

**ADANAC VALVE SPECIALTIES LIMITED TERMS AND CONDITIONS OF PURCHASE  
(MARCH 2009)**

These are the terms and conditions upon which Adanac Valve Specialties Limited are prepared to purchase the Goods and Services from you the Seller and any variation to these conditions shall have no effect unless expressly agreed in writing.

**1. INTERPRETATION**

1.1 The definitions and rules of interpretation in this condition apply in these conditions.

**Contract:** the Order and the Seller's acceptance of the Order.

**Goods:** any goods agreed in the Contract to be bought by us from the Seller (including any part or parts of them).

**Order:** Our written instruction to buy the Goods and, where applicable, commission the Services, incorporating these conditions.

**Services:** the provision of services by the Seller under the Contract.

**2. APPLICATION OF TERMS**

2.1 These conditions apply to all our purchases and they shall govern the Contract to the entire exclusion of all other terms and conditions. No terms or conditions of the Seller shall form part of the Contract and the Seller waives any right which it otherwise might have to rely on such terms and conditions.

2.2 The Goods and Services, their supply and delivery and all inspections and testing procedures shall comply and be in accordance with all national, local and other applicable laws and with all relevant European and British standards and accepted best industry practice.

2.3 The Seller confirms that it is free to supply the Goods and perform the Services. The Seller further confirms that we may use any Goods supplied by it in any way of our choosing without infringing any form of intellectual property right of any third party.

**3. QUALITY AND DEFECTS**

3.1 The Goods shall be of the best available design, quality, material and workmanship, and will conform in all respects with the Order and specification supplied by us or, in the absence of such, with the Seller's standard specification or sample. Our rights under these conditions are in addition to the statutory conditions implied in our favour by the Sale of Goods Act 1979.

3.2 Where Services are being provided the Seller shall use the highest standards of skill and care in providing the Services and will conform in all respects with the Order. Our rights under these conditions are in addition to the statutory conditions implied in our favour by the Supply of Goods and Services Act 1982.

3.3 If any of the Goods or Services fail to comply with the provisions set out in condition 3.1 or 3.2 we shall be entitled to avail ourselves of the remedies listed in condition 13. In the event of the Seller failing to comply with provision 3.1 the Seller will, as far as practical, preserve such Goods for a period of 14 days, from being notified by us of the defect, for our inspection

**4. INSPECTION AND TESTING BY THE SELLER**

- 4.1 The Seller shall carry out the inspection and testing procedures specified or referred to in the Order. If no procedures are specified or referred to in the Order, the procedures shall be compatible with those normally applied in connection with the manufacture and delivery of the kind of goods to be supplied under the Order.
- 4.2 No Goods shall be delivered until all applicable inspections and tests have been successfully completed and all relevant documentation including certificates, which shall be provided to us on or prior to delivery, have been completed to the requirements of the Contract.
- 4.3 Prior to delivery our authorised representatives shall have the right to inspect and test the Goods at all times as well as to attend and witness any pre-delivery examination or testing. We may arrange for third party inspection and testing of the Goods at a reasonable location of our choosing to be at our expense in the event of which the Seller must make the Goods, including all relevant documentation, available for inspection and testing at a time suitable to the third party within 28 days of notification.
- 4.4 If the results of any inspection or testing reveal that the Goods may not conform with our requirements under the Contract, then the Seller shall immediately take such action as is necessary to ensure conformity and we shall have the right to require and witness further testing and inspection.

**5. INDEMNITY**

The Seller shall keep us indemnified in full against all direct, indirect or consequential liabilities, loss, damages and any other costs without limitation incurred or paid by us as a result of or in connection with any (1) defective workmanship, quality or materials and (2) any infringement or alleged infringement of any intellectual property rights caused by the use, manufacture or supply of the Goods or Services and (3) any claim made against us in respect of any liability, loss, damage or other costs sustained by our employees or agents or by any customer or third party to the extent that such liability, loss, damage or other cost was caused by, relates to or arises from the Goods or Services as a consequence of any breach or negligent performance or failure or delay in performance of the terms of the Contract by the Seller.

**6. DELIVERY**

- 6.1 The Goods shall be delivered, carriage paid, to our place of business unless otherwise agreed by such method as is agreed by us in writing. The Seller shall off-load the Goods at its own risk as directed by us. Where Services are being provided then the Seller shall provide those Services at the place(s) notified in the Order and shall ensure that it allocates sufficient resources to the provision of the Services to enable it to meet its obligations under the Contract. The date for delivery of the Goods and completion of the Services shall be specified in the Order or otherwise within 28 days of the Order. Time for delivery shall be of the essence.
- 6.2 The Seller shall invoice us for the Goods and Services upon, but separately from, the latter of the despatch of the Goods or completion of the Services and shall ensure that each delivery is accompanied by a delivery note which shows, among other

things, the Order number, date of Order, number of packages and contents and, in the case of part delivery, the outstanding balance remaining to be delivered.

- 6.3 Unless otherwise stipulated by us, deliveries shall only be accepted by us in normal business hours. If the Goods and Services are not delivered on the due date then, without prejudice to any other rights which we may have, we reserve the right to (1) cancel the Contract in whole or in part and (2) refuse to accept any subsequent delivery of the Goods and /or performance of the Services which the Seller attempts to make and (3) to recover from the Seller any expenditure reasonably incurred by us in obtaining goods in substitution from another supplier and (4) to claim damages for any additional costs, loss or expenses incurred by us.
- 6.4 If the Seller requires us to return any packaging material to the Seller that fact must be clearly stated on any delivery note delivered to us and shall be returnable at the Seller's own cost.
- 6.5 Where we agree in writing to accept delivery by instalments the Contract shall be construed as a single contract in respect of each instalment. Failure by the Seller to deliver any one instalment shall entitle us to treat the whole Contract as repudiated.
- 6.6 If the Goods are delivered to us in excess of the quantities ordered we may accept or reject the quantity variation without any further liability for the excess quantity in the case of a rejection.
- 6.7 We shall not be deemed to have accepted the Goods until we have had 14 days to inspect them following delivery. We shall also have the right to reject the Goods as though they had not been accepted for 14 days after any latent defect in the Goods has become apparent.

## **7. RISK/PROPERTY**

- 7.1 The Goods shall remain at the risk of the Seller until delivery to us is complete. Where goods, other than the Goods, are supplied to us by the Seller in connection with the Services risk in those goods will pass on the earlier of (1) substantial incorporation into our property or premises as may be applicable or (2) completion of the Services.
- 7.2 The Seller shall take out and maintain comprehensive insurance with a reputable insurer to fully cover the Seller and ourselves from potential liabilities arising from the Contract in a minimum sum (but without limit in the case of death or personal injury cause by Seller's negligence) of £3 million for any one occurrence and shall provide evidence of such cover to us upon request.

## **8. PRICE**

The price of the Goods and for the Services shall be stated in the Order and unless otherwise agreed in writing by us shall be exclusive of value added tax but inclusive of all other charges and ancillary expenses including but not limited to charges for any containers or packaging, any duties, taxes, delivery costs and costs of materials. No variation in the price nor extra charges shall be accepted by us.

**9. PAYMENT**

- 9.1 We shall pay the price of the Goods and the Services within 60 days from the end of the month upon which delivery of the Goods and completion of the Services takes place provided that (1) all of our requirements under the Contract have been completed and (2) the Seller has provided an invoice which details separately our order number, the VAT rate charged and the Seller's VAT registration number. Time for payment shall not be of the essence.
- 9.2 Without prejudice to any other right or remedy, we reserve the right to set off any amount owed by the Seller to us against any amount payable by us to the Seller under the Contract.
- 9.3 If any sum under the Contract is not paid when due then, without prejudice to the parties' other rights under the Contract, that sum shall bear interest from the due date until payment is made in full at 2% per annum over National Westminster Bank's base rate from time to time. The Seller is not entitled to suspend deliveries of the Goods or provision of the Services as a result of any sums being outstanding.

**10. CONFIDENTIALITY**

At all times (both during this agreement and afterwards) the Seller shall (1) keep in strict confidence and (2) not disclose to any third party nor (3) use for any purpose other than complying with the Contract; any information of any nature disclosed to the Seller by us or otherwise made known to the Seller as a result of the Seller entering into the Contract. Where it is necessary to disclose information to any employees, agents or sub-contractors the Seller must ensure that they are subject to like obligations of confidentiality as bind it.

**11. OUR PROPERTY**

- 11.1 All forms of intellectual property rights in all drawings, specifications and data supplied by us to the Seller shall at all times be and remain our exclusive property and shall (1) be returnable upon request and (2) not be disposed of other than in accordance with our written instructions and (3) not be used otherwise than as authorised by us in writing..
- 11.2 Any intellectual property rights developed by the Seller pursuant to the performance of the Contract shall be assigned by the Seller to us with full title guarantee and free from all third party rights and all other rights in respect of the same.

**12. TERMINATION**

- 12.1 We shall have the right at any time and for any reason to terminate the Contract in whole or in part by giving the Seller written notice whereupon we shall pay to the Seller fair and reasonable compensation (but not for anticipated profits or any consequential loss) for work-in-progress at the time of termination.
- 12.2 We shall have the right at any time by giving notice in writing to the Seller to terminate the Contract forthwith if (1) the Seller fails to observe or perform any of its obligations under the Contract or any other contract between us and the Seller or (2) any distress, execution or other process is levied upon any of the assets of the Seller or (3) if a receiver, administrative receiver or administrator is appointed in respect of any

of the Seller's assets or (4) in the event that a resolution is passed or order made for the Seller to be wound up or (5) should the Seller cease to trade or (6) the Seller becomes unable to perform the Contract or any other event happens which in our reasonable opinion suggests that any of the aforementioned might occur.

- 12.3 The termination of the Contract, howsoever arising, shall be without prejudice to our rights and duties accrued prior to termination. The conditions which expressly or impliedly have effect after termination shall continue to be enforceable notwithstanding termination.

**13. REMEDIES**

Without prejudice to any other right or remedy which we may have, if the Seller fails to comply with any of the terms of the Contract we shall be entitled to avail ourselves of any one or more of the following remedies whether or not any part of the Goods have been accepted and or paid for. These remedies are to (1) rescind the Order (2) reject the Goods (in whole or in part) (3) give the Seller the opportunity at its expense to remedy any defect or to supply replacement Goods (4) refuse to accept any further deliveries of the Goods or performance of the Services without any liability to the Seller (5) carry out at the Seller's expense any work necessary to make the Goods and / or the provision of the Services comply with the Contract or to (6) claim damages.

**14. ASSIGNMENT**

The Seller is not entitled to assign the Contract in any way without our prior written consent.

**15. GENERAL**

- 15.1 We reserve the right to defer the date of delivery or payment or to cancel the Contract or reduce the volume of the Goods ordered if we, or our customers, are prevented from or delayed in the carrying on of our business due to circumstances beyond our reasonable control including, without limitation, any form of labour dispute.
- 15.2 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly invalid or unenforceable for whatever reason it shall, to the extent of the invalidity or unenforceability, be deemed severable and the remaining provisions of the Contract shall continue in full force and effect.
- 15.3 Each of our rights and remedies under the Contract is without prejudice to any other of our rights or remedies whether under the Contract or not. Any failure or delay by us in enforcing any provision of the Contract or any waiver of any breach of, or any default under, any provision of the contract by the Seller shall not be construed as a waiver of any of our rights under the Contract or a waiver of any subsequent breach of contract by the Seller.
- 15.4 The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Contract.
- 15.5 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.