

**All Valve Industries Pty Ltd –
Conditions of Sale**

1 Definitions

- 1.1 "AVI" shall mean All Valve Industries Pty Ltd its successors and assigns or any person acting on behalf of and with the authority of All Valve Industries Pty Ltd.
- 1.2 "Client" shall mean the Client (or any person acting on behalf of and with the authority of the Client) as described on any quotation, work authorisation or other form as provided by AVI to the Client.
- 1.3 "Guarantor" means the person (or persons), or entity, who agrees to be liable for the debts of the Client on a principal debtor basis.
- 1.4 "Goods" shall mean Goods supplied by AVI to the Client (and where the context so permits shall include any supply of Services as hereinafter defined) and are described on the invoices, quotation, work authorisation or any other forms as provided by AVI to the Client.
- 1.5 "Services" shall mean all Services supplied by AVI to the Client and includes any advice or recommendations (and where the context so permits shall be included in the supply of Goods as defined above).
- 1.6 "Price" shall mean the price payable for the Goods as agreed between AVI and the Client in accordance with Clause 4 of this contract.

2. The Australian Consumer Law ("ACL")

- 2.1 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the ACL, except to the extent permitted by the ACL where applicable.

3. Acceptance

- 3.1 Any instructions received by AVI from the Client for the supply of Goods and/or the Client's acceptance of Goods supplied by AVI shall constitute acceptance of the terms and conditions herein.
- 3.2 Where more than one Client has entered into the agreement, the Clients shall be jointly and severally liable for all payments of the Price.
- 3.3 Upon acceptance of these terms and conditions by the Client, the terms and conditions are binding and can only be amended with the written consent of AVI.
- 3.4 The Client shall give AVI not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client, or any change in the Client's name and/or any other change in the Client's details (including but not limited to, changes in the Client's address, facsimile number, or business practice). The Client shall be liable for any loss incurred by AVI as a result of the Client's failure to comply with this Clause.
- 3.5 Goods are supplied by AVI only on the terms and conditions of trade herein to the exclusion of anything to the contrary in the terms of the Client's order notwithstanding that any such order is placed on terms that purport to override these terms and conditions of trade.

4. Price and Payment

- 4.1 At AVI's sole discretion the Price shall be:
- (a) as indicated on invoices provided by AVI to the Client in respect of Goods supplied; or
- (b) as indicated on AVI's costing sheet; or
- (c) AVI's current price at the date of delivery of the Goods according to AVI's current Price list; or
- (d) AVI's quoted Price (subject to Clauses 4.2, 4.3 and 4.4) which shall be binding upon AVI provided that the client shall accept AVI's quotation in writing within thirty (30) days.
- 4.2 AVI reserves the right to change the Price in the event of a variation to AVI's quotation.
- 4.3 Any variation from the plan of scheduled works or specifications (including but not limited to, any variation as a result of additional works required due to hidden or unidentifiable difficulties beyond the control of AVI such as hard rock barriers below the surface or iron reinforcing rods in concrete, or termite infestation) will be detailed in writing and charged for on the basis of AVI's quotation and will be shown as variations on the invoice. Payment for all variations must be made in full at their time of completion.
- 4.4 AVI may, by giving notice to the Client, increase the Price of the Goods to reflect any increases in the cost to AVI beyond the reasonable control of AVI (including but not limited to, increases in the costs of manufacturing and of new materials including steel).
- 4.5 Unless stated otherwise, the Price does not include the connection of any services.
- 4.6 At AVI's sole discretion, a deposit may be required.
- 4.7 At AVI's sole discretion:
- (a) payment shall be due on delivery of the Goods; or
- (b) payment for approved Clients shall be made by instalments in accordance with AVI's payment schedule.
- 4.8 AVI may submit a detailed payment claim at intervals not less than one month for work performed up to the end of each month. The value of work so performed shall include the reasonable value of authorised variations, whether or not the value of such variations has

been finally agreed between the parties and the value of materials delivered to the site but not installed.

- 4.9 Time for payment for the Goods shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due seven (7) days following the date of the invoice.
- 4.10 Payment will be made by cash or by cheque or by bank cheque or by direct credit only.
- 4.11 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the price.

5. Delivery of Goods

- 5.1 At AVI's sole discretion, delivery of the Goods shall take place when the Client takes possession of the Goods at the Client's nominated address (in the event that the Goods are delivered by AVI or AVI's nominated carrier).
- 5.2 The costs of delivery are included in the Price.
- 5.3 AVI will notify the Client when delivery of the Goods is to take place. The Client shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery. In the event that the Client is unable (for whatever reason) to take delivery of the Goods at the nominated delivery address as arranged, then AVI shall be entitled (at AVI's sole discretion) to either:
- (a) charge the Client a reasonable fee for redelivery; or
- (b) unload the Goods without receiving a receipt or signed delivery docket. All risk for the Goods passes to the Client on delivery and the Client shall be liable for and hereby indemnifies AVI against all loss of or damage to the Goods due to the Client failing to be at the nominated address at the time of delivery.
- 5.4 Delivery of the Goods to a third party nominated by the Client is deemed to be delivery to the Client for the purposes of this agreement.
- 5.5 AVI may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 5.6 The failure of AVI to deliver shall not entitle either party to treat this contract as repudiated.
- 5.7 AVI shall not be liable for any loss or damage whatever due to failure by AVI to deliver the Goods (or any of them) promptly or at all, where due to circumstances beyond the control of AVI.

6. Risk

- 6.1 If AVI retains ownership of the Goods nonetheless, all risk for the Goods passes to the Client on delivery.
- 6.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, AVI is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by AVI is sufficient evidence of AVI's rights to receive the insurance proceeds without the need for any person dealing with AVI to make further enquiries.

7. Title

- 7.1 AVI and the Client agree that ownership of the Goods shall not pass until:
- (a) the Client has paid AVI all amounts owing for the particular Goods; and
- (b) the Client has met all other obligations due by the Client to AVI in respect of all contracts between AVI and the Client.
- 7.2 Receipt by AVI of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then AVI's ownership or rights in respect of the Goods shall continue.
- 7.3 It is further agreed that:
- (a) where practicable the Goods shall be kept separate and identifiable until AVI shall have received payment and all other obligations of the Client are met; and
- (b) until such time as ownership of the Goods shall pass from AVI to the Client AVI may give notice in writing to the Client to return the Goods or any of them to AVI. Upon such notice the rights of the Client to obtain ownership or any other interest in the Goods shall cease; and
- (c) AVI shall have the right of stopping the Goods in transit, whether or not delivery has been made; and
- (d) If the Client fails to return the Goods to AVI then AVI or AVI's agent may enter upon and into land and premises owned, occupied or used by the Client, or any premises as the invitee of the Client, where the Goods are situated and take possession of the Goods; and
- (e) the Client is only a bailee of the Goods and until such time as AVI has received payment in full for the Goods then the Client shall hold any proceeds from the sale or disposal of the Goods, up to and including the amount the Client owes to AVI for the Goods, on trust for AVI; and
- (f) the Client shall not deal with the money of AVI in any way which may be adverse to AVI; and

- (g) the Client shall not charge the Goods in any way nor grant nor otherwise give any interest in the Goods while they remain the property of AVI; and
- (h) AVI can issue proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Client; and
- (i) until such time that ownership in the Goods passes to the Client, if the Goods are converted into other products, the parties agree that AVI will be the owner of the end products.

8. Defects

- 8.1 The Client shall inspect the Goods on delivery and shall, within seven (7) days of delivery (time being of the essence) notify AVI of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford AVI an opportunity to inspect the Goods within a reasonable time following delivery if the Client believes the Goods are defective in any way. If the Client shall fail to comply with these provisions, the Goods shall be presumed to be free from any defect or damage. For defective Goods, which AVI has agreed in writing that the Client is entitled to reject, AVI's liability is limited to either (at AVI's discretion) replacing the Goods or repairing the Goods except where the Client has acquired Goods as a consumer within the meaning of the Australian Consumer Law, and is therefore also entitled to, at the consumer's discretion either a refund of the purchase price of the Goods, or repair of the Goods, or replacement of the Goods.
- 8.2 Goods will not be accepted for return other than in accordance with 8.1 above.

9. Intellectual Property

- 9.1 Where AVI has designed, drawn or written Goods for the Client, then the copyright in those designs and drawings and documents shall remain vested in AVI, and shall only be used by the Client at AVI discretion.
- 9.2 The Client warrants that all designs or instructions to AVI will not cause AVI to infringe any patent, registered design or trademark in the execution of the Client's order and the Client agrees to indemnify AVI against any action taken by a third party against AVI in respect of any such infringement.

10. Default & Consequences of Default

- 10.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and one half percent (2.5%) per calendar month (and at AVI's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgement.
- 10.2 In the event that the Client's payment is dishonoured for any reason, the Client shall be liable for any dishonour fees incurred by AVI.
- 10.3 If the Client defaults in payment of any invoice when due, the Client shall indemnify AVI from and against all costs and disbursements incurred by AVI in pursuing the debt including legal costs on a solicitor and own client basis and AVI collection agency costs.
- 10.4 Without prejudice to any other remedies AVI may have, if at any time the Client is in breach of any obligation (including those relating to payment), AVI may suspend or terminate the supply of Goods to the Client and any of its other obligations under the terms and conditions. AVI will not be liable to the Client for any loss or damage the Client suffers because AVI has exercised its rights under this clause.
- 10.5 If any account remains overdue after thirty (30) days then an amount of the greater of twenty dollars (\$20.00) or ten percent (10.00%) of the amount overdue (up to a maximum of five hundred dollars (\$500.00)) shall be levied for administration fees which sum shall become immediately due and payable.
- 10.6 Without prejudice to AVI other remedies at law AVI shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to AVI shall, whether or not due for payment, become immediately payable in the event that:
 - (a) any money payable to AVI becomes overdue or in AVI's opinion the Client will be unable to meet its payments as they fall due; or
 - (b) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

12. Security and Charge

- 12.1 Despite anything to the contrary contained herein or any other rights which AVI may have howsoever:
 - (a) where the Client and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Client and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to AVI or AVI's nominee to secure all amounts and other monetary obligations payable under these terms and conditions. The Client and/or the Guarantor acknowledge and

agree that AVI (or AVI's nominee) shall be entitled to lodge, where appropriate, a caveat, which caveat shall be withdrawn once all payments and other monetary obligations payable hereunder have been met;

- (b) should AVI elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Client and/or Guarantor shall indemnify AVI from and against all AVI's costs and disbursements including legal costs on a solicitor and own client basis;
- (c) the Client and/or the Guarantor (if any) agree to irrevocably nominate, constitute and appoint AVI or AVI's nominee as the Client's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 12.1.

13. Personal Property Securities Act 2009 ("PPSA")

- 13.1 In this clause financing statement, financing change statement, security agreement and security interest has the meaning given to it by the PPSA.
- 13.2 Upon assenting to these terms and conditions in writing or act, the Client acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in Account, Goods and/or All Personal Property of the Grantor/Owner, including that has previously been supplied and that will be supplied in the future by AVI to the Client.
- 13.3 The Client undertakes to:
 - (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which AVI may reasonably require to;
 - (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
 - (ii) register any other document required to be registered by the PPSA; or
 - (iii) correct a defect in a statement referred to in clause 13.3(a)(i) or 13.3(a)(ii);
 - (b) indemnify, and upon demand reimburse, AVI for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby;
 - (c) not register a financing change statement in respect of a security interest without the prior written consent of AVI;
 - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods in favour of a third party without the prior written consent of AVI;
 - (e) immediately advise AVI of any material change in its business practices of selling Goods which would result in a change in the nature of proceeds derived from such sales.
- 13.4 AVI and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 13.5 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 13.6 The Client waives their rights as a grantor and/or debtor under sections 142 and 143 of the PPSA.
- 13.7 Unless otherwise agreed to in writing by AVI, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 13.8 The Client must unconditionally ratify any actions taken by AVI under clauses 13.3 and 13.7.
- 13.9 Subject to any express provisions to the contrary, nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

14. Cancellation

- 14.1 AVI may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Client.
- 14.2 Following such notice under Clause 14.1:
 - (a) AVI shall be entitled to a reasonable price for the Goods and Services provided in accordance with these terms and conditions up to the date the notice under Clause 14.1 is given (including the cost of any Goods delivered or already ordered from suppliers but not yet paid for by the Client); and
 - (b) following any payment under Clause 14.2(a), AVI shall repay to the Client the balance of any sums paid in respect of the Price.
- 14.3 AVI shall not be liable for any loss or damage whatever arising from any cancellation under this Clause 14.
- 14.4 In the event that the Client cancels delivery of Goods, the Client shall be liable for any loss incurred by AVI (including, but not limited to, any loss of profits) up to the time of cancellation.

15. Privacy Act 1988

- 15.1 The Client and/or the Guarantor/s agree for AVI to obtain from a credit reporting agency, a credit report containing personal credit information about the Client and Guarantor/s in relation to credit provided by AVI.
- 15.2 The Client and/or the Guarantor/s agree that AVI may exchange information about the Client and the Guarantor's with those credit providers either named as trade referees by the Client or named in

consumer credit report issued by a credit reporting agency for the following purposes:

- (a) to assess an application by Client; and/or
 - (b) to notify other credit providers of a default by the Client; and/or
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
 - (d) to assess the credit worthiness of Client and/or Guarantor/s.
- 15.3 The Client consents to AVI being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
- 15.4 The Client agrees that personal credit information provided may be used and retained by AVI for the following purposes and for other purposes as shall be agreed between the Client and AVI or required by law from time to time:
- (a) provision of Goods; and/or
 - (b) marketing of Goods by AVI, its agents or distributors in relation to the Goods; and/or
 - (c) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to provision of Goods; and/or
 - (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by Client; and/or
 - (e) enabling the daily operation of Client's account and/or the collection of amounts outstanding in the Client's account in relation to the Goods.
- 15.5 AVI may give information about the Client to a credit reporting agency for the following purposes:
- (a) to obtain a consumer credit report about the Client; and/or
 - (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Client.

16. General

- 16.1 If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable, the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 16.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New South Wales and are subject to the jurisdiction of the courts of New South Wales.
- 16.3 AVI shall be under no liability whatever to the Client for any indirect loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by AVI of these terms and conditions.
- 16.4 In the event of any breach of this contract by AVI, the remedies of the Client shall be limited to damages which, under no circumstances shall exceed the Price of the Goods.
- 16.5 The Client shall not be entitled to set off against or deduct from the Price any sums owed or claimed to be owed to the Client by AVI.
- 16.6 AVI may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 16.7 The Client agrees that AVI may review these terms and conditions at any time. If following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which AVI notifies the Client of such change.
- 16.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.
- 16.9 The failure by AVI to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect AVI's right to subsequently enforce that provision.