

# **AVA Alms Valve Agency Ltd**

## **General Terms of Sale and Supply**

All deliveries and services shall be subject strictly to the present General Terms and Conditions of Sale and Supply. Terms and conditions of differing content of the Ordering Party shall not commit us in any manner, even where we do not expressly reject them. Terms and conditions of differing content shall only be deemed to constitute an integral part of the Contract where they have been expressly recognised by us in writing.

### **I** **Conclusion and content of Contract**

Our quotations are without obligation. The Contract and our obligation to supply shall take effect only when we have submitted our written confirmation of order.

Each confirmation of order shall be subject strictly to our being supplied ourselves.

The Ordering Party shall be bound by its quotation. It may be rescinded where we have not accepted it within a period of four weeks by way of confirmation of order.

Measurements and weights in quotations, confirmations of order, catalogues, brochures and suchlike shall, at all times, be held to constitute approximations only.

Any valves/goods that have been specifically manufactured/sourced to order are not subject to a credit note or reimbursement should they be cancelled

Valves/goods ordered and modified are not subject to a credit note or reimbursement should they be cancelled after machining has been completed.

The Ordering Party assumes responsibility for incurred shipping charges should the order be cancelled upon completion.

### **II** **Prices, payments**

Our prices are to be understood, at all times, ex-works (EXW) Harrogate, UK, unless otherwise stated. They shall be deemed applicable only for the quotation in question. Packaging, freight and any customs and excise duties and insurance premiums shall be charged for separately.

Where carriage-paid delivery has been agreed by way of exception, we shall be entitled to charge to the Ordering Party any such increases in freight as may occur following confirmation of order.

The costs attaching to the issuance of certificates of acceptance and items of confirmation of material-content shall be charged for separately.

All prices shall be deemed to have been quoted in the currency of the United Kingdom, unless otherwise stated. Payments shall likewise be effected strictly in this currency.

Our invoices fall due and shall be payable within a period of 30 days as of date of invoice and without deduction. Where the period allowed for payment is found to have been exceeded, we shall be entitled, as of the first day of exceeding the limit and without the requirement that a reminder be issued, to charge interest on arrears of amount equivalent to 8% above the Bank of England Base Rate. We shall further reserve the right to furnish evidence of our having incurred loss of interest receipts of higher amount. The Ordering Party shall likewise be deemed to have the right to furnish evidence that, in individual cases, we did not incur loss of interest receipts or such as was of lesser amount.

Where early-payment discounts have been agreed, they shall be held to apply to the net value of the goods, i.e. less Value Added Tax (MwSt), freight, packaging, etc.

Where bills of exchange or other replacement forms of payment have been accepted by way of exception, this shall not be construed as allowance of additional time for payment. Discount charges, interest and any other such nature of expense as may be associated with the discharge of replacement forms of payment shall, without exception, be for the account of the Ordering Party.

Offset against amounts payable to us shall be admissible only where the counterclaims to be applied are undisputed or conclusive and non-appealable under law.

### **III** **Price-variance clause**

In the event, following conclusion of Contract, of price increases in conjunction with the goods ordered by us or of a general increase in wages and salaries, we shall be entitled to increase the prices agreed accordingly.

### **IV** **Credit clause**

Where the Ordering Party is found to be in arrears in respective of settlement of an invoice, all unsettled invoices shall become due for settlement immediately. This shall also apply where we have accepted cheques or bills of exchange by way of provisional performance.

Furthermore, in such event, we shall also be due those entitlements provided for under Sale of Goods Act 1979, which, for the rest, shall likewise be deemed applicable.

### **V** **Delivery periods, deadlines**

Delivery periods and deadlines shall, at all times, be held to be non-binding.

Where we are found to be in default in respect of a binding delivery period or a binding delivery deadline, or where a non-binding delivery period or a non-binding delivery deadline is exceeded by a period in excess of one month, the Ordering Party shall be at liberty to stipulate an extension to the original term agreed coupled with the warning that, should such period of extension be allowed to lapse, acceptance of our services will be refused.

Following expiration of such period of extension, the Ordering Party shall be at liberty to withdraw from the Contract, however, no further entitlements shall be entertained, in particular such as may pertain to claims for compensation.

Delivery periods shall be deemed not to have commenced or to have been interrupted until such time as all of the details pertaining to a given order have been clarified or the requisite permits and items of clearance have been secured.

Force majeure, and all such circumstances for which we cannot be held accountable (in particular, strikes, operational disruptions at our premises or at those of our suppliers) shall serve to extend the delivery period agreed by the duration of their continuing to prevail. Should we be prevented on a permanent basis by such development from rendering the service in question, we shall be entitled to withdraw from the Contract to the exclusion of all such entitlements as the Ordering Party may seek to assert - with the exception of entitlements accruing in respect of repayment of any such deposit-payments as may have been effected.

### **VI** **Despatch, packaging**

Despatch shall, at all times, be at the risk of the Ordering Party.

Packaging material shall be charged for at prime cost.

### **VII** **Acceptance**

The Ordering Party shall be obliged to taken possession of the goods immediately subsequent to notification of readiness for despatch. Should said Party fail to do so, irrespective of the reason(s) for such failure, risk and the costs incurred through storage shall pass to the Ordering Party.

In the event of purchase on a deliverable-on-call basis, the Ordering Party shall be obliged to request delivery of the goods no later than three months subsequent to conclusion of Contract. The Ordering Party shall be obliged to accept part-deliveries.

Should the Ordering Party request that an order is to be supplied in accordance with an agreed Inspection (ITP) but fails to attend, delays or does not respond to an invitation, we will invoice the Ordering Party in full for the items affected.

Should the Ordering Party be found to be in default in respect of either request(s) for delivery of payment, we shall be at liberty at our own discretion, in addition to the entitlements provided for under Sub-section IV and having stipulated a reasonable extension to the periods previously agreed coupled with a warning in respect of refusal, to withdraw from the Contract or to assert a claim for compensation for non-fulfilment. In the latter case, we shall be at liberty, without being required to furnish the pertinent evidence, to demand compensation in amount equivalent to 25% of the purchase price. We shall further reserve the right to furnish evidence of our having incurred a loss of higher amount just as the Ordering Party shall likewise be deemed to have the right to furnish evidence that, in individual cases, we did not incur a loss or that any loss was of lesser amount.

Where a Contract is implemented through to its intended conclusion despite delay, we shall reserve the right to assert a claim for compensation for such delay.

### **VIII** **Warranty**

The period of warranty shall be governed by the statutory provisions of the Sale of Goods Act 1979

We are to be notified in writing of readily detectable defects within 14 days of receipt of the goods in order to avoid the exclusion of all entitlements. Obligation on the part of the Ordering Party to satisfy all other requirements pertaining to examination and submission of notice of defects as provided for as standard under prevailing law shall remain thereby unaffected.

Where implementation of warranty is found to apply, we shall only be obliged, at our own discretion, to effect repair or renewed delivery. Dismantling and re-installation shall be the responsibility and for the account of the Ordering Party.

Claims for compensation on grounds of defective supply or rendering of service, in particular, such as are derived from consequential damage originating from the installation of defective items, shall, under no circumstances, be entertained.

In so far, however, as entitlement to compensation could be found to prevail, liability for our part shall be restricted to one-and-a-half times the value of the invoice attaching to our delivery or service.

All entitlement to warranty and compensation shall be deemed to have lapsed where the Ordering Party is found to have engaged without proper authority in attempts to carry out repair or to have had such repair carried out by others.

Differences between the goods supplied and those proposed under the Contract shall not serve to constitute defect where such difference is found to be attributable to technical further development.

### **IX** **Retention of title**

All goods supplied shall remain our property (reserved goods) until all amounts receivable under the business relationship have been paid in full.

For as long as retention of title shall prevail, the Ordering Party shall be obliged to insure the goods supplied against the risk of fire, theft and water damage and to furnish evidence of the existence of the pertinent insurance policy upon being requested to do so.

The Ordering Party shall only be at liberty to dispose of by way of sale, process or combine the reserved goods through normal business channels. In the event of disposal by way of sale, the Ordering Party shall undertake - doing so herewith - to assign to us all entitlements accruing therefrom, said assignment being deemed to be of value equivalent to the amount receivable by us. We shall be entitled, and the Ordering Party shall, upon being requested to do so, be obliged to effect notification of such assignment.

In the case of processing, combining or mixing the reserved goods with other goods, our co-ownership of the item thereby created shall be equivalent to the ratio prevailing between the value of the reserved goods and that of the other goods employed in the process.

In so far as the Law stipulates that the acquisition of fractional co-ownership is not possible, we shall be entitled in the event of default to dismantle all of the plant parts supplied by us and to re-possess same. Consensus has been established to the effect that title thereby passes back to us.

In the event of default in payment, we shall be entitled to take possession by way of security of reserved goods of value equivalent to the amount of arrears.

Where reserved goods are confiscated or third parties assert a claim to said goods, the Ordering Party shall undertake to notify us of same without delay and to draw attention to our entitlements.

The costs incurred of necessity through repulsion of such measures shall be borne by the Ordering Party.

### **X** **Copyright, protective rights**

Drawings, technical descriptions, operating instructions, quotations of cost and any other documentation are acknowledged by the Ordering Party as constituting our industrial secret, and they shall remain our property. They may not be copied, duplicated or be made available to third parties in any form without our written consent having been requested and secured in advance; the same shall apply in respect of their becoming the subject matter of enquiries directed at third parties. It shall be acknowledged herewith that it is inadmissible to copy products on the basis of our design-related or any other documentation.

Responsibility for breach of the protective rights of third parties shall be borne by the party that proposes the technical design in question or that makes available the pertinent descriptions, drawings and any other documentation.

### **XI** **Concluding provisions**

Amendments and additions to a given Contract as well as assurances of whichever nature and content shall be held by us to be of binding character only where they have been confirmed by us in written form.

The jurisdictional venue shall be United Kingdom, however, we shall also be at liberty, at our own discretion, to pursue legal action against the Ordering Party through the Court(s) having general jurisdictional authority over said Party. The agreement pertaining to the issues of jurisdictional venue shall also be deemed applicable in respect of legal actions relating to bills of exchange and cheques.

All Contracts, both from the point of view of their becoming effective under law and their interpretation, as well as the present General Terms of Sale and Supply shall be governed by the Law of the United Kingdom.

Should any one of the foregoing provisions be or become ineffective, either in its entirety or in part, the validity of the remaining provisions shall not be thereby affected. An ineffective provision shall be replaced by way of supplemental construction of the terms of the Contract by such provision as shall be held to most approximate to the proposed economic purpose. Where necessary, pertinent statutory provisions shall be made to apply.