

BiS Valves Ltd., Units 17-22 Kingfisher Park, West Moors, Wimborne, Dorset, BH21 6US, United Kingdom.

## **TERMS AND CONDITIONS Rev: 2**

### **1. INTERPRETATION**

1.1 Definitions. In these Conditions, the following definitions apply:

**'Business Day'** means a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

**'Buyer'** means the person or firm who accepts a quotation of the Seller for the sale of the goods or whose order for the goods is accepted by the Seller.

**'Conditions'** means the standard terms and conditions of sale set out in this document as amended from time to time and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Buyer and the Seller.

**'Contract'** means the contract between the Seller and the Buyer for the sale and purchase of the Goods in accordance with these conditions.

**'Force Majeure'** Event has the meaning given in clause 10.

**'Goods'** means the goods (including any installment of the goods or any parts for them) which the Seller is to supply in accordance with these Conditions.

**'Order'** means the Buyer's Order for the Goods.

**'Seller'** means BiS Valves Limited (registered in England and Wales with Company Number 826821)

**'Specification'** means any specification for the Goods, including any related plans and drawings that are agreed in writing by the Buyer and the Seller.

**'Writing'** includes facsimile transmission email and any comparable means of communication.

1.2 Construction. In these Conditions, the following rules apply:

1.2.1 The headings in these Conditions are for convenience only and shall not affect their interpretation.

1.2.2 A **person** includes a natural person, corporate or unincorporated body (whether or not having a separate legal personality).

1.2.3 A reference to a party includes its personal representatives, successors or permitted assigns.

1.2.4 A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.

1.2.5 Any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

### **2. BASIS OF THE CONTRACT**

2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Buyer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.2 The Order constitutes an offer by the Buyer to purchase the Goods in accordance with these Conditions. The Buyer is responsible for ensuring that the terms of the Order are complete and accurate and for giving the Seller any and all necessary information relating to the Goods within a reasonable time to enable the Seller to perform the Contract in accordance with its terms.

2.3 No variation to these Conditions shall be binding unless agreed in writing between the authorised representatives of the Buyer and the Seller.

- 2.4 The Contract constitutes the entire agreement between the parties. The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Seller which is not set out in the Contract.
- 2.5 Any samples, drawings, descriptive matter, or advertising produced by the Seller and any descriptions or illustrations contained in the Seller's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract or have any contractual force.
- 2.6 A quotation for the Goods given by the Seller shall not constitute an offer and shall only be valid for a period of 90 days from its date of issue.

### **3. ORDERS AND SPECIFICATIONS**

- 3.1 No Order submitted by the Buyer shall be deemed to be accepted by the Seller unless and until confirmed in writing by the Seller's authorised representative.
- 3.2 The quantity, quality and description of and any Specification for the Goods shall be those set out in the Seller's quotation (if accepted by the Buyer) or the Buyer's order (if accepted by the Seller).
- 3.3 To the extent that the Goods are to be manufactured in accordance with a Specification supplied by the Buyer, the Buyer shall indemnify the Seller against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by the Seller in connection with any claim made against the Seller for actual or alleged infringement of any third party's intellectual property rights arising out of or in connection with the Seller's use of the Specification. This clause 3 shall survive termination of the Contract.
- 3.4 The Seller reserves the right to amend the Specification of the Goods if required by any applicable statutory or regulatory requirements.
- 3.5 No Order which has been accepted by the Seller may be cancelled by the Buyer except with the agreement in writing of the Seller and on terms that the Buyer shall indemnify the Seller in full against all loss (including loss of profit) costs (including the cost of all labour and materials used) damages charges and expenses incurred by the Seller as the result of cancellation.

### **4. PRICE OF THE GOODS**

- 4.1 The price of the Goods shall be the price set out in the Seller's quotation, or, in the case of an Order placed without a prior quotation from the Seller the price shall be as per the Seller's most up to date price list.
- 4.2 Where the Goods are supplied for export from the United Kingdom the Seller's published export price list shall apply. All prices quoted are valid for 90 days only or until earlier acceptance by the Buyer after which time they may be altered by the Seller without giving notice to the Buyer. All orders are subject to a minimum order charge.
- 4.3 The Seller may, by giving notice to the Buyer at any time up to 30 Business Days before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:
- 4.3.1 any factor beyond the Seller's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in the cost of labour, materials and other manufacturing costs);
  - 4.3.2 any request by the Buyer to change the delivery date(s), quantities or types of Goods ordered, or the Specification; or
  - 4.3.3 any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate or accurate information or instructions.

- 4.4 Except as otherwise agreed in writing between the Buyer and Seller the price of the Goods is on an ex-works basis and is exclusive of the costs and charges of packaging, carriage freight insurance and transport of the Goods which shall be invoiced to the Buyer. The Seller will use its reasonable endeavours to include the costs of [packaging, carriage, freight, insurance] in any quotation provided to the Buyer.
- 4.5 The price of the Goods is exclusive of amounts in respect of value added tax (**VAT**). The Buyer shall, on receipt of a valid VAT invoice from the Seller, pay to the Seller such additional amounts in respect of VAT as are chargeable on the supply of the Goods.
- 4.6 The cost of pallets and return of containers will be charged to the Buyer in addition to the price of the Goods but full credit will be given to the Buyer provided they are returned undamaged to the Seller before the due payment date.

## **5. TERMS OF PAYMENT**

- 5.1 Subject to any special terms agreed in writing between the Buyer and the Seller the Seller shall be entitled to invoice the Buyer for the price of the goods on or at any time after delivery. If the Goods are to be collected by the Buyer or the Buyer wrongfully fails to take delivery of the goods the Seller shall be entitled to invoice the Buyer for the price at any time after the Seller has notified the Buyer that the Goods are ready for collection or the Seller has tendered delivery of the Goods.
- 5.2 The Buyer shall pay the invoice in the manner detailed on the invoice in full and cleared funds on or before the last working day of the month following the date of invoice. The Seller shall be entitled to recover the invoice amount notwithstanding that delivery may not have taken place and that the property and the Goods have not passed to the Buyer. Time of payment is of the essence.
- 5.3 If the Buyer fails to make any payment on the due date then without prejudice to any other right or remedy available to the Seller the Seller shall be entitled to:
- 5.3.1 cancel the Contract or suspend any further deliveries to the Buyer;
  - 5.3.2 appropriate any payment made by the Buyer to such of the Goods (or the Goods supplied under any other contract between the Buyer and the Seller) as the Seller may see fit (notwithstanding any purported appropriation by the Buyer) and
  - 5.3.3 charge the Buyer interest (both before and after any judgment) on the amount unpaid at the rate of 4% per cent per annum above Bank of England base rate from time. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. The Buyer shall pay the interest together with the overdue amount.
- 5.4 The Buyer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Buyer shall not be entitled to assert any credit, set-off or counterclaim against the Seller in order to justify withholding payment of any such amount in whole or in part. The Seller may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Buyer against any amount payable by the Seller to the Buyer.

## **6. DELIVERY**

- 6.1 The Buyer shall collect the Goods from the Seller's premises at or such other location as may be advised by the Seller prior to delivery (**Delivery Location**) within 5 Business Days of the Seller notifying the Buyer that the Goods are ready for collection or if some other place is agreed in writing by both the Seller and Buyer then the Seller shall deliver the Goods to that location.

- 6.2 If the Seller requires the Buyer to return any packaging materials to the Seller, that fact will be clearly stated on the delivery note. The Buyer shall make any such packaging materials available for collection at such times as the Seller shall reasonably request.
- 6.3 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. The Seller shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Buyer's failure to provide the Seller with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods. The Goods may be delivered by the Seller in advance of the quoted delivery date.
- 6.4 Where delivery of the Goods is to be made by the Seller in bulk the Seller reserves the right to deliver up to 5% more or less than the quantity ordered without any adjustment in the price and the quantity so delivered shall be deemed to be the quantity ordered.
- 6.5 The Seller may at its discretion deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate Contract. Any delay in delivery or defect in an instalment shall not entitle the Buyer to cancel any other instalment.
- 6.6 If the Seller fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Buyer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. The Seller shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Buyer's failure to provide the Seller with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 6.7 If the Buyer fails to take delivery or collect the Goods within five Business Days of the Seller notifying the Buyer that the Goods are ready, then, except where such failure or delay is caused by a Force Majeure Event or the Seller's failure to comply with its obligations under the Contract:
- 6.7.1 delivery of the Goods shall be deemed to have been completed at 9.00 am on the fifth Business Day after the day on which the Seller notified the Buyer that the Goods were ready; and
- 6.7.2 the Seller shall store the Goods until delivery takes place, and charge the Buyer for all related costs and expenses (including insurance).
- 6.8 If 10 Business Days after the day on which the Seller notified the Buyer that the Goods were ready for delivery the Buyer has not taken delivery of them, the Seller may resell or otherwise dispose of part or all of the Goods.

## **7. TITLE AND RISK**

- 7.1 The risk in the Goods shall pass to the Buyer on completion of delivery.
- 7.2 Title to the Goods shall not pass to the Buyer until the Seller has received payment in full (in cash or cleared funds) for:
- 7.2.1 the Goods; and
- 7.2.2 any other goods or services that the Seller has supplied to the Buyer in respect of which payment has become due.
- 7.3 Until title to the Goods has passed to the Buyer, the Buyer shall:
- 7.3.1 hold the Goods on a fiduciary basis as the Seller's bailee;
- 7.3.2 store the Goods separately from all other goods held by the Buyer so that they remain readily identifiable as the Seller's property;
- 7.3.3 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;

- 7.3.4 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
  - 7.3.5 notify the Seller immediately if it becomes subject to any of the events listed in clause 11.2; and
  - 7.3.6 give the Seller such information relating to the Goods as the Seller may require from time to time,
- 7.4 If, before title to the Goods passes to the Buyer, the Buyer becomes subject to any of the events listed in clause 11.2, or the Seller reasonably believes that any such event is about to happen and notifies the Buyer accordingly, then, provided that the Goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy the Seller may have, the Seller may at any time require the Buyer to deliver up the Goods and, if the Buyer fails to do so promptly, enter any premises of the Buyer or of any third party where the Goods are stored in order to recover them.

## **8. QUALITY**

- 8.1 The Seller warrants that for a period of 12 months from the date of first use or for a period of 24 months from date of delivery (whichever expires first) the Goods shall:
- 8.1.1 conform in all material respects with their description;
  - 8.1.2 be free from material defects in design, material and workmanship; and
  - 8.1.3 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979); and
  - 8.1.4 be fit for any purpose held out by the Seller.
- 8.2 Subject to clause 8.1, if the Buyer gives notice in writing to the Seller during the warranty period and within a reasonable period of discovery that some or all of the Goods do not comply with the warranty set out in clause 8.10 then the Seller shall be given a reasonable opportunity to examine such Goods and the Buyer (if asked to do so by the Seller) shall return such Goods to the Seller's place of business at the Buyer's cost, and the Seller shall, at its option, repair or replace any Goods found to be defective, or refund the price of any Goods found to be defective, in full.
- 8.3 The Seller shall not be liable for Goods' failure to comply with the warranty set out in clause 8.1 in any of the following events:
- 8.3.1 the Buyer makes any further use of such Goods after giving notice in accordance with clause 8.2;
  - 8.3.2 the defect arises because the Buyer failed to follow the Seller's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;
  - 8.3.3 the defect arises as a result of the Seller following any drawing, design or Specification supplied by the Buyer;
  - 8.3.4 the Buyer alters or repairs such Goods without the written consent of the Seller;
  - 8.3.5 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions;
  - 8.3.6 the Goods differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory requirements;
  - 8.3.7 the Goods are used in an application beyond the Seller's design specification
- 8.4 Except as provided in this clause 8, the Seller shall have no liability to the Buyer in respect of the Goods' failure to comply with the warranty set out in clause 8.1.

8.5 Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

8.6 These Conditions shall apply to any repaired or replacement Goods supplied by the Seller.

## **9. LIMITATION OF LIABILITY**

9.1 Nothing in these Conditions shall limit or exclude the Seller's liability for:

9.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);

9.1.2 fraud or fraudulent misrepresentation;

9.1.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979;

9.1.4 defective products under the Consumer Protection Act 1987 (where applicable); or

9.1.5 any matter in respect of which it would be unlawful for the Seller to exclude or restrict liability.

9.2 Subject to clause 9.1 the Seller shall under no circumstances whatsoever be liable to the Buyer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract.

9.3 Whilst BiS Valves take every care with product selection, please note that final approval for use of any product is the responsibility of the end user, having considered all design factors, and if necessary, having proven suitability for use through testing.

## **10. FORCE MAJURE**

10.1 Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event. A Force Majeure Event means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of Sellers or subcontractors.

## **11. BUYER INSOLVENCY OR INCAPACITY**

11.1 If the Buyer becomes subject to any of the events listed in clause 11.2(a)-(l), or the Seller reasonably believes that the Buyer is about to become subject to any of them and notifies the Buyer accordingly, then, without limiting any other right or remedy available to the Seller, the Seller may cancel or suspend all further deliveries under the Contract or under any other contract between the Buyer and the Seller without incurring any liability to the Buyer, and all outstanding sums in respect of Goods delivered to the Buyer shall become immediately due.

11.2 For the purposes of clause 11.1 the relevant events are:

(a) the Buyer suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply;

- (b) the Buyer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;
  - (c) (being a company) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Buyer, other than for the sole purpose of a scheme for a solvent amalgamation of the Buyer with one or more other companies or the solvent reconstruction of the Buyer;
  - (d) (being an individual) the Buyer is the subject of a bankruptcy petition or order;
  - (e) a creditor or encumbrance of the Buyer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
  - (f) (being a company) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Buyer;
  - (g) (being a company) a floating charge holder over the Buyer's assets has become entitled to appoint or has appointed an administrative receiver;
  - (h) a person becomes entitled to appoint a receiver over the Buyer's assets or a receiver is appointed over the Buyer's assets;
  - (i) the Buyer suspends, threatens to suspend, ceases or threatens to cease to carry on all or substantially the whole of its business;
  - (j) the Buyer's financial position deteriorates to such an extent that in the Seller's opinion the Buyer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; and
  - (k) (being an individual) the Buyer dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.
  - (l) any event occurs, or proceeding is taken, with respect to the Buyer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 11.2(a) to clause 11.2(k) (inclusive);
- 11.3 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination. Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

## **12. TEST OR INSPECTION OF THE GOODS**

- 12.1 Where the Contract provides for test and inspection before dispatch and delivery by or on behalf of the Buyer at the Seller's premises the following conditions shall apply:
- 12.2 In the event of inspection by the Buyer and/or their servant or agent any complaint in relation to the Goods must be notified to the Seller in writing within seven days of that inspection and in the absence of such notice the Buyer shall be conclusively deemed to have accepted the Goods as being in conformity with the Contract and shall not thereafter be entitled to reject the Goods.
- 12.3 Examination of Goods during construction by an external authority where required shall be payable by and at the cost of the Buyer in addition to the ordinary price of the Goods.
- 12.4 The Seller reserves the right to charge the Buyer the cost of all test pieces which comply with specification.

## **13. ASSIGNMENT AND SUBCONTRACTING**

13.1 The Seller may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

13.2 The Buyer may not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of the Seller.

#### **14. NOTICES**

14.1 Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post, recorded delivery, commercial courier, fax or e-mail.

14.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 14.1; if sent by pre-paid first class post or recorded delivery, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or e-mail, one Business Day after transmission.

14.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

#### **15. SEVERANCE**

15.1 If any court or competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.

15.2 If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

#### **16. WAIVER**

A waiver of any right or remedy under the Contract is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

#### **17. THIRD PARTY RIGHTS**

A person who is not a party to the Contract shall not have any rights under or in connection with it.

#### **18. VARIATION**

Except as set out in these Conditions, any variation to the Contract, including the introduction of any additional terms and conditions, shall only be binding when agreed in writing and signed by the Buyer and the Seller.

#### **19. GOVERNING LAW AND JURISDICTION**

The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and

construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.