

## APPLIED ALLOYS INTERNATIONAL AND ICON VALVE GROUP AUSTRALIA

### STANDARD TERMS AND CONDITIONS

By entering this contract you acknowledge that you have read these terms and conditions as set out in sections 1 through 23.

#### 1. DEFINITIONS AND INTERPRETATION

##### 1.1 DEFINITIONS

In these terms and conditions, unless the context otherwise requires:

- a. "Australian Consumer Law" means Schedule 2 of the Competition and Consumer Act 2010 (Cth) and the corresponding provisions of State Fair Trading legislation.
- b. "Buyer" means the person named as "Buyer" in the relevant Sales Invoice or Quotation.
- c. "Business Day" means a day other than a weekend or public holiday in the place in which the goods are delivered.
- d. "Conditions" means these terms and conditions.
- e. "Consumer" means a consumer as defined by Schedule 2 of the Competition and Consumer Act 2010 as amended from time to time.
- f. "Contract" means a contract for sale as referred to in clause 2(c).
- g. "Excluded Loss" means loss of revenue, loss of profit, loss or denial of opportunity, loss of access to markets, loss of goodwill, loss of business reputation, loss arising from any business interruption, increased overhead costs, and any indirect, remote or unforeseeable loss.
- h. "Exclusive Goods" means any goods which are, at the Buyer's request, manufactured, embellished, printed, machined, cut-to-size, or specifically ordered for the Buyer.
- i. "Health Event" means an epidemic, pandemic, quarantine restrictions, public health emergency, communicable disease outbreak, including without limitation, the Covid-19 outbreak and the consequences of any of the foregoing.
- j. "PPSA" means Personal Property Securities Act 2009 (Cth).
- k. "Purchase Price" means the price for the goods set out in the relevant Quotation or Sales Invoice or as otherwise agreed in writing by the Seller and the Buyer.
- l. "Quotation" means the form of quotation submitted by the Seller to the Buyer setting out the Purchase Price and any other special terms and conditions for the sale and supply of goods by the Seller to the Buyer.
- m. "Sales Invoice" means the sales invoice issued by the Seller to the Buyer evidencing their agreement for the sale and supply of goods by the Seller to the Buyer.
- n. "Seller" in relation to any Quotation or Sales Invoice means Applied Alloys Pty Ltd ATF The Engineering and Engineering & Technology Unit Trust TA Icon Valves Australia and Applied Alloys International– ABN 63 224 783 721.

##### 1.2 INTERPRETATION

- a. The words "include" and "including" are not to be interpreted as words of limitation and, when introduced as an example, do not limit the generality of the words to which the example relates.
- b. Words importing the singular shall include the plural (and vice versa).
- c. A reference to a person includes an individual, the estate of an individual, a body politic, a corporation, a trust, a partnership, an association (incorporated or unincorporated), and a statutory or other authority.
- d. A reference to "in writing" includes recorded by electronic or other durable means.

- e. If any provision of these Conditions is invalid, these Conditions shall be read as if that provision has been severed.

## 2. ORDERS, GOVERNING TERMS AND CONDITIONS

- a. Orders for the supply of goods by the Seller may be made by way of an offer from the Buyer referencing a Quotation. Any such offer shall not bind the Seller until accepted by the Seller.
- b. Alternatively, orders may be confirmed by the issue of a Sales Invoice by the Seller.
- c. When the Seller accepts the Buyer's offer or issues a Sales Invoice, a separate contract of sale will arise for the goods to which the offer or Sales Invoice relates.
- d. Each Contract will comprise the terms and conditions of the relevant Quotation or Sales Invoice and these Conditions. The terms and conditions of the relevant Quotation or Sales Invoice will prevail over these Conditions to the extent of any inconsistency.
- e. Any direction by the Buyer either verbal or written to procure goods or services from the Seller will be deemed as acceptance by the Buyer of these Conditions, despite any provisions to the contrary in the direction or any purchase order issued by the Buyer.
- f. These Conditions prevail over any terms and conditions contained in any order, offer acceptance, or other documents of the Buyer whether or not any inconsistency arises.

## 3. QUOTATIONS

- a. Unless previously withdrawn, a Quotation is valid for 7 days or such other period as stated in it. A Quotation is not to be construed as an obligation to sell but merely an invitation to treat and no contractual relationship shall arise from it until the Buyer's order has been accepted by the Seller which provided the Quotation.
- b. No Seller shall be bound by any conditions attaching to the Buyer's order or acceptance of a Quotation and, unless such conditions are expressly accepted by the Seller in writing, the Buyer acknowledges that such conditions are expressly negated.
- c. Every Quotation is subject to and conditional upon obtaining any necessary import, export or other licence.

## 4. TERMS OF PAYMENT

- a. Payment to the Seller for goods delivered is due within 30 calendar days of the end of the month in which the Buyer is invoiced for the goods.
- b. The Buyer must not withhold payment or make any deduction from the invoiced price or any other amount owing to the Seller without the Seller's prior written consent.
- c. The Seller may in its discretion allocate a payment that does not specifically identify the invoice for which such payment is made in satisfaction for monies owing under any outstanding invoices without regard to the date of those invoices.
- d. If the Buyer fails to make payment in accordance with this clause, all amounts owing by the Buyer to the Seller on any account shall immediately become due and payable. Each outstanding amount shall bear interest at an annual rate of three percent above the current Bank Bill Swap Reference Rate as quoted in the Australian Financial Review at the date the amount is due and payable or an equivalent rate determined by the Seller (acting reasonably) if this rate ceases to be published, is updated,

suspended or discontinued three percent above the then current, Interest will be calculated on a daily basis from the day it falls due until the day it is paid. Any payment made by the Buyer shall be credited first against any interest that has accrued.

## 5. DELIVERY, INSPECTION AND ACCEPTANCE

- a. Any timeframes quoted by the Seller for delivery of goods are estimates only. The Seller will use its reasonable endeavours to supply goods in the quantities specified in the relevant Contract.
- b. Delivery will be made in the manner and at the place specified in the relevant Contract or if not specified delivery will be made as determined by the Seller. The Buyer agrees to accept delivery of goods at any time between 9.00am and 5.00pm on a Business Day. If the Buyer does not, or indicates to the Seller that it will not, take or accept delivery of goods, then the goods will be deemed to have been delivered when the Seller, acting reasonably, was willing to deliver them.
- c. The Seller reserves the right to make part deliveries of any order. Each part delivery may be invoiced separately and shall constitute a separate sale of goods upon the same terms and conditions as those applying to the main order. A part delivery of an order shall not invalidate the balance of an order.
- d. The Buyer shall inspect all goods upon delivery and shall within seven (7) days of delivery give notice to the Seller of any matter or thing by which the Buyer alleges that the goods are not in accordance with the Buyer's order or these terms and conditions. Failing such notice, subject to any non-excludable condition implied by law, such as those in the Australian Consumer Law, the goods shall be deemed to have been delivered to and accepted by the Buyer.

## 6. RETURNS

Return of goods (other than in situations where the Seller is required to accept a return of goods under the Australian Consumer Law) must be approved by the Seller and shall not occur:

- a. in respect of goods accepted or deemed to have been accepted by the Buyer; and
- b. if the Buyer changes its mind and wishes to return goods commonly supplied by the Supplier in response to a Health Event for so long as the Health Event continues.

These authorised returns must be freight prepaid and will only be accepted if they are in a saleable condition and (unless otherwise agreed with the Seller) the goods are returned within 14 days of supply. The Seller reserves the right to charge a handling fee of \$10 or 10% of the price of the goods returned (whichever is greater) under this provision. The Seller will not accept the return of Exclusive Goods other than in situations where the Seller is required to accept a return of such goods under the Australian Consumer Law.

## 7. GST

- a. If a supply under this Contract is subject to GST, the recipient of the supply must pay to the supplier, in addition to the other consideration payable or to be provided for the supply and at the same time as the other consideration, an additional amount equal to the GST.

- b. If any party is entitled to payment of any costs or expenses by way of reimbursement or indemnity, the claim shall exclude any amount for which that party (or representative member if the party is a member of a GST group) may obtain an input tax credit.
- c. Where an adjustment event occurs in relation to a supply made by the supplier under or in connection with this Contract, the supplier will issue an adjustment note to the recipient in respect of that supply within fourteen (14) days after becoming aware of the relevant adjustment. Where the supplier becomes entitled to receive the amount of a variation from the recipient, the amount is not payable by the recipient unless and until the supplier provides a valid adjustment note.
- d. Unless clearly indicated to the contrary, all amounts referred to in this Contract, other than in this clause 7, are GST exclusive.
- e. Unless clearly indicated to the contrary, 'GST' and other terms used in this clause 7 (and in other provisions of this Contract where the GST meanings are expressly intended) have the meanings given to those terms by the A New Tax System (Goods and Services Tax) Act 1999 or any replacement or other relevant legislation and regulations. Any reference to GST payable by the supplier includes any GST payable by the representative member of any GST group of which the supplier is a member.

## 8. PASSING OF PROPERTY AND RISK

- a. Goods supplied by the Seller to the Buyer shall be at the Buyer's risk immediately upon delivery to the Buyer, into the Buyer's custody or at the Buyer's direction (whichever happens first). The Buyer shall insure the goods from the time of that delivery at its cost against such risks as it thinks appropriate.
- b. Title in the goods supplied by the Seller to the Buyer under these Conditions shall not pass to the Buyer until those goods and all other amounts owing or unpaid by the Buyer to the Seller on any account have been paid in full.
- c. Until the goods have been paid for in full:  
the Buyer shall store the goods in a manner which shows clearly that they are the property of the Seller; and  
the Buyer may sell the goods, in the ordinary course of its business, as agent for the Seller and shall account to the Seller for the proceeds of sale (including any proceeds from insurance claims). These proceeds must be kept in a separate bank account.
- d. The Buyer irrevocably authorises the Seller at any time to enter onto any premises upon which:  
the Seller's goods are stored to enable the Seller to inspect the goods and/or reclaim the goods, if the Buyer has breached these Conditions;  
the Buyer's records pertaining to the goods are held to inspect and copy such records.
- e. The Buyer and the Seller agree that the provisions of this clause apply notwithstanding any arrangement under which the Seller grants credit to the Buyer.
- f. The Buyer consents to the Seller perfecting any security interest (as defined in section 12 of the PPSA) in goods and their proceeds created by this clause 8 by registration under the PPSA and agrees to do anything reasonably requested by the Seller to enable it to do so.
- g. The parties contract out of each provision of the PPSA which, under section 115(1) of that Act, they are permitted to contract out of, other than:  
sections 117 and 118 (relationship with land laws), sections 120 (enforcement of liquid assets), 123 (right to seize collateral), 125 (obligation to dispose of or retain collateral), 126 (apparent possession), 128 (secured party may dispose of collateral); and sections 134(1) and 135 (retention of collateral).
- h. Each party waives its right to receive each notice which, under section 157(3) of the PPSA, it is permitted to waive.
- i. Each party waives its rights to receive anything from any other party under section 275 of the PPSA and agrees not to make any request of any other party under that section.

## 9. SUSPENSION, CANCELLATION AND DISCONTINUANCE OF SUPPLY

The Seller reserves the right to immediately suspend, cancel or discontinue the supply of goods to the Buyer without further notice to the Buyer where:

- a. the Seller reasonably suspects that the Buyer is in breach of these Conditions; or
- b. the Buyer is otherwise in breach of its payment obligations to the Seller, and the Seller will not incur any liability to the Buyer in respect of such suspended, cancelled or discontinued supply.

## 10. INSTALLATION

The Seller's Quotation or Sale Invoice is made on a supply only basis. Installation and commissioning (if any) is at the expense of the Buyer unless otherwise specified in writing by the Seller.

## 11. DIMENSIONS, PERFORMANCE DATA AND OTHER DESCRIPTIVE DETAILS

- a. All technical information (including photographs, drawings, illustrations, weights, dimensions and any other particulars accompanying, associated with or given in a Quotation, descriptive literature or a catalogue) is approximate only and to the extent permitted by law, the Seller gives no warranty and makes no representation with respect to the correctness, compliance, adequacy or otherwise of that information at its own risk.
- b. To the extent permitted by statute, any performance data provided by the Seller, a supplier or a manufacturer is an estimate only and is provided in good faith but without liability or responsibility on the part of the Seller and without the intention that the Buyer should rely on it.
- c. Unless agreed to the contrary in writing, the Seller reserves the right to offer an alternative brand or substitute product that has characteristics that are materially consistent with the goods offered when necessary. Substitution will not be given effect to until approval is received from the Buyer.

## 12. SHIPMENT AND DELIVERY

- a. Upon acceptance of an order by the Seller, the Seller will seek confirmation of the period of shipment or delivery. If any variation has occurred in the quoted period, the Seller will notify the Buyer. Unless the Buyer objects in writing within 7 days of that notification to the Buyer, the period of shipment or delivery notified to the Buyer will be the contractual period for shipment or delivery.
- b. The Seller may impose a delivery charge on all deliveries (subject to such charge being notified to the Buyer in advance) with the exception of back order deliveries which are part of an original order that has been partly fulfilled.

### 13. CURRENCY

Where goods are imported into Australia, any adverse variation in the price arising from fluctuation in exchange rates between the date of the Buyer's order and the date of payment by the Seller will be to the Buyer's account.

### 14. CONTINGENCIES

Any charge, duty, impost, sales tax or other expenditure which is not applicable at the date of Quotation or Sales Invoice but which is subsequently levied upon the Seller in relation to a Quotation or Sales Invoice as a result of the introduction of any legislation, regulation or governmental policy, shall be to the Buyer's account.

### 15. CHARGES BEYOND POINT OF DELIVERY QUOTED

Unless otherwise agreed in writing, if the Seller pays freight, insurance, custom and/or import duties (if any), landing and delivery charges or other charges in connection with shipment and delivery of the goods, then any such charges shall be to the Buyer's account. The Seller reserves the right to nominate the means of delivery.

### 16. FORCE MAJEURE

The Seller shall be excused from the performance or observance of any obligations of the Seller to the extent its performance or observance is prevented, restricted or affected by reason of a force majeure event including strike, lock out, industrial dispute, raw material shortage, breakdown of plant, transport or equipment, a Health Event, measures or actions taken by any government or government body including, without limitation, in connection with a Health Event and importation of goods or any other cause beyond the reasonable control of the Seller. The Seller may, in its absolute discretion, give notice of that cause to the Buyer.

### 17. BUYER'S CANCELLATION

Unless otherwise agreed in writing, the Buyer shall have no right to cancel an order which has been accepted by the Seller. If a right of cancellation is expressly reserved to the Buyer, such right of cancellation must be exercised by notice in writing from the Buyer to the Seller not later than 7 days prior to the estimated date of shipment by the manufacturer or that Seller as the case may be. Unless otherwise agreed between the Buyer and Seller, upon cancellation prior to shipment any deposit paid by the Buyer shall be forfeited to the manufacturer or Seller (as the case may be). Despite the cancellation of any order for any reason, the Buyer must still purchase from the Seller any goods ordered by the Buyer which constitute Exclusive Goods (whether

in store, in transit or being manufactured) which were procured or ordered by the Seller before such cancellation, unless otherwise agreed in writing by the Seller.

## 18. WARRANTY

- a. The Seller warrants the Goods to be free from defects in workmanship and materials under normal use and service for a period of 1 calendar year from the Delivery ("Warranty Period"). This warranty does not cover costs of recovery of the goods from the site or damage, fault, failure or malfunction due to external causes including accident, abuse, misuse, mechanical or electrical overload, abrasion, corrosion, incorrect installation, failure to perform required preventative maintenance or normal wear and tear.
- b. During the Warranty Period, to the extent permitted by law, the Buyer's sole remedy with respect to breach of warranties set out in the clause immediately above will be to repair or replace (as the Seller may elect) any such defective goods at the Seller's expense. The replacement or repaired goods shall be covered by the unexpired portion of the Warranty Period in respect of the original goods or for a period of 90 days, whichever is the greater.
- c. For equipment forming part of the goods, which equipment is not manufactured by the supplier, the original manufacturer's warranty will apply. The Seller's liability for such equipment shall not exceed the liability of the manufacturer.
- d. The Buyer shall not carry out any remedial work to allegedly defective goods without first obtaining the written consent of the Seller to do so. The provisions of this clause 18 do not constitute a warranty in relation to the quality or fitness of the goods, or require the Seller to repair or replace goods, or offer a refund in relation to goods, in circumstances other those set out in Australian Consumer Law (to the extent that the Australian Consumer Law applies to the goods).

## 19. LIABILITY OF SELLER

- a. Where goods are purchased from the Seller by the Buyer as a Consumer: the Australian Consumer Law provides certain statutory guarantees in relation to the goods; and nothing in these Conditions purports to modify or exclude such guarantees, but the Seller's liability in respect of any failure to comply is limited to the fullest extent permitted by law.
- b. To the extent permitted by statute, the liability, if any, of the Seller arising from the breach of any statutory guarantee under the Australian Consumer Law in relation to the supply of goods, other than goods of a kind ordinarily acquired for personal, domestic or household use or consumption, shall at the Seller's option be limited to:  
the replacement of the goods or resupply of the goods by the Seller, or the cost of replacement or resupply of the goods; or  
the repair of the goods, or the cost of repair of the goods.
- c. To the extent permitted by statute, the Seller shall not in any circumstances be liable to the Buyer for or in respect of any Excluded Loss.
- d. Subject to clauses 19a to 19c, and except in the case of fraud or wilful misconduct of the Seller, the total aggregate liability of the Seller, whether in contract, in tort (including but not limited to negligence), in equity, under any warranties or indemnities, by operation of statute or otherwise, will to the extent permitted by law, be limited to the Purchase Price.
- e. To the extent permitted by statute, all warranties, conditions and guarantees (whether express, implied or applied, and whether given by the Seller, the manufacturer or a third party) and any

obligation of the Seller to repair or replace any goods are void in respect of any goods which the Buyer tampers with or alters.

## 20. ALTERATION TO CONDITIONS

The Seller may, at any time and from time to time, alter these Conditions without notice and with immediate effect once posted on the Seller's website, provided that any variation to these Conditions will not apply to any:

- a. orders placed not yet fulfilled prior to the date of such variation taking effect; or
- b. contract for a specified term that incorporates a version of these Conditions released prior to the variation.

## 21. VIENNA SALES CONVENTION

To the fullest extent permitted by law, the United Nations Convention on Contracts for the International Sale of Goods (Vienna 1980) known as the Vienna Sales Convention does not apply to the contract comprised by these Conditions nor do any of the Conditions express or implied by the Vienna Sales Convention form part of the contract.

## 22. GOVERNING LAW

These Conditions and any contract including them shall be governed by and construed in accordance with the laws of the State of Western Australia and the Seller and the Buyer submit to the non-exclusive jurisdiction of the Courts of Western Australia.

## 23. CONFIDENTIALITY

The terms of any Quotation or Sales Invoice, other than any terms which the Seller itself has placed in the public domain, are confidential and must not be disclosed by the Buyer to any third party without the Seller's prior written consent unless such disclosure is required by law (other than section 275(1) of the PPSA). It is agreed that the provisions of this clause 23 amount to "confidentiality agreement" referred to in section 275(6) of the PPSA.