

CONDITIONS OF SALE

1. GENERAL

- 1.1 In these Conditions the following words shall have the following meanings (unless the context otherwise requires):-
- 1.1.1 "Company" means Thompson Valves Limited;
 - 1.1.2 "Contract" means the contract for the sale of Goods between the Company and the Customer to which these Conditions applies;
 - 1.1.3 "Customer" means the person, firm or company who has placed an order for Goods from the Company;
 - 1.1.4 "Ex Works" means "ex works" as defined in the edition of the rules for interpretation of trade terms known as Incoterms current as at the date of the Order;
 - 1.1.5 "Goods" means all goods and associated documentation to be supplied under the Contract; and
 - 1.1.6 "Site" means the premises of the Company as specified in the order acknowledgment issued by the Company to the Customer.
- 1.2 All orders by the Customer for the Goods ("Orders") if accepted will be accepted subject to these Conditions. All other terms conditions or warranties whatsoever are excluded from the Contract or any variation thereof unless expressly accepted by the Company in writing (order acknowledgements do not constitute such acceptance). In particular, in no circumstances will any conditions of purchase submitted at any time by the Customer be applied to this or any other Contract and any failure by the Company to challenge any such conditions of purchase does not imply acceptance of those conditions of purchase.
- 1.3 Quotations shall be available for acceptance by the Customer for a maximum of sixty (60) days from the date of issue by the Company and may be withdrawn by the Company by written or oral notice to the Customer at any time prior to acceptance of the Order by the Company.
- 1.4 Any statement or representation by the Company its servants or agents upon which the Customer wishes to rely must be set out in writing. Any statement or representation which is not so confirmed in writing is followed or acted upon entirely at the Customer's own risk.
- 1.5 The Contract is between the Company and the Customer as principals; neither the benefit nor the burden is assignable by the Customer without the Company's prior consent in writing; the Contract may be assigned or sub-contracted by the Company.

- 1.6 Unless specifically agreed to the contrary, all trade terms shall be interpreted in accordance with the version of the Incoterms applicable as at the date of the Order.
- 1.7 The Company shall be entitled to cancel an Order at any time by serving notice in writing on the Customer if it does not receive, on request, satisfactory (in the Company's sole opinion) credit references in relation to the Customer. If the Company cancels an Order pursuant to this Clause 1.7 it shall have no liability whatsoever for any liabilities, losses, damages, costs or expenses whatsoever incurred, suffered or paid by the Customer as a result of or in connection with such cancellation.

2. ELECTRONIC TRADING

- 2.1 The Company shall be entitled to reject any Order which is made electronically if the Order does not contain all of the information agreed between the Customer and the Company as being required or which is not set out in the correct format.

3. DELIVERY

- 3.1 Unless otherwise agreed in writing by the Company, delivery shall be deemed to take place when the Goods are made available by the Company for collection by the Customer or its carrier at the Company's premises ("Delivery").
- 3.2 All dates and periods for Delivery are estimated, do not constitute fixed times for Delivery by the Company and shall not be made of the essence by notice. Unless otherwise expressly agreed in writing by the Company, the Company shall not be liable for any liabilities, damages, losses, costs or expenses whatsoever as a result of or in connection with the failure by the Company to meet any delivery times specified in the Order or subsequently set by agreement in writing between the authorised representatives of the Company and the Customer.
- 3.3 Notwithstanding Clause 3.2, the Customer shall be obliged to collect the Goods or take Delivery of the Goods on the date or within the period stated in the Order or in any delivery schedule notified to the Customer by the Company from time to time. If no delivery date or period is stated the Customer shall be obliged to accept delivery of the Goods one (1) month after the issue of notice in writing by the Company notifying the Customer that the Goods are available for collection by the Customer or its carrier at the Company's premises. Failure by the Customer to collect the Goods or take Delivery as set out in this clause shall entitle the Company to terminate the Contract (such right is without prejudice to any other rights and remedies available to the Company) whether expressly provided for in these Conditions or implied by any rule of law.
- 3.4 The date for Delivery shall in every case be dependent upon prompt receipt of all necessary information, final instructions or approvals from the Customer.

- 3.5 The Company reserves the right to deliver the Goods to the Customer in instalments. Where the Goods are 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.
- 3.6 Except as otherwise expressly agreed by the Company in writing in advance, the Goods will be delivered to the Customer by the Company Ex Works the Site and the Customer shall provide at the Site and at its expense adequate and appropriate equipment and manual labour for loading the Goods.
- 3.7 The Customer shall (and shall procure that its sub-contractors and agents):
- 3.7.1 observe the works rules and safety regulations applicable to the Site; and
- 3.7.2 indemnify and keep the Company indemnified in full against all and any direct, indirect or consequential liabilities (all three of which terms include without limitation loss of profit, loss of business, depletion of goodwill and like loss), losses, claims, damages, costs and expenses (including all legal and other professional expenses) awarded against or incurred or paid by the Company as a result of or in connection with any death or personal injury to the Company's employees or agents while such employees or agents are on any premises of the Customer in connection with the Contract.
- 3.8 The Company will endeavour to comply with reasonable requests by the Customer for postponement of Delivery, but shall be under no obligation to do so. Where Delivery is postponed, other than due to a default by the Company, then without prejudice to all other rights and remedies available to the Company, the Customer shall pay all liabilities, losses, costs and expenses (including but not limited to any charges for storage and transportation of the Goods) arising as a result of or in connection with such postponement.

4. **RISK AND TITLE**

- 4.1 Unless otherwise agreed between the Company and the Customer in writing, risk of damage to or loss of the Goods shall pass to the Customer at the commencement of the loading of the Goods onto the Customer's designated delivery vehicle at the Site.
- 4.2 Title to the Goods shall not pass to the Customer until either:
- 4.2.1 the Company has received in cash or cleared funds all monies payable (whether or not due) to the Company under this and any other contracts whenever made between the Company and the Customer including but not limited to contracts made after this Contract; or

- 4.2.2 when the Company serves on the Customer notice in writing specifying that title in the Goods or any part thereof has passed to the Customer.
- 4.3 Until title to the Goods has passed to the Customer pursuant to these Conditions:
 - 4.3.1 the Customer shall possess the Goods as fiduciary agent and bailee of the Company and shall store the Goods separately from other goods not owned by the Company and shall ensure that they are fully insured on an all risks basis and clearly identifiable as belonging to the Company;
 - 4.3.2 the Customer shall not sell, offer to sell, assign, underlet, pledge, mortgage, charge, encumber or part with possession of the Goods or any interest in the Goods nor create or allow to be created over the Goods any lien;
 - 4.3.3 the Company shall be entitled to enter upon any premises where such Goods are kept for the purpose of satisfying itself that this condition is being complied with by the Customer and the Customer irrevocably licences the Company, its officers, employees and agents to enter upon any premises of the Customer, with or without vehicles, for this purpose or for the purpose of recovering any Goods in respect of which title has not passed to the Customer; and
 - 4.3.4 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 within a reasonable period of time, the Company shall be entitled to enter upon the Customer's premises or any third party's premises and recover and/or dispose of the Goods. For the avoidance of doubt, the Customer shall make no claim against the Company in respect of any such entry or disposal.
- 4.4 The Customer's right to possession of the Goods shall terminate immediately if:
 - 4.4.1 the Customer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Customer or notice of intention to appoint an administrator is given by the Customer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed

or a petition presented to any court for the winding-up of the Customer or for the granting of an administration order in respect of the Customer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Customer; or

4.4.2 the Customer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe or perform any of his/its obligations under the Contract or any other contract between the Company and the Customer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Customer ceases to trade; or

4.4.3 the Customer encumbers or in any way charges any of the Goods.

4.5 If the Company repossesses the Goods pursuant to this Clause 4, the relevant Order which relates to those Goods shall be treated as discharged in full with immediate effect and the Company will grant to the Customer a valid VAT credit note in respect of the price or any part thereof that had previously been invoiced to the Customer but not paid in respect of those Goods. For the avoidance of doubt, the Company and the Customer agree to take all reasonable steps to procure that the credit note has effect for the purposes crediting the VAT originally charged following the subsequent repossession of the Goods.

4.6 On termination of the Contract, howsoever caused, the Company's (but not the Customer's) rights contained in this Clause 4 shall remain in effect.

5. CANCELLATION AND AMENDMENT

No Order can be amended or cancelled by the Customer except with the Company's approval in writing and should such approval be given the Customer shall indemnify the Company and keep the Company indemnified in full against all and any direct, indirect or consequential liabilities (all three of which terms include without limitation loss of profit, loss of business, depletion of goodwill and like loss), losses, claims, damages, costs and expenses (including all legal and other professional expenses) awarded against or incurred or paid by the Company as a result of or in connection with such cancellation or amendment.

6. PRICES

6.1 The price for the Goods shall (subject to Clause 1.3) be the price quoted by the Company or where no price has been quoted or a quoted price is no longer valid, the price listed on the Company's price list current at the date of the Order ("Price").

6.2 Unless otherwise agreed by the Company in writing, all Prices quoted by the Company are on an Ex Works basis and any other applicable taxes are payable by the Customer in addition to the Price.

6.3 The Company reserves the right at any time prior to Delivery to increase the Price to reflect any increase in cost to the Company which is due to any

factor beyond the control of the Company (including, but not limited to, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increases in the labour, materials or any other costs of manufacture of the Goods), any change in delivery dates, quantities or specifications for the Goods requested by the Customer or any delay caused by the instructions of the Customer or failure of the Customer to give the Company adequate information or instructions.

7. TERMS OF PAYMENT

- 7.1 Subject to Clause 7.4, payment of the price for the Goods is due in pounds sterling on the last working day of the month following the month in which the Goods are delivered or deemed to be delivered unless otherwise agreed by the Company in writing. Time for payment of the Price is of the essence of the Contract.
- 7.2 No payment shall be deemed to have been received until the Company has received cleared funds.
- 7.3 No disputes arising under this Contract shall serve to permit payment by the Customer of sums due to the Company to be delayed or withheld nor shall disputes interfere with prompt payment in full. The Customer shall not in any circumstances be entitled to make any deduction from sums owing to the Company by reason of any such dispute.
- 7.4 All payments payable to the Company under the Contract shall become due immediately on its termination despite any other provision.
- 7.5 In the event of default in payment by the Customer, the Company shall be entitled (without prejudice to any other right or remedy it may have under these Conditions or otherwise) to charge interest on a daily basis (after as well as before judgment) on any amount outstanding at the rate of four percent (4%) above the base rate of the Bank of England from time to time.

8. LIABILITY

- 8.1 The Company warrants that for a period of twelve (12) months from Delivery, the Goods will comply in all material respects with any specifications for the Goods agreed between the Company and the Customer in writing. If no specification for the Goods has been agreed between the Company and the Customer, the Company warrants that for a period of twelve (12) months from Delivery, the Goods will comply in all material respects with the specifications published by the Company in relation to the Goods from time to time (if any) and in the absence of any specification (agreed or published) the Company warrants that for a period of twelve (12) months from the date of Delivery the Goods will be free from material defects in workmanship or materials.
- 8.2 The Customer shall only be entitled to claim (and then subject to this condition 8) for defects in the Goods as supplied which are apparent on visual inspection if the Customer inspects the goods within five working days

following the date of Delivery and complies with the provisions of condition 8.3 below.

8.3 If the Customer believes that the Goods do not comply with the warranty set out in Clause 8.1 ("Defective Goods"):

8.3.1 the Customer shall within five working days of discovery of the Defective Goods, notify the Company in writing and provide to the Company evidence which supports its claim that the relevant Goods are Defective Goods; and

8.3.2 on receipt of notice from the Customer and satisfactory evidence (in the Company's sole opinion) in relation to the Defective Goods pursuant to Clause 8.3.1, the Company shall (at its option) either repair or replace the Defective Goods. For the avoidance of doubt, following repair or replacement of the Defective Goods pursuant to this Clause 8.2.2, the Company shall have no further liability whatsoever to the Customer.

8.4 The Company shall not be liable for a breach of the warranty set out in Clause 8.1 if:

8.4.1 the Customer makes any further use of such Goods after giving such notice; or

8.4.2 the defect arises because the Customer failed to follow the Company's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice; or

8.4.3 the Customer alters or repairs such Goods without the written consent of the Company.

8.5 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.

8.6 Nothing in these Conditions excludes or limits the liability of the Company:

8.5.1 for death or personal injury caused by the Company's negligence;

8.5.2 under section 2(3) Consumer Protection Act 1987;

8.5.3 for any matter which it would be illegal for the Company to exclude or attempt to exclude its liability; or

8.5.4 for fraud or fraudulent misrepresentation.

8.7 Subject to Clauses 8.5 and 8.6:

8.7.1 the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated

performance of this Contract shall be limited to the contract price or £1million whichever is the greater; and

8.7.2 the Company shall not be liable to the Buyer for any pure economic loss, loss of profit, loss of business, depletion of goodwill or otherwise, in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

8.8 The Customer shall indemnify and keep the Company indemnified in full against all and any direct, indirect or consequential liabilities (all three of which terms include without limitation loss of profit, loss of business, depletion of goodwill and like loss), losses, claims, damages, costs and expenses (including all legal and other professional expenses) awarded against or incurred or paid by the Company as a result of or in connection with any breach of the Contract by the Customer.

THE FOLLOWING CLAUSES(8.9 TO 8.12) APPLY TO IMI PRODUCTS AND PARTS FOR USE IN A NUCLEAR FACILITY

8.9 The Customer agrees to hold harmless, indemnify and keep indemnified the Company (for and on behalf of itself and each of its group undertakings, and their respective officers and employees) (each an "Indemnified Person") from and against any and all direct or indirect liabilities (which shall include without limitation loss of profit, loss of business, depletion of goodwill and like loss), losses, obligations, claims (including claims from third parties), demands, damages, penalties, expenses and fees suffered or incurred by the Company or any other Indemnified Person, arising out of any actual or alleged nuclear damage caused by the Goods or which otherwise occurs in consequence of the performance of or failure to perform the Contract, whether by the Company, or any sub-contractors of the Customer or Company, and any actual or alleged nuclear damage arising in consequence of any activities from time to time carried out in relation to the Contract, whether or not resulting from the negligence of the Company.

8.10 The Customer undertakes to provide and to maintain, or procure that the Owner/Operator of the site where the Goods are to be installed provides and maintains, throughout the operational life of the site where the Goods are to be installed and for ten years thereafter, insurance covering nuclear damage. Such policy will be placed with recognized international Nuclear Pools (Liability and Property) on industry standard terms, will provide for all suppliers and sub-suppliers to be covered as additional insured and will include a waiver of subrogation for the benefit of the Company. The Customer will pay any deductible applicable to such insurance (or, as applicable, procure that the Owner/Operator pays such deductible). The Customer will provide a copy of the insurance certificate to the Company upon written request.

8.11 In this clause 8 the term "liability" means any form of liability or obligation whatsoever including but not limited to liability for nuclear damage (as defined in clause 8.12 below) and liability for misrepresentation, under contract,

common law, equity or any statutory provision whether or not based on negligence or breach of any express or implied duty to act with care or skill.

- 8.12 In this clause 8, the term “nuclear damage” means injury or death to persons and damage to any property or facility and/or damage or harm to the environment, natural resources, flora and fauna (and including the property and/or facility of the Customer and the Owner/Operator and the site where the Goods are to be installed) arising out of or resulting from radioactive, toxic, explosive or other hazardous properties (or any combination of such properties) of any nuclear matter in connection with which the Goods are directly or indirectly used, including but not limited to ionizing radiation or contamination by radioactivity from any nuclear fuels, radioactive products or any nuclear waste from the combustion of nuclear fuels coming from, originating in, or sent to, any site at which the Goods are to be installed and/or used, whether or not such injury, death or damage results from the negligence of the Company.

9. TERMINATION

- 9.1 Without prejudice to any other rights or remedies of the Company, the Company shall be entitled in any of the following circumstances to terminate (in whole or in part) this and any other contract whenever made between the Company and the Customer and/or to suspend delivery and/or to receive upon demand payment of all monies payable under any such contracts whether or not otherwise due:

- 9.1.1 the Customer makes or proposes in respect of it a company voluntary arrangement pursuant to the Insolvency Act 1986 or any other composition or scheme or arrangement with or assignment for the benefit of any of its creditors;
- 9.1.2 the Customer becomes subject to an administration order or becomes bankrupt or goes into liquidation;
- 9.1.3 the Customer has a petition presented for its winding up (which is not dismissed within 21 days of its service) or has an application made for the appointment of a provisional liquidator or has a creditors' meeting convened pursuant to s 98 Insolvency Act 1986;
- 9.1.4 an encumbrancer takes possession or a receiver or administrative receiver or similar officer is appointed of any of the property or assets of the Customer;
- 9.1.5 the Customer becomes unable to satisfy its debts as they fall due or ceases or threatens to cease to carry on business;
- 9.1.6 the Company reasonably believes that any of the events mentioned above or any equivalent or similar event under any relevant laws to which the Customer or any connected person is subject has or may occur; or

- 9.1.7 the Customer or any connected person commits any breach of this or any other contract whenever made between the Customer and the Company.

10. FORCE MAJEURE

- 10.1 "Force Majeure" shall mean any cause inhibiting or preventing the Company from performing any or all of its obligations which arises from or is attributable to acts, events, omissions or accidents beyond the reasonable control of the Company; including, but not limited to, strikes, lock-outs or other industrial disputes (whether involving the workforce of the party so prevented or of any other party); acts of God, pandemic, explosion, riot, civil commotion; death of royalty; malicious damage; damage, destruction or denial of access to premises; governmental actions, compliance with any law or governmental order, rule, regulation, direction or requirement; the effect of import or export regulation; accident, fire, flood, or storm or other natural disaster or default of suppliers or sub-contractors; war, civil war, national emergency, armed conflict or terrorist attack; nuclear, chemical or biological contamination or sonic boom or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials.
- 10.2 If the Company is prevented or delayed in the performance of any of its obligations under any Contract by Force Majeure, the Company shall forthwith serve notice in writing on the Customer specifying the nature and extent of the circumstances giving rise to Force Majeure, and shall, subject to service of such notice and having taken all reasonable steps to avoid such prevention or delay, have no liability in respect of the performance of such of its obligations as are prevented by the Force Majeure events during the continuation of such events, and for such time after they cease as is necessary for the Company, using all reasonable endeavours, to recommence its affected operations in order for it to perform its obligations. It is acknowledged that some Force Majeure events will render the Company unable to perform the contract e.g. the taking of action against the Company by a governmental or regulatory authority which requires the Company's withdrawal from the contract. If such a Force Majeure event occurs which requires Company's withdrawal from the contract the Company will notify the Customer in writing and within 30 days of such a notice the Customer will make payment for any goods delivered pursuant to the contract prior to the withdrawal and will release Company from all performance bonds and the Company shall have no further liability to the Customer in respect of the contract.

11. INTELLECTUAL PROPERTY RIGHTS

- 11.1 All drawings, documents, confidential records, computer software and other information supplied by the Company, whether produced by itself or a third party, are supplied on the express understanding that copyright is reserved to the Company (or the third party) and that the Customer will not, without the prior consent of the Company in writing, give away, loan, exhibit or sell any drawings, documents, records, software or other information or extracts

from them or copies of them or use them in any way except in connection with the Goods in respect of which they are issued.

12. HEALTH & SAFETY

- 12.1 The Customer agrees to pay due regard to any information supplied by the Company relating to the use for which the Goods are designed or have been tested or concerning conditions necessary to ensure that they will be safe and without risk to health at all times when they are being set, used, cleaned, serviced or maintained by any person and the Customer undertakes to take such steps as may be specified by such information or otherwise necessary to ensure that as far as is reasonably practicable the Goods will be safe and without risk to health at all times as mentioned above.

13. COMPLIANCE

- 13.1 The Customer shall comply with all relevant anti-corruption legislation in connection with the Contract and the Company's business and shall immediately notify the Company if it discovers or suspects that any of its officers, directors, employees or representatives are acting or have acted in a way which violates such legislation.
- 13.2 The Customer acknowledges that the Company has a code of responsible business (the "IMI Way") which is available at www.imiplc.com and the Customer shall, at all times, conduct, and procure that its officers, directors, employees and/or representatives conduct, business ethically and in accordance with the relevant provisions of IMI Way. This clause shall apply whether or not the Customer is acting pursuant to the Contract or its relationship with the Company.
- 13.3 The Customer agrees that it must be able to demonstrate its compliance with the requirements referred to in this clause 13 at the request of and to the satisfaction of the Company which includes, but is not limited to, the Company having the right to inspect any site involved in work for the Company. If the Customer fails to comply with this clause 13, the Company shall be entitled, in its sole discretion, to terminate this Contract and any other agreements between the Customer and the Company without penalty to the Company, but with obligations for the Customer to remedy any damages suffered by the Company as a result of such termination or as a result of the breach of Contract pursuant to clause 8.8.

14. MISCELLANEOUS

- 14.1 The Contract and any non-contractual obligations arising out of or in connection with it shall be governed and interpreted exclusively according to the Laws of England. The parties hereby agree to submit to the exclusive jurisdiction of the English courts provided that the Company may at its option take proceedings in the courts of the state in which the Company is situated or the state in which the Customer is domiciled including action to obtain any remedy (including injunctive relief).

- 14.2 In the case of any Order for the export of Goods, the Schedule to the Uniform Law on International Sales Act 1967 shall not in any circumstances apply to the Contract and neither shall the limits imposed by the Unfair Contract Terms Act 1977 on the extent to which liability can be excluded or limited.
- 14.3 Any failure to exercise or any delay by the Company in exercising a right or remedy provided by this Contract or at law or in equity will not constitute a waiver of the right or remedy or a waiver of any other rights or remedies. A waiver of a breach of any of the terms of the Contract or of a default under these Conditions will not constitute a waiver of any other breach or default and will not affect the other terms of the Contract.
- 14.4 If any provision of these Conditions shall be held invalid or unenforceable in whole or in part then the unaffected provisions shall remain in full force and effect. Headings appear for convenience only and shall not affect the construction of these Conditions.
- 14.5 A person who is not a party to the Contract shall have no rights pursuant to the Contracts (Rights of Third Parties) Act 1999 ("the Act") to enforce any term of the Contract. Any right or remedy of a third party which exists or is available apart from the Act is not affected.