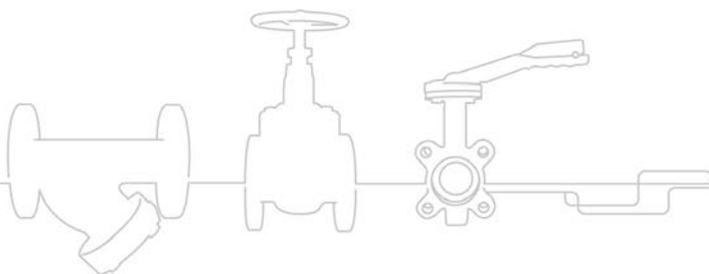




**ALBION VALVES (UK) LIMITED  
CONDITIONS OF SALE**



# ALBION VALVES (UK) LIMITED

## CONDITIONS OF SALE

### 1. INTERPRETATION

#### 1.1. In these conditions:

- 'BUYER' means the person, business or company who accepts a quotation of the Seller for the sale of 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 and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Buyer and the Seller.
- 'CONTRACT' means any contract between the Seller and the Buyer for the purchase and the sale of the Goods;
- 'GOODS' means the goods (including any instalment of the goods or any for them) which the Seller is to supply to the Buyer subject to these Conditions;
- 'SELLER' means Albion Valves (UK) Limited a private limited company registered in England with number 3081412;
- 'WRITING' includes facsimile transmission and comparable means of communication.
- 1.2. Any reference in these Conditions to a statute or any provision of a statute shall, unless the context otherwise requires, be construed as a reference to that statute or provision as amended, re-enacted or extended at the relevant time.
- 1.3. A reference to a Clause of a Contract or Condition shall (unless the contrary is expressly stipulated) be to a Clause of a Contract or to one of these Conditions, respectively.
- 1.4. The headings in these Conditions are for convenience only and shall not affect their interpretation.

### 2. BASIS OF THE SALE

- 2.1. The Seller shall sell, and the Buyer shall purchase the Goods in accordance with any written quotation of the Seller which is accepted by the Buyer, or any written order of the Buyer which is accepted by the Seller, subject in either case to these Conditions, which, together with any clauses appearing in the Contract, shall govern the Contract to the exclusion of any other terms and conditions (including any terms or conditions which the Customer purports to apply).
- 2.2. These Conditions apply to all of the Seller's sales of the Goods and no variation to these Conditions shall be binding unless agreed in Writing between the authorised representatives of the Buyer and the Seller.
- 2.3. Any advice or recommendation given by the Seller or its employees or agents to the Buyer or its employees or agents as to the storage, application or use of the Goods which is not confirmed in Writing by the Seller is followed or acted upon entirely at the Buyer's own risk, and accordingly the Seller shall not be liable for any such advice or recommendation which is not so confirmed.
- 2.4. Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.

### 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 Buyer shall be responsible for ensuring the accuracy of the terms of any order (including any applicable specification submitted by the Buyer), and for giving the Seller any necessary information relating to the Goods within a sufficient time to enable the Seller to perform the Contract in accordance with its terms.
- 3.3. Unless the Seller otherwise agrees in Writing all or any drawings, illustrations, descriptions, dimensions and weights whether contained in brochures, catalogues or other advertising matter published by the Seller or in any tender, quotation or specification prepared by the Seller shall be regarded as approximate only and intended to convey a general description of the Goods and do not form part of any Contract. No warranty or condition that the Goods shall accord with any such drawing, illustration, description or other similar document shall be implied and any warranty or condition capable of being so implied is expressly excluded.
- 3.4. 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).
- 3.5. If the Goods are to be manufactured or any process is to be applied to the Goods by the Seller in accordance with a specification submitted by the Buyer, the Buyer shall indemnify the Seller against all loss, damages, costs and expenses awarded against or incurred by the Seller in connection with or paid or agreed to be paid by the Seller in settlement of any claim for infringement of any patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person which results from the Seller's use of the Buyer's specification.
- 3.6. The Seller reserves the right to make any changes to the specification of the Goods which are required to conform with any applicable safety or other statutory requirements or, where the Goods are to be supplied to the Seller's specification, which do not materially affect their quality or performance.
- 3.7. 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 direct losses (including, without limitation, loss of profit, costs (including the cost of all labour and materials used), damages, charges and expenses) incurred by the Seller as a result of such cancellation.

### 4. PRICE OF THE GOODS

- 4.1. The price of the Goods shall be the Seller's quoted price or, where no price has been quoted (or a quoted price is no longer valid), the price listed in the Seller's published price list current at the date of acceptance of the order. 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 60 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.
- 4.2. The Seller shall have the right at any time before delivery to revise the price of the Goods to reflect any increase in its costs of performing the Contract relating to them including without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture, any change in delivery dates, quantities or specifications for the Goods which is requested by the Buyer, or any delay caused by any instructions of the Buyer, or failure of the Buyer to give the Seller adequate information or instructions.
- 4.3. Except as otherwise stated under the terms of any quotation or in any price list of the Seller, and unless otherwise agreed in Writing between the Buyer and the Seller, all prices are given by the Seller on an ex works basis, and where the Seller agrees to deliver the Goods otherwise than at the Seller's premises, the Buyer shall be liable to pay the Seller's charges for transport, packaging and insurance.
- 4.4. The price is exclusive of any applicable value added tax, which the Buyer shall be additionally liable to pay to the Seller.

### 5. 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 of the Goods, unless the Goods are to be collected by the Buyer, or the Buyer wrongfully fails to take delivery of the Goods, in which event 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 (as the case may be) the Seller has tendered delivery of the Goods.
- 5.2. In the event that payment upon delivery is not required by the Seller, the Buyer shall pay the price of the Goods within 30 days of the end of the month in which the Seller's invoice is dated, notwithstanding that delivery may not have taken place and the property in the Goods has not passed to the Buyer. The Buyer shall make no deductions of any type from such payments unless it has a valid court order requiring an amount equal to such deduction to be paid by the Seller to the Buyer.
- 5.3. Time for payment shall be of the essence and failure by the Buyer to pay in accordance with the provisions of this Clause shall entitle the Seller, without prejudice to any other right or remedy available to it to:
- 5.3.1. cancel the applicable 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 think fit (notwithstanding any purported appropriation by the Buyer); and
- 5.3.3. charge the Buyer interest (both before and after any judgment) on any amount outstanding, at the rate of 3 per cent per annum above the National Westminster Bank Plc base rate from time to time in force, accruing on a daily basis until payment is made.
- 5.4. The Seller reserves the right, to invoice the Buyer for Goods delivered in instalments after such instalment has been delivered, and the

- provisions of these Conditions shall apply in full to such invoices as if such instalment was a separate Contract.
- 5.5. No payment shall be deemed to have been received until the Seller has received cleared funds.
- 5.6. All payments payable to the Seller under a Contract shall become due immediately upon termination of that Contract notwithstanding any other provision.
- 6. DELIVERY**
- 6.1. Delivery of the Goods shall be made by the Buyer collecting the Goods at the Seller's premises at any time after the Seller has notified the Buyer that the Goods are ready for collection or, if some other place for delivery is agreed by the Seller in Writing, by the Seller delivering the Goods to that place.
- 6.2. Any dates quoted by the Seller for delivery of the Goods are intended to be an estimate only and time of delivery shall not be of the essence unless agreed by the Seller in Writing. If no dates are so specified, delivery will be within a reasonable time. The Goods may be delivered to the Buyer by the Seller in advance of the quoted delivery date provided that reasonable notice is given to the Buyer.
- 6.3. Subject to the other provisions of these Conditions, the Seller will not be liable for any loss (including loss of profit), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods (even if caused by the Seller's negligence), nor will any delay entitle the Buyer to terminate or rescind the Contract unless such delay exceeds 90 days unless stated otherwise.
- 6.4. Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure by the Seller to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.
- 6.5. If for any reason the Buyer fails to take delivery of the Goods when they are ready for delivery or fails to provide appropriate delivery, or other instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of the Seller's fault) then the Goods will be deemed to have been delivered and without prejudice to any other right or remedy available to the Seller, the Seller may:-
- 6.5.1. Store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or
- 6.5.2. Sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the price under the Contract or charge the Buyer for any shortfall below the price under the Contract.
- 6.6. If the Seller fails to deliver the Goods for any reason other than any cause beyond the Seller's reasonable control or the Buyer's fault, and the Seller is accordingly liable to the Buyer, the Seller's liability shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods.
- 7. RISK AND PROPERTY**
- 7.1. Risk of damage to or loss of the Goods shall pass to the Buyer:
- 7.1.1. In the case of Goods to be delivered at the Seller's premises, at the time when the Seller notifies the Buyer that the Goods are available for collection; or
- 7.1.2. in the case of Goods to be delivered otherwise than at the Seller's premises, at the time of delivery or, if the Buyer wrongfully fails to take delivery of the Goods, the time when the Seller has tendered delivery of the Goods (and in such circumstances, the Buyer's risk shall encompass any consequences of negligence on the part of the Seller).
- 7.2. Notwithstanding delivery and the passing of risk in the Goods ownership of the Goods shall not pass to the Buyer until the Seller has received in full (in cash or cleared funds) all sums due to it in respect of:
- 7.2.1. The Goods; and
- 7.2.2. All other sums which are or which become due to the Seller from the Buyer pursuant to any other Contract.
- 7.3. Until ownership of the Goods has passed to the Buyer the Buyer must;
- 7.3.1. hold the Goods on a fiduciary basis as the Seller's bailee;
- 7.3.2. Store the Goods (at no cost to the Seller) separately from all other Goods of the Buyer and in such a way that they remain readily identifiable as the Seller's property;
- 7.3.3. Not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods;
- 7.3.4. maintain the Goods in a satisfactory condition insured on the Seller's behalf for their full price against all risks to the reasonable satisfaction of the Seller (and on request the Buyer shall produce the policy of such insurance to the Seller); and
- 7.3.5. Hold the proceeds of the insurance referred to in Condition 7.3.4 on trust for the Seller and not mix them with any other money, nor pay the proceeds into an overdrawn bank account.
- 7.4. The Buyer may resell the Goods before ownership has passed to it solely on the following Conditions:-
- 7.4.1. any sale shall be effected in the ordinary course of the Buyer's business at full market value and the Buyer shall hold such part of the proceeds of sale by the Buyer to the Seller on behalf of the Seller and the Buyer shall account to the Seller accordingly; and
- 7.4.2. Any such sale shall be a sale of the Seller's property on the Buyer's own behalf and the Buyer shall deal as principal when making such sale.
- 7.5. The Buyer's right to possession of the Goods shall terminate immediately if:-
- 7.5.1. the Buyer (being an individual) has a bankruptcy order made against him or makes an arrangement or composition with his creditors or otherwise takes the benefit of any Act for the time being in force for the relief of insolvent debtors; or
- 7.5.2. the Buyer (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 over its undertaking or part thereof, or a resolution is passed or a petition is presented to any court for the winding up of the Buyer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer; or
- 7.5.3. the Buyer 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/perform any of his/its obligations under the applicable Contract or any other Contract between the Seller and the Buyer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or
- 7.5.4. The Buyer ceases or threatens to cease to trade; or
- 7.5.5. The Buyer encumbers or in any way charges the Goods.
- 7.6. The Seller shall be entitled to recover payment of the Goods notwithstanding that ownership of any of the Goods has not passed from the Seller.
- 7.7. Until ownership of the Goods has passed to the Buyer the Seller shall be entitled at any time to require the Buyer to deliver up the Goods to the Seller and, if the Buyer fails to do so forthwith, the Seller, its employees and agents shall be entitled to enter upon any premises of the Buyer or any third party where the Goods are stored and repossess the Goods.
- 8. WARRANTIES AND LIABILITY**
- 8.1. The Seller warrants (subject to the other provisions of these Conditions) that the Goods which are manufactured by the Seller shall, for a period of 12 months from the date of delivery:-
- 8.1.1. Correspond with their specification; and
- 8.1.2. Will be free from defects in material and workmanship.
- 8.2. In respect of Goods not manufactured by the Seller, the Seller shall endeavour to assign for the benefit of the Buyer such rights (including guarantee or warranty rights) as the Seller has against the manufacturer but shall not be liable for such Goods beyond this Condition 8.2.
- 8.3. The Supplier shall not be liable for a breach of any of the warranties in this Condition 8 if:-
- 8.3.1. The defect in the Goods arises from any drawing, design or specification supplied by the Buyer;
- 8.3.2. the defect arises from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Seller's instructions (whether oral or in Writing), as to the storage, installation, commissioning, use of the Goods, or, if there are such, good trade practices;
- 8.3.3. The Buyer alters or repairs the Goods without the Written consent of the Seller; or
- 8.3.4. The total price for the Goods has not been paid by the due date for payment.
- 8.4. Any claim by the Buyer which is based on any defect in the quality or condition of the Goods or their failure to correspond with specification shall, (whether or not delivery is refused by the Buyer) be notified to the Seller orally within 7 days, and in Writing within 14 days, from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure and in any event not later than 12 months from the date of delivery. If delivery is not refused, and the Buyer does not notify

- the Seller accordingly the Buyer shall not be entitled to reject the Goods and the Seller shall have no liability for such defect of failure, and the Buyer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.
- 8.5. The Seller's sole obligation under this Condition 8 shall be at its option to repair or replace the Goods or any part thereof or at the Seller's sole discretion refund the price of the Goods at the pro rata Contract rate.
- 9. LIMITATION OF LIABILITY**
- 9.1. The following provisions set out the entire financial liability of the Seller (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of any breach of these Conditions and any representation, statement or tortious act or omission, including negligence arising under or in connection with the Contract.
- 9.2. Save as expressly provided 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.
- 9.3. Nothing in these Conditions excludes or limits the liability of the Seller for death or personal injury caused by the Seller's negligence or fraudulent misrepresentation.
- THE BUYER'S ATTENTION IS IN PARTICULAR DRAWN TO THE PROVISIONS OF CONDITIONS 9.4. AND 9.5**
- 9.4. Subject to Conditions 9.2 and 9.3:
- 9.4.1. The Seller's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise, arising in connection with the performance or contemplated performance of this Contract shall be limited to the total price payable for the Goods; and
- 9.4.2. The Seller shall not be liable to the Buyer for loss of profit, business, contracts, opportunity or the depletion of goodwill in each case whether direct, indirect or consequential, or any claims for consequential compensation at all (howsoever caused) which arise out of or in connection with the Contract.
- 9.5. If due to the Buyer's particular circumstances the limitation in Condition 9.4 is unacceptable to the Buyer, the Seller may at its discretion accept an extended liability to a level agreed in Writing prior to the Contract being entered into, upon payment to it of the cost of a single insurance premium (if such an insurance policy is available).
- 10. PRODUCT LIABILITY INSURANCE**
- The Buyer will maintain product liability insurance cover for the Goods through a reputable insurance company at a minimum level of cover of two million pounds or at such other level of cover as the Seller may require and will provide a copy of the relevant insurance documents to the Seller upon request.
- 11. INTELLECTUAL PROPERTY**
- 11.1. If any claim is made against the Buyer that the Goods infringe or that their use or resale infringes the patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person the Seller shall indemnify the Buyer against all loss, damages, costs and expenses awarded against or incurred by the Buyer in connection with the claim, or paid or agreed to be paid by the Buyer in settlement of the claim, provided that:
- 11.1.1. The Seller is given full control of any proceedings or negotiations in connection with any such claim;
- 11.1.2. The Buyer shall give the Seller all reasonable assistance for the purposes of any such proceedings or negotiations;
- 11.1.3. except pursuant to a final award, the Buyer shall not pay or accept any such claim, or compromise any such proceedings without the consent of the Seller (which shall not be unreasonably withheld);
- 11.1.4. the Buyer shall do nothing which would or might vitiate any policy of insurance or insurance cover which the Buyer may have in relation to such infringement, and this indemnity shall not apply to the extent that the Buyer recovers any sums under any such policy or cover (which the Buyer shall use its best endeavours to do);
- 11.1.5. the Seller shall be entitled to the benefit of, and the Buyer shall accordingly account to the Seller for, all damages and costs (if any) awarded in favour of the Buyer which are payable by or agreed with the consent of the Buyer (which consent shall not be unreasonably withheld) to be paid by any other party in respect of any such claim; and
- 11.1.6. Without prejudice to any duty of the Buyer at common law, the Seller shall be entitled to require the Buyer to take such steps as the Seller may reasonably require to mitigate or reduce any such loss, damages, costs or expenses for which the Seller is liable to indemnify the Buyer under this clause.
- 12. FORCE MAJEURE**
- The Seller shall not be liable to the Buyer or be deemed to be in breach of Contract by reason of any delay in performing, or any failure to perform, any of the Seller's obligations in relation to the Goods, if the delay or failure was due to any cause beyond the Seller's reasonable control.
- 13. CONFIDENTIALITY**
- Any information which the Seller discloses relating to the Goods, which is not in the public domain at the time of disclosure, shall be confidential and shall not be disclosed to any third party or used by the Buyer to enable the Buyer to manufacture the Goods or use the same as a springboard to develop the Buyer's own products.
- 14. EXPORT ITEMS**
- 14.1. In these Conditions 'Incoterms' means the international rules for the interpretation of trade terms on the International Chamber of Commerce as in force at the date when the Contract is made. Unless the Contract otherwise requires, any term or expression which is defined in or given a particular meaning by the provisions of Incoterms shall have the same meaning in these Conditions, but if there is any conflict between the provisions of Incoterms and these Conditions, the latter shall prevail.
- 14.2. Where the Goods are supplied for export from the United Kingdom, the provisions of this clause 14 shall (subject to any special terms agreed in Writing between the Buyer and the Seller) apply notwithstanding any other provision of these Conditions.
- 14.3. The Buyer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and for the payment of any duties thereon.
- 14.4. Unless otherwise agreed in Writing between the Buyer and the Seller, the Goods shall be delivered FOB (free on board) to the air or sea port of shipment stipulated in Writing in the applicable Contract and the Seller shall be under no obligations to give notice under section 32(3) of the Sale of Goods Act 1979.
- 14.5. The Buyer shall be responsible for arranging for testing and inspection of the Goods at the Seller's premises before shipment. The Seller shall have no liability for any claim in respect of any defect in the Goods which would be apparent on inspection and which is made after shipment, or in respect of any damage during transit.
- 14.6. The Buyer undertakes not to offer the Goods for resale in any country notified by the Seller to the Buyer at or before the time the Buyer's order is placed, or to sell the Goods to any person if the Buyer knows or has reason to believe that the person intends to resell the Goods in any such country.
- 14.7. The Buyer shall not be entitled to resell the Goods for use in the United States of America or Canada without the written consent of the Seller and the Buyer shall indemnify the Seller against all loss damage claims and expenses awarded against or incurred by the Seller as a consequence of any breach of this sub-clause by the Buyer.**
- 15. NOTICES**
- 15.1. All notices required to be served by one party upon the other shall be in Writing and addressed to that other party at its registered office or principal place of business or such other address as either party may from time to time notify the other.
- 15.2. All such notices shall be deemed to be served:-
- 15.2.1. In the case of an inland letter 24 hours after proven despatch or posting;
- 15.2.2. In the case of any airmail letter 72 hours after proven despatch or posting; and
- 15.2.3. in the case of facsimile transfer at 9am on the next business day of the recipient party following its despatch and receipt by the transmitting party of machine confirmation of successful transmission to the recipient party's receiver number.
- 16. WAIVER AND SEVERANCE**
- 16.1. No waiver by the Seller of any breach of the Contract by the Buyer shall be deemed as a waiver of any of the Seller's rights or remedies nor be deemed a waiver of any subsequent breach by the Buyer.
- 16.2. The invalidity, illegality or unreasonableness in whole or in part of any of these Conditions shall not affect the validity of the remainder of such Condition or these Conditions.

**17. ASSIGNMENT**

No Contract is assignable by the Buyer without the written consent of the Seller and each Contract is between the Seller and the Buyer as principals but the Seller may, without consent, assign or sub-contract all or any of its rights and obligations under a Contract.

**18. GOVERNING LAW**

18.1 These Conditions and every Contract and any dispute or claim arising out of or in connection with them or their subject matter (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England.

18.2 The parties irrevocably agree that the courts of England shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with these Conditions and every Contract or their respective subject matter or formation (including non-contractual disputes or claims).

**19. THIRD PARTIES**

The parties agree that none of the provisions of any Contract will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to that Contract.