

STANDARD TERMS & CONDITIONS OF SALE

1. DEFINITIONS

- 1.1. "Client" – means the person, institution, or entity contracting with IDV;
- 1.2. "IDV" – means Industrial and Designer Valves Holdings Proprietary Limited (Registration Number 2014/190940/07);

2. PRICE LISTS, PAYMENTS AND INTEREST

- 2.1. Any price lists exhibited or issued by IDV are (i) for information purposes only, (ii) subject to change or variation without notice and (iii) do not constitute offers of sale of the prices listed.
- 2.2. Subject to clause 2.5, all payments due by the Client are to be paid in full within 30 (thirty) days from date of statement.
- 2.3. Any amount not paid within 30 (thirty) days from date of statement shall accrue interest at the prime interest overdraft rate, as specified by Absa Bank from time to time, plus 3% (three percent), which interest will accrue on a monthly basis.
- 2.4. All accounts that have not been paid in full within 30 (thirty) days from date of statement shall be temporarily suspended until full payment has been made by the Client.
- 2.5. With regards to any cash sales, payment in respect of goods sold by IDV to the Client shall become due upon delivery to or collection by the Client of the goods.
- 2.6. The Client shall not be entitled to set-off any amounts owing by it to IDV. Notwithstanding the aforementioned, IDV shall be entitled to set-off amounts.
- 2.7. The Client may not withhold any payments pending settlement of any claims or dispute/s under the Terms and Conditions.

3. ACKNOWLEDGEMENTS

- 3.1. The Client agrees that they have fully considered the Terms and Conditions and that they are reasonable in the light of all factors relating to any engagement, goods and/or services.
- 3.2. If any terms or provisions of the Terms and Conditions are or become invalid, illegal or unenforceable, such term or provision shall be severed here from and the remainder shall survive unaffected.
- 3.3. To the extent that: (i) the Client satisfies the definition of a "Consumer" as defined in the Consumer Protection Act No. 68 of 2008 ("CPA"); and (ii) any provision contained in the Terms and Conditions is invalid, illegal or unenforceable as

a result of the application of the CPA, such provision shall be deemed to be amended to the extent necessary to comply with the CPA.

4. DELIVERY AND OWNERSHIP

- 4.1. Delivery dates are approximate, and whilst IDV will make every effort to adhere to the date/s (if any), stated in the order confirmation, to ensure that the goods are delivered timeously. In no case shall time be of the essence to the contract unless specifically agreed so by IDV in writing, and the Client shall have no claim whatsoever nature arising out of any delay in delivery.
- 4.2. The Client shall be obliged to accept delivery of the goods when delivery is made by IDV to the Client at the address given on the face of the application.
- 4.3. Should the Client fail to take delivery or should the Client purport to withdraw his offer to purchase, then IDV shall be entitled to, at its option and sole discretion and without waiving its rights to proceed with any other remedy available to IDV in law, which includes but is not limited to (i) demand the return of the goods, (ii) retain any monies paid by IDV as rouwkoop, (iii) claim damages and/or (iv) claim immediate payment of the full purchase price or the balance thereof, as the case may be, against tender of the goods.
- 4.4. IDV undertakes to use its best endeavours to ensure that the goods supplied will conform to specifications and/or to any requirements specifically accepted by it in writing in regard to any particular order, but gives no warranty express or implied in regard to material, workmanship or fitness of goods for any particular purpose.
- 4.5. All sales and prices quoted are "ex works" of IDV's business address, unless agreed otherwise in writing.
- 4.6. Should IDV be requested by the Client to transport the goods to the Client's premises, or such other address as specified by the Client in writing, IDV may, in its sole and absolute discretion and at the Client's sole expense, arrange for the transportation of the goods to the Client. In the event that IDV transports the goods, the Client and IDV hereby agree and acknowledge that the risk of loss and damage shall pass from IDV to the Client once the goods are placed at the IDV business premises ready for loading. The Client acknowledges and agrees that it/he/she shall have no claim of whatsoever nature, whether directly, indirectly or consequential, against IDV as a result of any damage caused to the goods during loading or transit or delay in delivery of the goods arising out of the transportation thereof. The Client undertakes to procure the necessary insurance at

the Client's expense for the transportation of the goods by IDV.

- 4.7. Notwithstanding any other provision of the contract whereby goods have been made available by IDV to the Client:
 - 4.7.1. the ownership in all goods sold, delivered or in any other way made available to the Client by IDV shall remain vested in IDV until the Client has made full payment of all outstanding amounts for such goods;
 - 4.7.2. risk shall pass from IDV to the Client once the goods leave IDV's business premises;
 - 4.7.3. IDV shall have the right at any time to give notice of its continued ownership in the goods to every possessor and every landlord of premises in or on which goods are stored or may be placed, whether for sale, repair, assembly or otherwise;
 - 4.7.4. without prejudice to any of its rights in terms of law, IDV reserves the right to repossess goods in the event of the Client failing to make any payments on the due date or at all; and
 - 4.7.5. IDV shall not be bound by any errors and/or omissions made in relation to the sale of goods, whether they be in respect of arithmetical calculations, incorrect ruling prices or otherwise and gives no warranty and makes no representations in respect of the goods.

5. QUALITY OF GOODS

- 5.1. A signed delivery note shall constitute *prima facie* proof that the goods have been delivered to and received by the Client in good condition, whether signed by the Client, an employee, an agent, a representative or nominated transporter of the Client.
- 5.2. All goods are sold *voetstoots*.

6. ACCOUNT

- 6.1. IDV shall be entitled to terminate any Terms and Conditions or provision of open account facilities at any time without prior notice to the Client in which further purchases by the Client shall be for cash or as otherwise arranged at the time of purchase.
- 6.2. IDV shall, in its sole discretion, at any time without prior notice to the Client, be entitled to reduce and/or withdraw the credit limit initially imposed on the facilities extended to the Client.
- 6.3. The Client hereby agrees that a certificate under the hand of IDV purporting to reflect the balance then owing on the said account, shall be *prima facie* evidence of the correctness of such balance for purposes of any action or application by

IDV for payment of such balances and shall constitute an acknowledgement of debt by the Client in favour of IDV in the sum reflected in each certificate, entitling IDV to claim *inter alia* provisional sentence or summary judgment against the Client, as if the document were a liquid document signed by the Client.

7. EVENT OF DEFAULT

- 7.1. Each of the following events or circumstances, as set out in this **clause 7.1** is an "**Event of Default**" (each of which shall be severable and distinct from the others and whether or not caused by any reason whatsoever outside of the Client's control):
 - 7.1.1. the Client does not pay on the due date any amount payable by the Client to IDV;
 - 7.1.2. the Client breaches any of the provisions contained in the Terms and Conditions;
 - 7.1.3. the Client is placed in compulsory or voluntary liquidation, judicial management or business rescue;
 - 7.1.4. the Client compromises with any and/or all of its creditors;
 - 7.1.5. the Client ceases to conduct business or trade;
 - 7.1.6. the Client commences proceedings or takes any steps to deregister itself, the Client undertaking to inform IDV of any such steps or proceedings;
 - 7.1.7. any assets of the Client is attached under a writ of execution;
 - 7.1.8. the Client effects a compromise with its creditors or one or more of them; or
 - 7.1.9. the Client commits any act of insolvency.
- 7.2. Should an Event of Default occur, IDV shall have the right but not the obligation, without prejudice to any other rights it may have in law, to:
 - 7.2.1. claim the full balance owing by the Client as at the date thereof which amount shall immediately become due and payable without notice from IDV;
 - 7.2.2. retake possession of the good sold and delivered to the Client in respect of which ownership has not passed, including worked materials;
 - 7.2.3. cancel the Terms and Conditions or any other contract between IDV and the Client; and/or
 - 7.2.4. refuse to deliver any other goods to the Client.
- 7.3. The Client shall have no claim against IDV arising out of such cancellation or the refusal of IDV to deliver any further goods

to the Client.

- 7.4. The determination of whether or not an Event of Default has occurred shall be made in the sole and absolute discretion of IDV.

8. RETURNS

- 8.1. The Client shall and hereby undertakes to inform IDV of any shortages in delivery, breakages, defects, or failure to comply with product specifications ("**Defects**") within 3 (three) business days of delivery of the goods. Should the Client not inform IDV of any Defects within 3 (three) business days of delivery of the goods, the Client hereby waives his/her/its right to claim any Defects in the goods and IDV shall not be liable for any Defects. IDV hereby reserves its right to refuse any returned goods which have been misused or intentionally or negligently damaged. Notwithstanding the foregoing, IDV may in its sole and absolute discretion accept goods returned by the Client, then and in such event the Client agrees that IDV shall be entitled to a handling charge in an amount equivalent to a minimum amount of 20% (twenty percent) of the selling price of the goods returned.
- 8.2. In the event that IDV institutes action against the Client for payment of any amounts due arising, the Client acknowledges that it shall be liable for all costs arising out of the institution of legal action, including all costs of IDV as on the scale between attorney and client including collection commission.

9. LIMITATION OF LIABILITY

- 9.1. IDV shall not be liable for any loss or damage whatsoever, including consequential damages, suffered by the Client or any other person as a result of the goods being defective or failing to conform with any warranty or representation. In the case of goods not manufactured by IDV, the liability of IDV shall not extend beyond that of any corresponding liability to the supplier or the manufacturer of the goods. IDV does not accept any liability for damage to goods caused by inadequate storage, tampering by parties unauthorized by IDV, negligence of the Client of their use in applications for which they are not intended.
- 9.2. Subject to any warranty obligations that IDV may have in terms of the Terms and Conditions, IDV shall under no circumstances whatsoever have any liability, whether contractual, delictual or otherwise, towards the Client for the death of or injury to the employees of the Client or for any losses, damages, costs or expenses ("**Losses**"), whether direct or indirect or consequential or special damages, suffered by the Client and that are directly or indirectly caused by (i) any defect in any goods or services supplied by IDV, (ii) a breach by IDV of its obligations in terms hereof

and/or (iii) any other act or omission of IDV, its employees and agents in connection with the execution of the Terms and Conditions.

- 9.3. For the avoidance of doubt, nothing in the Terms and Conditions shall have the effect of increasing the liability of IDV for any Losses caused by its gross negligence or wilful default beyond those available under common law, nor will the presence of this clause preclude any defence that would be available to IDV. The Client hereby indemnifies and will hold IDV harmless against any such claims in respect of which IDV has excluded liability in terms hereof.
- 9.4. IDV shall not be liable for any delays caused by breakdown of machinery, shortage of labour or materials, fuel shortage, delays in transport, customs and clearing delays, accidents of any kind, any default or delay by any sub-contractor or seller of IDV, strikes, lock-out, industrial action riots, sabotage, fires, civil commotion, civil unrest, interference by civil or military authorities, acts of war (declared or undeclared), armed hostilities, labour disputes, political riot, accidents, orders or regulations by any government, acts of God, storms, floods, *causis fortuitis*, some or other national or international calamity, one or more acts of terrorism, failure of energy sources or any other cause whatsoever beyond its control (each of which shall constitute a "**Force Majeure Event**"). The Client shall not and to the extent necessary waives its right to claim for any failure of IDV to carry out any of its obligations as a result of a Force Majeure Event. If any obligation of IDV is delayed by any cause referred to above, the period for carrying out the obligation shall be extended to such period (which need not be limited to the actual delay) as IDV may reasonably require.
- 9.5. In the event of the goods not proving to be in accordance with the specifications or requirements referred to above, IDV shall not be responsible for any damages whatsoever whether direct or consequential and its liability shall be limited solely to the replacement of the goods in question.

10. DOMICILIUM

The Client selects at its *domicilium citandi et executandi*, the address reflected on the application to open an account, completed by the Client, or in the event that no application to open an account has been completed, the address of delivery reflected on the invoice addressed by IDV to the Client, where notices, process and documents in connection with or arising out of these Terms and Conditions may validly be served.

11. PAYMENTS

- 11.1. All payments to be made pursuant to the Terms and Conditions shall be made in Rand in immediately available funds, whether by electronic funds transfer or otherwise, and shall be deemed to be made when they are received by the

payee and shall be accounted for accordingly. All payments to be made by the Client pursuant to the Terms and Conditions shall be made without any deduction, cost of transfer, free of exchange, set-off or other deduction.

- 11.2. If any payment to be made by the Client pursuant to the Terms and Conditions falls due for payment on a day which is not a business day, then such Party shall make such payment on the following business day.
- 11.3. Any amount due in terms of the Terms and Conditions which is not paid on the due date and time thereof shall carry interest at the prime interest overdraft rate, as specified by Absa Bank from time to time, plus 3% (three percent), from the due date to date of payment thereof.

12. DISPUTE RESOLUTION

The Client consents and agrees that any dispute, disagreement or claim arising between the parties shall, at the sole election of IDV, be finally resolved: -

- 12.1. in the Magistrate's Court having jurisdiction in respect of the Client, notwithstanding that the amount in issue may exceed the jurisdiction of such Court; or
- 12.2. in the High Court of South Africa, having jurisdiction; or
- 12.3. by arbitration in terms of **clause 13** (*Arbitration*).

13. ARBITRATION

- 13.1. Any dispute arising out of or in connection with the Terms and Conditions (including but not limited to its interpretation), or related thereto, whether directly or indirectly, both while in force and after its terminate, shall (in the sole and absolute discretion of IDV) be submitted to and determined by arbitration in accordance with the expedited rules ("**Rules**") of the Arbitration Foundation of South Africa ("**AFSA**").
- 13.2. There shall be 1 (one) arbitrator. The appointment of the arbitrator shall be agreed upon between the Parties.
- 13.3. Failing agreement between the parties, within a period of 10 (ten) Business Days after the arbitration has been demanded, any of the parties shall be entitled to request the Secretariat for the time being of AFSA to make the appointment who, in making his appointment, shall appoint a practising Senior Counsel or commercial attorney with at least 10 (ten) years' post admission experience.
- 13.4. The arbitrator shall have the powers conferred upon an arbitrator under the Rules. The decision of the arbitrator shall, in the absence of manifest error, be final and binding on the Parties, and may be made an order of any court of competent jurisdiction.
- 13.5. The reference to AFSA shall include its successor.

- 13.6. This **clause 13** will not preclude any Party from access to an appropriate court of law for interim relief in respect of urgent matters by way of an interdict, or mandamus pending finalisation of this dispute resolution process, for which purpose the parties irrevocably submit to the jurisdiction of a division of the High Court of RSA.
- 13.7. This **clause 13** is a separate, divisible agreement from the rest of the Terms and Conditions and shall remain in effect even if the Terms and Conditions terminates, is nullified, or cancelled for any reason or cause.
- 13.8. The proceedings and award of the arbitrator shall as far as possible be kept confidential.

14. TERMS AND CONDITIONS

- 14.1. The terms and conditions should be read in conjunction with: (i) the conditions of sale; and (ii) any terms and conditions contained in any written fee estimate or e-mail issued by a duly authorised representative of IDV to the Client (collectively referred to as the "**Terms and Conditions**").
- 14.2. IDV reserves the right to modify, amend, replace and substitute any of the provisions of the Terms and Conditions, which modification shall replace any previous Terms and Conditions, and the Client shall be bound by such new Terms and Conditions, which shall become effective once it has been published on IDV's website found at <http://www.idv.co.za>.
- 14.3. Unless specifically stated otherwise, the Terms and Conditions contained on IDV's website found at <http://www.idv.co.za> shall prevail in the event of a conflict over any terms and conditions contained in any: (i) conditions of sale; (ii) quotation or (iii) e-mail issued by a duly authorised representative of IDV; or (iv) this version of the Terms and Conditions.
- 14.4. It is the Client's responsibility to keep abreast of any changes to the Terms and Conditions and IDV shall not be obliged to notify the Client of any amendments thereto. The Terms and Conditions shall apply to any and all relationships IDV has with the Client (with retroactive force if need be) and shall continue to be effective until all rights and obligations of the parties hereto have been extinguished.

15. GENERAL

- 15.1. No relaxation or indulgence which IDV may have granted to the Client shall in any way prejudice IDV's rights and shall not preclude IDV from exercising all or any of its rights hereunder and shall not constitute a waiver of IDV's rights.
- 15.2. These Terms and Conditions, as read with any credit application which may have been completed by the Client, represent the entire agreement between the parties and no

alteration or variation or novation of the agreement or waiver of any rights herein hereof shall be of any force or effect unless reduced to writing and signed by the parties, save in such circumstances where it is expressly stated herein that IDV shall be entitled without notice to the Client to vary of the provisions of these Terms and Conditions.

- 15.3. No party shall have any claim or right of action arising from any undertaking, representation or warranty not included in the Terms and Conditions.
- 15.4. It is agreed that each clause and sub-clause of the Terms and Conditions is severable, the one from the other, and if any clause or sub-clause is found to be defective or unenforceable for any reason by any competent court, then the remaining clauses and sub-clauses shall continue to be of full force and effect.
- 15.5. In the event that any order for goods is placed by any party acting in a representative capacity then such party hereby warrants that he/she/it is duly authorized to place and/or sign such order and in the event that such party is not so authorized, such party hereby expressly acknowledges that he shall be personally liable to IDV in respect of all and any amounts that may become due and payable to IDV arising out of the Terms and Conditions.
- 15.6. Each party warrants that it is acting as a principal and not as an agent for an undisclosed principal.
- 15.7. The parties hereby consent to the non-exclusive jurisdiction of the High Court of RSA in connection with any action which either party to the Terms and Conditions may institute in connection with the Terms and Conditions and that the Terms and Conditions shall be governed in accordance with the laws of RSA.
- 15.8. The Terms and Conditions shall be binding on and enforceable by and against the estates, heirs, executors, administrators, trustees, assigns, cessionary, successors in title, liquidators, curators, business rescue practitioners or other legal representatives, as the case may be, of the parties.