

## MAJOR TERMS & CONDITIONS

THE UNDERMENTIONED TERMS AND CONDITIONS MUST BE READ AND UNDERSTOOD BEFORE ENTERING INTO CONTRACT WITH AUSTRALIAN PIPELINE VALVE (APV) AND BEFORE SUPPLYING OR ORDERING GOODS AND/ OR SERVICES IN RELATION TO ANY CONTRACT WITH APV. THESE TERMS AND CONDITIONS SHALL THEN REMAIN IN FORCE FOR THE LIFE OF THE CONTRACT AND ARE OUR STANDARD CONDITIONS OF TRADE.

These terms and conditions (T&C's or "Agreement") supersede and prior quotations from Australian Pipeline Valve (APV) and shall provide any provisions in the said quotations which contradict these T&C's. These T&C's shall apply to a contract arising from the acceptance by APV of an order from any individual, partnership, company or organisation (Buyer) for the supply of goods and/or services.

### MAJOR TERMS & CONDITIONS OF SALE

**A.** This quotation is subject to our normal terms and conditions (copy on request). **B.** Goods supplied remain the property of Australian Pipeline Valve (APV) until full payment has been received. The goods can be recovered from the purchaser or third party should full payment not be made by the date shown on our invoice. **C.** Where a warranty applies, sellers warranty liability only extends to the extent the the seller is able to recover from it's supplier for defects. Refer to clause 22 for warranty coverage. **D.** APV does not claim to be the authorised or sole agent for all brands sold. **E.** Prices and delivery dates shown are provided in good faith and may vary due to circumstances outside of the control of APV. **F.** Claims for credit will only be considered for ex-stock material and must be made in writing within seven days of dispatch of goods. Restocking fee of 20% applies plus all costs incurred. Modified, manufactured goods & indent lines are not returnable. Refer to clause 21 for cancellation & change policy. **G.** No responsibility will be taken for the misuse of stock sold. APV does not play a part in specifying the suitability of stock sold for a given application. **H.** APV is not liable for damages resulting from downtime, injury, product loss, airfreight costs etc. nor is it liable for consequential damages. **I.** Deposits are strictly non refundable. **J.** 2% per month interest will be charged on overdue accounts. All debt collection fees will be payable by the customer. **K.** Freight insurance is the client's responsibility unless APV pay freight. **L.** The goods quoted are not designed or manufactured by the seller. **M.** APV will not be liable to any party for incidental, consequential or special damages including loss of profit or production.

### DETAILED TERMS & CONDITIONS OF SALE

1. Terms and conditions on your purchase order which conflict with the Terms and conditions set out herein an attached will not be applicable unless agreed to in writing by APV.
2. **A/** Payment terms are not net 30 days unless agreed otherwise in writing by both parties  
**B/** Payment terms for sales are effective from the date of collection by the customer or customer's representative, this applies irrespective of whether APV agrees to alternate payment duration.
3. If the cost to Australian Pipeline Valve of supplying the goods not yet delivered shall be increased materially by any dispute or cause and the parties concerned cannot agree on how such increase shall be borne, APV may cancel the contract without liability in respect of such undelivered goods.
4. APV shall not be responsible for errors or omissions due to oversight or misinterpretation of verbal instructions received from the buyer.
5. Where the delivery of the goods is made by installments and failure, suspension or delay in any defect in the goods delivered shall not violate this contract, and payments shall be due for partial deliveries.
6. All delivery dates only are estimated only and APV shall not be liable in damages for any delay in delivery, nor shall the buyer be entitled to refuse delivery or payment (or part thereof) or to with hold payment except where delay of an unreasonable length has occurred due to circumstances within APV control. Without limiting the generality of the foregoing the following circumstances shall be deemed to be not within APV control: - Acts of God, war, riots, civil commotions, strikes, lock-outs, trade disputes, breakdowns, interruptions of transport, Government action or delay in delivery from APV suppliers.
7. APV reserves the rights to stop the supply of goods in the event of the purchaser failing to make any payment to the seller by the due date.
8. The goods are at the buyer's risk after collection or delivery.
9. All goods must be thoroughly inspected by the buyer. Notification of defects must be made within 48 hours of receipt.
10. APV shall not be responsible for any loss of trade or profit or consequential loss of the buyer. In the event of a claim being accepted be APV, the liability is limited to any one or more of the following as APV may decide in it's absolute discretion: - the replacement of the goods or the supply of equivalent goods or the payment of the cost of replacing the goods or acquiring equivalent goods or the payment of having goods repaired.
11. Claims for lost or damaged goods will not be accepted unless written notification is given to APV within ten days of the actual or expected (whichever is applicable) delivery date, APV will not accept claims for lost or damaged goods where such losses or damages are caused by the on-forwarding carrier or after the point where property and risk passes to the buyer.

12. Claims for damaged or defective goods will not be accepted by APV, unless the goods are returned. APV will not accept returned goods unless an accredited officer of APV has given prior authorisation.
13. **A/** Property in the goods shall not pass to the buyer until payment received by APV in full. If the goods have been passed onto a third party they shall still remain the property of APV until full payment has been received from the buyer. APV has the right to retrieve goods, which have not been paid for within the agreed payment period, even if the goods are installed and in service. **B/** Until property in the goods passes to the buyer here under the buyer shall, unless otherwise agreed in writing, store the goods so that they are clearly identified as the property of APV. **C/** If the buyer fails to make payment in accordance with these conditions of sale the servants or agents of APV shall be entitled to enter the premises of the buyer or the buyer's customers to repossess the goods. **D/** Until payment has been made in full to APV the buyer shall be entitled to re-sell the goods or part thereof only upon the condition that the proceeds of sale of the goods or such part of the goods as shall be sold shall be held by the buyer in trust for APV.
14. Unless agreed in writing, 1.5% interest per month will be charged for every amount not paid on the due time. Every amount unpaid within the agreed time also makes other debts payable forthwith.
15. Each invoice and the conditions of sale shall be governed in all respects in accordance with the laws of the state of South Australia and each party hereby submit to the jurisdiction of the courts of that state.
16. If any provision, covenant or condition of any invoice and the conditions of sale is held by any court of competent jurisdictions to be invalid, void or unenforceable the remainder of the terms, provisions, covenants and conditions shall remain in full force and effect and shall in no way be allocated impaired or invalidated.

**17. Force Majeure:-**

APV is not liable for failure to perform the Contract to extent and for so long as its performance is prevented or delayed because of:

**A/** circumstances outside Australian Pipeline Valve's control;

**B/** failure of a supplier to Australian Pipeline Valve.

Furthermore, deliveries may be suspended in the case of an act of God, war, terrorism, riots, fire, explosion, flood, strike, lock-out, injunction, or any cause beyond the control of such party, preventing the manufacture of the goods. If, because of any such circumstance, APV is unable to supply the total demand of the goods, APV may allocate its available supply among all or any of its customers, in an equitable manner. Any deliveries suspended by APV pursuant to this clause may be subsequently cancelled without any liability, but the contract shall otherwise remain unaffected.

**18. Representations and Fitness for Purpose:-**

**A/** Except as expressly provided to the contrary in the Contract, all representations, warranties, terms and conditions in relation to the Goods (whether implied or otherwise) are hereby excluded to the maximum extent permitted by law.

**B/** The customer agrees that if it is aware (or should be aware) that the Goods, the subject of an Order, are for a particular purpose (including, but not limited to, use as a component part of another product) or are required to possess special or uniform characteristics, the Customer will clearly specify that purpose or those characteristics in any such Order.

19. Guarantees & warranties are as specified by the original subcontractor/supplier (if any), and APV does not give any warranty or guarantee beyond such warranty. APV does not guarantee that the goods are for the intended purpose. The customer is always invited to inspect the goods prior to the purchase; hence APV reserves the right to refuse any unreasonable requests for return of goods. Furthermore, the amount of payment or remedy is limited to the amount or settlement arrangement APV is able to successfully claim from the original equipment subcontractor/supplier (OEM). Any warranty claims are on the basis of repairing or replacing the goods. Refunds will only be paid if APV is able to obtain refund from OEM.
20. APV is not responsible for the recovery of any airfreight. Even if we are at fault in supplying the wrong goods, we cannot be liable for the cost of airfreight.
- 21. Cancellation and Change Policy:-**
- 21.1** Any changes requested by Buyer after order entry must be accompanied by written notice received by APV at least 2 months prior for indent orders (buy in orders not from APV stock) and with 24 hours of order placement for ex stock sales, to the proposed delivery of any goods and/or services affected by the proposed changes. Where APV has consented to the proposed changes, APV may amend or alter at its sole discretion, the contract price and other contractual terms by an amount or magnitude dependent on the timing and extent of the change. Further, as these proposed changes may adversely affect delivery, APV will only provide new promised delivery dates after an evaluation of the impact of the proposed changes. Cancellation of terms in an order shall be deemed to be and considered as a change order and charges, as described below, shall be payable by the Buyer. Should APV for any reason disapprove of, or reject any request for changes, Buyer agrees that APV shall deliver the goods and/or services to which the change request relates in accordance with all then existing specification, prices, and delivery schedules.
- 21.2** When the Buyer, at least 2 months before the proposed delivery of the affected goods, sends a notice of cancellation or intent to cancel an order, APV on receipt of the said notice, will immediately stop production on all items. Charges for materials procured and work done will be assessed. Further, it shall be a fundamental term of such cancellation that APV be indemnified on demand by the Buyer against any and all loss (including without limitation, any economic or consequential loss) in connection with, in relation to, and/or arising out of such cancellation as may be reasonable substantiated by APV.
- 21.3** Where any order of goods and/or services is cancelled, the Buyer agrees to pay cancellation charges. Cancellation charges are assessed as a percentage (%) of the sales price in accordance with the following schedule:
- |   |      |
|---|------|
| <b>Ex-Stock Items, not modified</b>                                       |      |
| Prior to order entry (up to 24 hours from order)                          | 0%   |
| After order entry and issue or order to store (after 24 hours from order) | 0%   |
| After order pulled, checked & matched to certificates                     | 7.5% |
| After order packed, documented and certificates & documentation completed | 10%  |

Goods shipped from store up to 7 days from despatch*	20%
Up to 30 days after shipment*	22.5%
Up to 60 days after shipment*	25%
Over 60 days after shipment	no return

\*Client pay return freight and any remediation costs.

**Ex-Stock items, modified<sup>1</sup> or accessorised or actuated items**

Prior to order only	0%
After order entry and issue of order to store	5%
After work instruction issued to workshop and certificates matched	7.5%
After commencing work to modify valve (as soon as 24 hours from order)	not cancellable

<sup>1</sup>Examples:- replace or modify:- stem packing, ends (including machine to RF or RTJ from blind face, machine to butt weld or alter butt weld schedule), fit counter weight or actuator, fit lock device or special lever, special paint specification, custom stainless tagging, etc.

**Standard Construction<sup>2</sup>, indent items (not from APV stock)**

Prior to order entry	5%
After order entry and issue of order to subcontractor/supplier	10%
After order acknowledge receipt from subcontractor/supplier	25%
In production prior to delivery	50%
Goods shipped from subcontractor/supplier	70%

<sup>2</sup>Carbon steel commodity low value ANSI lines commonly stocked.

**Special Constructions<sup>3</sup> or Modified Designs, indent items (not from APV stock)**

Prior to order entry	10%
After order entry and issue of order to subcontractor/supplier	15%
After order acknowledgement receipt from subcontractor/supplier	45%
In production prior to delivery	70%
Goods shipped from subcontractor/supplier	85%

<sup>3</sup>Stainless, alloy, duplex or any non commodity line or any high value line and any order over AUD 30,000.

Australian Pipeline Valve reserves the right to revise the above-mentioned schedule of cancellation charges from time to time and at any time. On receipt of notice of such revision, the Buyer shall be bound by the revised schedule of cancellation charges.

**22. Warranty:-**

Australian Pipeline Valve (APV) and its approved distributors warrants to the purchaser that its products delivered to the purchaser will be of the kind described in the order and will free from latent defects in material or workmanship. The products must be properly stored, installed, operated, handled and not misused and must be used for the type of service and application for which they are designed and sold. Australian Pipeline Valve's obligation under warranty is limited to the replacement or repair at Australian Pipeline Valve's discretion of any part which shall prove defective in materials or workmanship within a period of one year from the date of shipment from APV's premises, and does not include liability for consequential damages of any nature whatsoever. This warranty is in lieu of all other warranties either express or implied, and no other person – agent or distributor approved or otherwise is authorised to alter the warranty for Australian Pipeline Valve. This warranty does not include other or additional liability in connection with the sale or installation of our products.

All warranty obligations of Australian Pipeline Valve pursuant hereto shall be null and void if the product or any of its part is modified in any manner whatsoever without the prior written consent of Australian Pipeline Valve.

Should a valid warranty claim occur within one year after the date of the delivery to the purchaser, Australian Pipeline Valve will, upon written notification thereof and substantiation that the goods have been stored, installed, maintained, utilised and operated in accordance with APV's written recommendations as recited in its Installation, Operation and Maintenance Manuals, correct such defects by suitable repair or replacement, whichever is appropriate in Australian Pipeline Valve's opinion, and at APV's own expense (excluding air freight costs).

THE WARRANTY IS EXCLUSIVE AND IS IN LIEU OF ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR OTHER WARRANTY OF QUALITY, WHETHER EXPRESSED OR IMPLIED, EXCEPT THE WARRANTY OF TITLE AND AGAINST PATENT INFRINGEMENT. THERE ARE NO OTHER ORAL OR WRITTEN WARRANTIES OR REPRESENTATIONS REGARDING THE PRODUCTS, AS ALL UNDERSTANDING AND AGREEMENTS BETWEEN AUSTRALIAN PIPELINE VALVE AND YOU, OUR INITIAL PURCHASER, REGARDING WARRANTY OF THE PRODUCTS ARE INCORPORATED HEREIN.

Correction of non conformities, in the manner and for the period of time provided above, shall constitute fulfillment of all liabilities of Australian Pipeline Valve to our initial purchaser, with respect to the goods, whether based on contract, negligence, strict tort or otherwise. It is the intention of APV that no warranty of any kind, whether expressed or implied, shall pass through our initial purchaser to any other person or corporation.

LIMITATION OF LIABILITY: AUSTRALIAN PIPELINE VALVE SHALL NOT UNDER ANY CIRCUMSTANCES BE LIABLE FOR SPECIAL OR CONSEQUENTIAL DAMAGES SUCH AS, BUT NOT LIMITED TO, DAMAGES OR TO LOSS OF OTHER PROPERTY OR EQUIPMENT, LOSS OF PROFITS OR REVENUE, COST OF CAPITAL, COST OF PURCHASED OR REPLACEMENT GOODS OR CLAIMS OF CUSTOMERS OF OUR INITIAL PURCHASER. THE REMEDIES OF OUR INITIAL PURCHASER, AND ALL OTHERS, SET FORTH HEREIN, ARE EXCLUSIVE, AND THE LIABILITY OF AUSTRALIAN PIPELINE VALVE WITH RESPECT TO SAME SHALL NOT, EXCEPT AS EXPRESSLY PROVIDED HEREIN, EXCEED THE PRICE OF THE GOODS UPON WHICH SUCH LIABILITY IS BASED.

**23. Indemnity:-**

The Buyer shall indemnify and hold harmless APV, its subsidiaries and affiliates and their respective directors, employees and agents from and against any and all claims arising out of, in connection with, or related to any breach of or non-compliance by the Buyer of the provisions of this Agreement.

**24. Governing Law:-**

This agreement is subject to the Laws of South Australia unless otherwise specified and agreed by APV. Any dispute arising out of or in connection with this Agreement shall be referred to and finally resolved by the arbitration rules of a South Australian Arbitration Centre for the time being in force which rules are deemed to be incorporated by reference into this clause.

**25. Severability:-**

Every term, condition or provision is severable from others. If a court or arbitrator of competent jurisdiction holds any term, condition or provision of this Agreement to be invalid, unenforceable or illegal in whole or in part for any reason, the validity and enforceability of the remaining terms, conditions or provisions, or portions of them, will not be affected.

**26. Third Parties:-**

A person who is not a party to this Agreement has no right to enforce any term of this Agreement, but this does not affect any right or remedy of a third party which exists or is available apart from under that Act.

**27. Remedies:-**

No remedy conferred by any of the provisions of this Agreement is intended to be exclusive of any other remedy which is otherwise available at law, in equity, by statute or otherwise, and each and every remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now hereafter existing at law, in equity, by statute or otherwise. The election of one or more remedies by APV shall not constitute a waiver by such party of the right to pursue any other available remedies.

**28. Headings:-**

The headings in this Agreement are included for convenience only, and will not affect the construction or interpretation of any provision in this Agreement.

**29. Assignment:-**

The Buyer shall not, directly or indirectly, in whole or in part, assign or transfer this Agreement (whether by operation of law, sale of all or substantially all of its assets, sale or disposition of greater than 50% of its outstanding voting power or otherwise) or delegate any of its obligations under this Agreement without the prior written consent of APV. Any attempted assignment, transfer, or delegation without such prior written consent will be void and unenforceable. Without limiting the foregoing, this Agreement will be binding upon and inure to the benefit of the parties and their permitted successors and assigns.

**30. Limitation of Liability:-**

If the delivery item cannot be used by the customer according to the contract due to fault on the part of Australian Pipeline Valve caused by failure to implement proposals and consultations or by improper implementation of proposals and consultations which were made prior to or after conclusion of the contract or by violation of other ancillary contractual obligations, in particular instructions on operation and maintenance of the delivery item, the provisions of this paragraph shall apply accordingly and any further claims of the customer shall be excluded.

Australian Pipeline Valve shall be liable, on whatsoever legal grounds, for damages which was not caused to the delivery item itself only in case of

- (a) wilful intent,
- (b) gross negligence of the owner/ the corporate bodies or executive staff,
- (c) negligent injury to life and limb,
- (d) malicious withholding of information about defects the absence of which was warranted,
- (e) defects of the delivery item to the extent liability for physical injuries or damage to privately used property exists according to the *German Product Liability Act*.

Except for cases of wilful intent or gross negligence liability Australian Pipeline Valve shall be limited to the value of the delivery item and only to the amount our insurer will pay out if a claim is successful.

Australian Pipeline Valve shall not be liable for any special, incidental, indirect or consequential loss or damage (including but not limited to loss of profit, loss of revenue, loss of use of equipment, service interruption, cost of power, cost of money and loss of use of capital) whether such a liability arises out of contract, tort (including negligence), strict liability or any other cause of form of action whatsoever.