintain the Goods in satisfactory condition and keep them fully insured.

- 6.3 The Buyer grants us an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them or, where appropriate to recover them. Should we be unable to determine which are the Goods where the Buyer's right to possession has terminated then the Buyer shall be deemed to have sold all the goods of the kind sold by us in the order in which they were invoiced to the Buyer.

- 6.4 The Buyer's right to possession of the Goods shall terminate immediately should the Buyer (1) fail to observe or perform any of its obligations under the Contract or any other contract between us and the Buyer or (2) the Buyer encumbers or in any way charges any of the Goods or (3) if a receiver, administrative receiver or administrator is appointed in respect of any of the Buyer's assets or (4) in the event that a resolution is passed or order made for it to be wound up or (5) should the Buyer cease to trade or (6) any other event happens which in our reasonable opinion suggests that any of the aforementioned might occur.

**7. WORKS TEST, INSPECTION, CERTIFICATION AND DRAWINGS**

- 7.1 One copy of the relevant certificates such as Conformity Certificates and Test Certificates will be supplied free of charge. However, Foundry or Mill Certificates by independent authorities and other certificates may be supplied upon request and may be charged as an additional cost.

7.2 Arrangements can be made for authorised inspectors and/or the Buyer to witness normal tests on finished goods. If the Buyer requires to be present during a test then we shall provide written notification as to when the goods will be ready for testing and provide test dates. Should the Buyer fail to notify us of the preferred test date and/or attend the test then we reserve the right to proceed with the tests and the Buyer will be deemed to have been present at that test.

**8. PRICE**

Unless otherwise agreed by us in writing, the price for the Goods shall be the price set out in our price list or quotation as published on the date of our order acknowledgment and shall be inclusive of all costs or charges in relation to our standard non-returnable packaging but exclusive of any value added tax as well as loading, unloading, non-standard packaging, carriage and insurance. Quotations are subject to alteration at any time by us without notice.

**9. PAYMENT**

9.1 Payment is due in pounds sterling before despatch of the Goods unless otherwise agreed in writing and all payments payable to us under the Contract shall become due immediately on its termination despite any other provision.

9.2 Time for payment shall be of the essence and no payment shall be deemed to have been received until we has received cleared funds.

9.3 The Buyer shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise except pursuant to a court order.

9.4 If the Buyer fails to pay us any sum due pursuant to the Contract, the Buyer shall be liable to pay interest to us from the due date for payment at the annual rate of 2% above the base rate of The National Westminster Bank Plc, accruing on a daily basis until payment is made. We reserve the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.

**10. QUALITY**

10.1 We warrant that (subject to the other provisions of these conditions) on delivery, and for a period of 12 months from the date of despatch, the Goods shall be of satisfactory quality within the meaning of the Sale of Goods Act 1979, shall be reasonably fit for the purpose for which we have recommended and be reasonably fit for any particular purpose for which the Goods are being bought, the latter only being the case where we have confirmed in writing that it is reasonable for the Buyer to rely on our skill and judgement.

10.2 We shall not be liable for a breach of any of the warranties in condition 10.1 unless the Buyer gives written notice of the defect to us within 14 days of the time when the Buyer discovers or ought to have discovered the defect and returns such Goods to us at its own cost and risk.

10.3 We shall not be liable for a breach of the warranty in condition 10.1 if the Buyer (1) makes any further use of such Goods after giving such notice or (2) the defect arises because the Buyer failed to follow any of the our instructions in respect of the Goods or (if there are none) good trade practice or (3) the Buyer alters or repairs such Goods without our written consent.

- 10.4 If any of the Goods do not conform with any of the warranties in condition 10.1 we may at our option repair or replace such Goods or refund the price of such Goods at the pro rata Contract rate. Any Goods replaced shall belong to us and any repaired or replacement Goods shall be guaranteed on the terms of condition 10 for the unexpired term of the warranty but otherwise we shall have no further liability whatsoever for the breach of the warranties.

**11. LIMITATION OF LIABILITY**

- 11.1 Subject to condition 5 and condition 10, the following provisions set out our entire financial liability (including any liability for the acts or omissions of our employees, agents and sub-contractors) to the Buyer in respect of any breach of the Contract, any use made or resale by the Buyer of any of the Goods, (or of any product incorporating any of the Goods) and any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.
- 11.2 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.
- 11.3 Nothing in these conditions excludes or limits our liability for (1) death or personal injury caused by our negligence (2) under section 2(3) Consumer Protection Act 1987 (3) for any matter which it would be illegal for us to exclude or attempt to exclude our liability (4) for fraud or fraudulent misrepresentation.
- 11.4 Subject to condition 11.3, our total liability in respect of the Contract shall be limited to the Contract price and we shall not be liable for any loss of profit, loss of business, or depletion of goodwill or other consequential losses howsoever arising including as a result of our negligence.

**12. FORCE MAJEURE**

We reserve the right to defer the date of delivery or to cancel the Contract or reduce the volume of the Goods ordered (without liability to the Buyer) if we are prevented from or delayed in the carrying on of our business due to circumstances beyond our reasonable control including, without limitation, any form of labour disputes provided that, if the event in question continues for a continuous period in excess of 14 days, the Buyer shall be entitled to give us notice in writing to terminate the Contract.

**13. GENERAL**

- 13.1 Each of our rights and remedies under the Contract is without prejudice to any other right or remedy we may have. Any failure or delay by us in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of our rights under the Contract nor shall any waiver by us of any breach of, or any default under, any provision of the Contract by the Buyer be deemed to be a waiver of any subsequent breach or default.
- 13.2 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly invalid or unenforceable for whatever reason it shall to the extent of the invalidity or unenforceability be deemed severable and the remaining provisions of the Contract shall continue in full force and effect.
- 13.3 The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Contract.

- 13.4 The Buyer shall not assign the Contract without our prior written consent.
- 13.5 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.