

CONDITIONS OF SALE



1. INTERPRETATION

In these Conditions:

- 1.1 "Company" means any of the companies in the A C Valve Alliance Group;
"Customer" means the person, firm or company with whom the Contract is made;
"Contract" means the contract between the Company and the Customer for the sale of Goods or supply of Services into which these Conditions are incorporated;
"Quotation" means the written, oral or online quotation given by the Company to the Customer;
"Order" means the written, oral or online order placed by the Customer;
"Acknowledgement of Order" means the written acknowledgement given by the Company to the Customer whether before or after delivery of the Goods;
"Goods" means the goods and/or Services described in the Quotation or subsequently supplied to the Customer by the Company;
"Services" means any services provided by the Company whether with or without the Goods;
- 1.2 Words and phrases defined for the purposes of or in connection with any statutory provision shall where the context so requires be construed as having the same meaning in these Conditions. 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.

2. FORMATION OF CONTRACT

- 2.1 All Quotations and Acknowledgements of Order given by the Company shall be deemed to include these Conditions except insofar as they are inconsistent with any special terms or conditions contained in the Quotation or the Acknowledgement of Order (as the case may be).
- 2.2 The Quotation shall remain valid for 30 days and does not form an offer capable of acceptance by the Customer but merely an invitation to the Customer to make an offer in accordance with its terms. The Contract shall not come into effect until the Company has despatched the Acknowledgement of Order to the Customer.
- 2.3 Any terms or conditions contained in the Order which are inconsistent with these Conditions shall not form part of the Contract unless accepted by the Company in writing in the Acknowledgement of Order.
- 2.4 Cancellation of the Contract by the Customer will be a breach of contract entitling the Company to compensation and the Customer shall indemnify the Company in full against all losses (including loss of profit) costs (including the cost of all labour and materials used) damages charges and expenses paid incurred or sustained by the Company as a result of the cancellation.
- 2.5 Insofar as these Conditions are in any circumstances regarded as or held to constitute the terms of a counter offer, the Customer shall be taken to have accepted such counter offer by accepting physical delivery of any of the Goods or completion of the Services from the Company.
- 2.6 No variation to these Conditions shall be effective unless made in writing and signed by an authorised officer of the Company.
- 2.7 The employees of the Company are not authorised to make oral representations as to the description quality or fitness for any particular purpose of any Goods or as to the skill and care which will be used by the Company in the provision of Services. If a representation is made or an opinion expressed orally which materially affects the Customer's decision to place an order for the Goods or Services the Customer must ensure that such details are confirmed in writing by a duly authorised officer of the Company so as to form part of the Contract otherwise no liability can be accepted by the Company.
- 2.8 All specifications drawings and technical descriptions contained in correspondence submitted with or in connection with any Quotation or Acknowledgement of Order are the Company's copyright, approximate only and not guaranteed unless a specific written undertaking is included in the Quotation or Acknowledgement of Order. All such copyright material and all information and "know-how" whenever supplied shall at all times be treated by the Customer as confidential and shall not without the written consent of the Company be used by the Customer except for the purpose of the Contract and the operation of the Goods or provision of Services supplied thereunder nor shall they without the written consent of the Company be communicated to third parties save insofar as may be necessary for the purposes stated above.
- 2.9 The Company reserves the right to make any changes in the specification or component parts of the Goods which are required to conform with any applicable safety or other statutory requirements, or which do not materially affect their quality or performance.

3. DESIGNS DRAWINGS AND SPECIFICATIONS

- 3.1 Where the Company prepares designs drawings or specifications in accordance with the Customer's requirements it shall be the Customer's responsibility to ensure that the Goods will function correctly if they are supplied in accordance with such designs drawings or specifications.
- 3.2 Where Goods are manufactured assembled or sold:
- 3.2.1 to designs drawings or specifications submitted by the Customer; or
 - 3.2.2 to designs drawings or specifications prepared by the Company which shall have been approved by the Customer; or
 - 3.2.3 with the use of Goods supplied by the Customer
- then and in any such case the Customer shall indemnify the Company against any liability arising directly or indirectly from any inadequacy of design or function or any inadequacy or defect of the Goods supplied by the Customer including (without prejudice to the generality of the foregoing) any liability costs and expenses arising from any claim for negligence against the Company or for the breach by the Company of any condition warranty or undertaking contained in the Contract or any other contract between the Company and the Customer or implied by law or the breach by the Company of any statutory duty.
- 3.3 Where the Customer requires any alteration to be made to a design drawing or specification, the Customer shall pay for any additional work necessary.
- 3.4 Where the Goods are to be manufactured or supplied to design drawings or specifications to be supplied by the Customer these shall be supplied in reasonable time to enable the Company to complete delivery within the period indicated.

4. PRICES

- 4.1 All prices quoted are the price of the Goods and/or Services (excluding VAT) ExW Coalville (Incoterms 2020) unless otherwise agreed in writing.
- 4.2 The quoted price is based upon costs of component parts, raw materials, labour and other factors current at the date of the Quotation. The Company shall be entitled to increase the quoted price in the event of any changes in such costs at any time prior to the date of delivery of any particular part of the Goods and the Customer shall pay such increases in addition to the quoted price as if the same formed part of the said quoted price.
- 4.3 Unless otherwise agreed in writing the Customer shall be responsible for paying the following items where applicable, packaging, transportation and freightage, export and import duties, warehousing, insurance in transit and delivery. The Company, if requested, will supply to the Customer at any time a quotation for the cost of these items. The Company reserves the right to increase the price if the actual cost to the Company of any of these items is for any reason more than the figure quoted.
- 4.4 The Company shall have the right to vary prices quoted should the Customer request any changes to the Order or Quotation or if the Customer is responsible for any delay in providing adequate information or instructions to the Company or due to currency fluctuations.
- 4.5 Unless otherwise stated in the Quotation or Acknowledgement of Order all prices are quoted and payable in pounds sterling and the price for each delivery shall be paid in full and received by the Company within thirty days of the date of the Company's invoice.
- 4.6 Without prejudice to its rights to claim damages the Company shall be entitled (without any prior notification) to charge interest (on a day to day basis) at the rate per annum of eight per cent above Barclays Bank plc Base Lending Rate for the time being in force on any sums which remain unpaid after the same shall become due.
- 4.7 The Customer shall not be entitled to withhold payment of any amount payable under the Contract because of any disputed claim of the Customer in respect of faulty Goods or Services or any other alleged breach of contract nor shall the Customer be entitled to set off against any amount payable under the Contract to the Company any monies which are not then presently payable by the Company or for which the Company disputes liability.

5. TERMINATION AND SUSPENSION OF THE CONTRACT

- 5.1 This Condition applies if:
- 5.1.1 the Customer is in breach of any of its obligations under the Contract or any other contract between the Customer and the Company (including late or non-payment of any invoice as per sub-clause 4.5); or
 - 5.1.2 unforeseen events including (without prejudice to the generality thereof) those referred to in clause 13 materially affect the commercial effect of the Contract; or
 - 5.1.3 the Customer becomes bankrupt enters into a voluntary arrangement goes into liquidation has a receiver, administrative receiver, administrator or similar official appointed over any of its property or assets or is otherwise insolvent; or
 - 5.1.4 the Customer ceases or threatens to cease to carry on business; or
 - 5.1.5 the Customer is unable to pay its debts as they fall due; or
 - 5.1.6 the Company reasonably apprehends that any of the events mentioned in sub-clauses 5.1.3 - 5.1.5 is about to occur in relation to the Customer and immediately notifies the Customer accordingly.
- 5.2 If this Condition applies then without prejudice to any other right or remedy available to the Company, the Company shall be entitled to terminate the Contract or any other contract between the Customer and the Company or suspend any further deliveries under the Contract or any other contract between the Customer and the Company without any liability to the Company and if the Goods have been delivered but not paid for the price shall become immediately due and payable and the Company will be entitled to invoke the provisions of sub-clause 6.4 notwithstanding any previous agreement or arrangement to the contrary.
- 5.3 In the event that the Goods are altered or modified in any way by:
- 5.3.1 the Company at the request of the Customer; or
 - 5.3.2 the Customer or a third party and the Contract is subsequently terminated
- then the Customer shall pay the full price of the Goods and the full cost incurred by the Company for altering or modifying the Goods.

6. TITLE

- 6.1 Notwithstanding delivery and the passing of risk in the Goods or any other provision of these Conditions the Company shall retain full legal and beneficial ownership of the Goods until receipt of payment in full of all sums due to the Company on any invoice addressed to the Customer.
- 6.2 Until such time as the property in the Goods passes to the Customer, the Customer shall hold the Goods as the Company's fiduciary agent and bailee and shall keep the Goods separate from those of the Customer and third parties and properly stored protected and insured and identified as the Company's property. Until that time the Customer shall be entitled to use or (subject to the provisions sub-clause 6.3) sell the Goods in the ordinary course of its business but shall account to the Company for the proceeds of sale or otherwise of the Goods whether tangible or intangible including insurance proceeds and shall keep all such proceeds separate from any monies or property of the Customer and third parties and in the case of tangible proceeds properly stored protected insured and identified as the Company's property. The Customer shall allow a representative of the Company to enter any premises of the Customer to ensure compliance with the provisions hereof.
- 6.3 Until the Company has received in cash or cleared funds payment in full of the price of the Goods the Customer shall not be entitled to dispose of any property in the Goods (by sale or otherwise) to the holding company of the Customer or to any subsidiary of the Customer or of any such holding company.
- 6.4 Until such time as the property in the Goods passes to the Customer (and provided the Goods are still in existence and have not been resold in the manner provided by sub-clause 6.2) the Company shall be entitled at any time to require the Customer to deliver up the Goods to the Company and if the Customer fails to do so forthwith to enter upon any premises of the Customer or any third party where the Goods are stored and repossess the Goods.

7. DELIVERY

- 7.1 Delivery of the Goods shall be made by the Customer collecting the Goods at the Company's premises at any time after the Company has notified the Customer that the Goods are ready for collection or, subject to sub-clause 7.2, if some other place for delivery is agreed by the Company, by the Company delivering the Goods to that place.
- 7.2 In respect of delivery of Goods overseas they shall be delivered ExW Coalville (Incoterms 2020) unless otherwise agreed in writing by the Company.
- 7.3 Any dates quoted for delivery of the Goods or provision of the Services are approximate and are given for information only and under no circumstances shall time be of the essence. A delay in delivery including delivering later than the date or dates provided in the Contract shall not constitute a breach of contract and shall not entitle the Customer to avoid the Contract or to any other remedy unless the Company has guaranteed the date of delivery in a written warranty which expressly modifies the provisions of this Condition.
- 7.4 In any case where the Company has agreed in writing to both a guaranteed delivery date and an agreed daily or weekly sum by way of pre-estimated damages for failure to deliver in accordance with the Contract the Company's liability shall be limited to the agreed daily or weekly sum. This shall be the Customer's sole remedy in respect of any delay in delivery by the Company.

- 7.5 Where the Goods are to be delivered in instalments each delivery shall constitute a separate contract and failure by the Company to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Customer in respect of any one or more instalments shall not entitle the Customer to treat the Contract as a whole as repudiated.
- 7.6 If the Customer fails to take delivery of the Goods or fails to give the Company adequate delivery instructions at the time stated for delivery then without prejudice to any other right or remedy available to the Company, the Company may:
- 7.6.1 store the Goods until actual delivery and charge the Customer for the reasonable costs (including insurance) of storage; or
 - 7.6.2 sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) charge the Customer for any shortfall below the price under the Contract.
- 7.7 Subject to the provisions of sub-clause 7.6 the Company shall have a general lien on all goods and property belonging to the Customer and such lien shall be exercisable in respect of all sums which in the reasonable opinion of the Company are lawfully due from the Customer to the Company. The Company shall be entitled on the expiration of fourteen days' notice to dispose of such goods or property in such manner and at such price as it thinks fit and to apply the proceeds towards such debt.
- 8. RISK**
- 8.1 Risk of damage to or loss of the Goods shall pass to the Customer:
- 8.1.1 in the case of Goods to be delivered at the Company's premises, at the time when the Customer collects the Goods from the Company's premises or if the Customer fails to collect the Goods on the agreed collection date at the close of business on that date; or
 - 8.1.2 in the case of Goods to be delivered otherwise than at the Company's premises at the time of delivery, or if the Customer wrongfully fails to take delivery of the Goods at the time when the Company has tendered delivery of the Goods.
- 8.2 Where the Contract provides for delivery of the Goods elsewhere than at the Company's premises the Company will consider a claim by the Customer in respect of loss or damage in transit only if the Customer:
- 8.2.1 gives written notice to the Company within twenty-one days after the date of the Company's advice note or other notification of the despatch of the Goods in the case of non-delivery, or within three working days of the date of delivery of the Goods in any other case; and
 - 8.2.2 where the Goods are transported by an independent freight carrier complies in all respects with the freight carrier's conditions of carriage for notifying claims for loss or damage in transit.
- 9. WARRANTY**
- 9.1 Subject to the provisions set out in this clause 9 if (in the case of Goods sold by the Company to the Customer) within the period of 12 months from the date of despatch, the Goods or any part thereof are found to be defective as a result of faulty design manufacture or workmanship or (save for discrepancy in weight or quantity) otherwise not in accordance with the Contract the Customer shall make the Goods available for inspection at a time and place to be arranged by the Company and if the Company reasonably accepts that there is a defect then the Company undertakes at its option to:
- 9.1.1 in exchange for the return of the Goods repay or allow the Customer the invoice price thereof (including freight where appropriate) and any reasonable transport costs incurred by the Customer in carrying the relevant Goods from the place of original delivery of such Goods to the Company's premises from which they were despatched or to such other place as the Company may nominate; or
 - 9.1.2 make good the defect at the Company's expense as soon as may be reasonably practicable; or
 - 9.1.3 in exchange for the return of the Goods replace the Goods by delivering replacement goods to the original place of delivery as soon as may be reasonably practicable.
- 9.2 The warranty set out in sub-clause 9.1 and all other terms and conditions of the Contract are subject to and the Company shall (subject to the provisions of sub-clause 10.3) be under no liability:
- 9.2.1 in respect of any defect in the Goods arising from any drawing design or specification supplied or approved by or on behalf of the Customer or where full and correct working conditions are not specified;
 - 9.2.2 in respect of any defect in the Goods arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Company's instructions or manufacturer's instructions (whether oral or in writing), incorrect storage or operation misuse or alteration or modification or repair of the Goods or additional tests are carried out by the Customer or a third party on its behalf without the Company's approval;
 - 9.2.3 and the Customer shall be deemed to have accepted the Goods and it shall be conclusively agreed that the Goods are in accordance with the Contract unless:
 - 9.2.3.1 the Customer gives notice in accordance with sub-clause 9.3; or
 - 9.2.3.2 within ten days after receipt of the Goods and prior to their use or resale the Customer serves upon the Company a written notice specifying any defect in the quality or state of the Goods or other respect in which the Goods are not in accordance with the Contract which would be apparent upon reasonable inspection or by such testing as it is reasonable in all the circumstances for the Customer to undertake or stating why the Goods are not otherwise in accordance with the Contract and thereafter provides to the Company a reasonable opportunity of inspecting and testing the Goods before they have been used or resold; or
 - 9.2.3.3 in the case of a defect in the quality or state of the Goods or other respect in which the Goods are not in accordance with the Contract which would not be apparent upon reasonable inspection or reasonable testing the Customer serves upon the Company written notice of such defect or respect forthwith upon its discovery specifying the matters complained of and affording to the Company a reasonable opportunity of inspecting the Goods before any making good or replacement is undertaken. The Customer shall not be excused from providing such opportunity by reason only of the incorporation of the Goods in the property of a third party.
- 9.3 Where the Contract provides for testing or inspection of the Goods by or on behalf of the Customer before delivery whether at the Company's premises or elsewhere then upon the Company giving notice of the availability of the Goods for inspection/testing the Customer shall inspect and/or test the Goods within seven days of such notice. If the Customer does not inspect or test the Goods within the time specified or if within 48 hours of such testing or inspection the Customer does not notify the Company in writing that the Goods are not in accordance with the Contract specifying the matters complained of then the Customer shall conclusively be deemed to have accepted the Goods as being in accordance with the Contract and shall not thereafter be entitled to reject the Goods on the grounds of anything which such testing or inspection has or would have revealed.
- 9.4 The Company warrants to the Customer that the Services will be provided using reasonable care and skill.
- 10. LIABILITY**
- 10.1 The Customer expressly holds itself out as making the Contract in the course of a business.
- 10.2 Except as expressly provided in these Conditions all warranties statements terms and conditions or undertakings, which may be implied by statute common law custom of the trade or otherwise are hereby excluded.
- 10.3 The Company does not exclude liability for:
- 10.3.1 death or personal injury resulting from its negligence or that of its employees;
 - 10.3.2 direct physical damage to or physical loss of the property of the Customer resulting from the Company's or its employees' negligent acts or omissions and which arise out of the performance of its obligations under the Contract provided that the Company's liability shall not exceed the value of the Contract in respect of any one event or series of events.
- 10.4 Subject to sub-clause 10.3 the Company will not be liable to the Customer:
- 10.4.1 except as expressly provided in these Conditions for any direct loss damage or injury; and/or
 - 10.4.2 for any indirect consequential or special loss damage or injury (including but without limitation financial loss of profits loss of business or contracts loss of operating time or loss of use) whether foreseeable or not to the Customer or to the Customer's property howsoever whensoever or wheresoever arising whether by reason of any representation or any implied warranty condition or other term or duty at common law or under statute or under the express terms of the Contract (and whether caused by the negligence of the Company or otherwise) or otherwise in respect of or in connection with the supply of the Goods or Services or their use or resale by the Customer.
- 11. INDEMNITY**
- 11.1 Without prejudice to the Company's express obligations under these Conditions the Customer shall indemnify and keep the Company fully indemnified from and against any liability of any kind to any third party howsoever arising (whether in contract tort or otherwise and including, but not limited to, liability arising from the negligence of the Company or from the negligence of any person for whom the Company is vicariously liable) in respect of or in connection with:
- 11.1.1 any defect in the Goods or Services; and/or
 - 11.1.2 any loss injury or damage of any kind (whether direct indirect or otherwise and including but not limited to any loss of profit and/or any incidental consequential or special loss or damage of any description) arising out of or in respect of or in connection with the supply of Services or the sale of the Goods or their use or resale.
- 11.2 If the Goods are to be manufactured or assembled or any process is to be applied to the Goods by the Company in accordance with a design drawing or specification submitted by the Customer or using goods supplied by the Customer, the Customer shall indemnify the Company against all losses damages costs and expenses awarded against or incurred by the Company in connection with or paid or agreed to be paid by the Company in settlement of any claim for infringement of any patent copyright design trade-mark or other industrial or intellectual property rights of any other person which results from the Company's use of the Customer's design drawing specification or goods.
- 12. RETURN GOODS**
- In the event that the Goods or any part thereof are returned to the Company whether under sub-clause 9.1 or for any other reason by the Customer (with the prior approval of the Company) then such Goods or any part thereof shall be delivered to the Company in the same condition as originally supplied accompanied by all relevant documentation as requested by the Company. Upon receipt of the Goods or any part thereof and the documentation, the Company shall inform the Customer of any cancellation or restocking charges that may be appropriate.
- 13. FORCE MAJEURE**
- The Company shall not be liable to the Customer or be deemed to be in breach of the Contract by reason of any delay in performing or any failure to perform any of the Company's obligations in relation to the Goods or Services if the delay or failure was due to any cause beyond the Company's reasonable control. Without prejudice to the generality of the foregoing the following shall be regarded as causes beyond the Company's reasonable control:
- 13.1 acts of God explosion lightning flood tempest fire or accident;
 - 13.2 war or threat of war sabotage insurrection civil disturbance or requisition;
 - 13.3 acts restrictions regulations bye-laws prohibitions or measures of any kind on the part of any governmental parliamentary or local authority;
 - 13.4 import or export regulations or embargoes;
 - 13.5 strikes lock-outs or other industrial actions or trade disputes (whether involving employees of the Company or of a third party);
 - 13.6 difficulties in obtaining raw materials labour fuel parts or machinery;
 - 13.7 power failure or breakdown in machinery;
 - 13.8 epidemic, pandemic or quarantine.
- 14. WAIVER**
- The rights of the Company or the Customer shall not be prejudiced or restricted by any indulgence or forbearance extended by either party to the other and no waiver by either party in respect of any breach shall operate as a waiver in respect of any subsequent breach.
- 15. SEVERANCE**
- In the event of any of the words provisions terms or Conditions herein contained being unenforceable or void for any reason whatsoever each word provision term or Condition (including any clause or sub-clause herein contained) shall be deemed to be severable from the remaining words provisions terms or Conditions and such remaining words provisions terms or Conditions shall remain in full force and effect.
- 16. RIGHTS OF THIRD PARTIES.**
- Nothing in this contract or these Conditions shall create any rights for third parties under the Contracts (Rights of Third Parties) Act 1999. No variation to this Contract or these Conditions shall create any such rights unless expressly so stated in such variation by the Company and the Customer. This does not affect any right or remedy of a third party which exists or is available apart from the said Act.
- 17. PROPER LAW AND JURISDICTION**
- 17.1 The Contract shall be governed by English law in every particular including formation and interpretation and shall be deemed to have been made in England.
- 17.2 Any proceedings arising out of or in connection with the Contract may be brought in any court of competent jurisdiction in England.
- 17.3 The submission by the Company and the Customer to such jurisdiction shall not limit the right of the Company to commence any proceedings arising out of the Contract in any other jurisdiction it may consider appropriate.