

**AVK VALVES Southern Africa (Pty) Ltd  
(Reg. No. 1996 004805 07)**

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**COMMERCIAL CONDITIONS OF TENDER AND SALES**

**1. ACCEPTANCE:**

Except where specifically agreed to the contrary in writing by the AVK Valves Southern Africa (Pty) Ltd, orders resulting from the AVK Valves Southern Africa (Pty) Ltd written quotations and price lists are subject to the terms and conditions embodied herein.

**2. CONTRACTUAL LIMITATIONS:**

AVK Valves Southern Africa (Pty) Ltd supply is limited to such equipment, accessories, work and documentation as is specified in its quotation

**3. DRAWINGS AND DATA:**

All drawings, illustrations, descriptive literature, technical data or particulars of mass and dimension accompanying AVK Valves Southern Africa (Pty) Ltd quotations must be considered approximate except when specifically certificated.

**4. TESTS:**

The goods will be tested in accordance with the specifications of AVK Valves Southern Africa (Pty) Ltd tender and/or the relevant standard specifications as stated therein.

**5. AVAILABILITY:**

Offers for equipment available ex-stock are subject to such stock remaining unsold at time of order placement. Delivery periods quoted are based on the manufacturing position as at the time of quotation. Whilst every endeavour will be made to maintain such deliveries, no liability shall be accepted by AVK Valves Southern Africa (Pty) Ltd for delay due to causes beyond its control.

AVK Valves Southern Africa (Pty) Ltd shall only accept liability for late delivery where AVK Valves Southern Africa (Pty) Ltd, liability for such late delivery is not excluded in terms of the foregoing and where AVK Valves Southern Africa (Pty) Ltd has specifically agreed in writing to the payment of a penalty or liquidated damages or damages for such late delivery, in which case AVK Valves Southern Africa (Pty) Ltd liability shall be limited to the amount so agreed by a duly authorised manager of AVK Valves Southern Africa (Pty) Ltd.

**6. DELIVERY DESTINATION:**

AVK Valves Southern Africa (Pty) Ltd will deliver, where provided for, to a destination named in its quotation at which point AVK Valves Southern Africa (Pty) Ltd's responsibility for the goods will be limited to the standard conditions of tender and sales.

**7. DELIVERY PERIOD:**

All delivery periods quoted are in good faith and all efforts will be made to ensure they are met. AVK Valves Southern Africa (Pty) Ltd will not be held responsible for any delivery periods that are not met, in particular when there are services that are included which are beyond our control.

**8. PACKING:**

Where the AVK Valves Southern Africa (Pty) Ltd deems goods vulnerable to damage during transit, AVK Valves Southern Africa (Pty) Ltd reserves the right to pack such goods in suitable protective packaging or crates at the Purchaser's cost.

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Costs for packing will be quoted and agreed to beforehand, and will be substantiated by a copy of relevant documentation from the packaging contractor.

#### **9. PRICE BASIS:**

Prices shall be referenced from AVK Valves Southern Africa (Pty) Ltd valid List Price or from AVK Valves Southern Africa (Pty) Ltd written quotations.

#### **10. PAYMENT TERMS:**

Payment terms are cash in advance or COD. Alternatively, credit terms can be applied for by completing a credit application form. Credit checks will be performed and a credit limit will be granted, subject to the credit limit granted by Credit Guarantee Insurance Corporation of Africa Limited, as the credit insurer of AVK Valves Southern Africa (Pty) Ltd. Standard terms of payment for all goods and services received from AVK Valves Southern Africa (Pty) Ltd are payment within 30 (THIRTY) days of statement. Thereafter interest will be charged at 2.5% per month on all overdue amounts. Where AVK Valves Southern Africa (Pty) Ltd has quoted delivery point as ex-works, delivery shall be deemed to have been effected when the goods are ready for collection, at which time, the Purchaser shall be advised and an invoice will be generated. Payment for ex-works goods shall be due within the requisite period in accordance with AVK Valves Southern Africa (Pty) Ltd payment terms, starting from the date on which order completion advice was issued to the Purchaser. Failure or delay by the Purchaser to effect collection of completed goods shall not relieve the Purchaser from the contractual obligation to remit payment within 30 days from statement date.

#### **11. DISCOUNT:**

Trade discounts will be negotiated on a contract, tender or quotation basis. A 2.5% settlement discount can only be allowed if agreed upon and where full and final settlement is received within 30 (thirty) days from date of statement. The AVK Valves Southern Africa (Pty) Ltd statement/invoice reflects the date by which payment must be received to qualify for discount, therefore late receipt or non-receipt of statements will not constitute acceptable reason for payment delays. Late payments which reflect arbitrary discount deductions will be received without prejudice to AVK Valves Southern Africa (Pty) Ltd, right to full and final payment.

#### **12. TITLE:**

Ownership of all goods supplied by AVK Valves Southern Africa (Pty) Ltd will not pass to the purchaser or any other party until paid for in full and until such time, AVK Valves Southern Africa (Pty) Ltd shall be entitled to re-possess the goods whether affixed to immovable property or not. All such goods shall be deemed to be removable property and severable from immovable property.

#### **13. TENDER/ QUOTATION VALIDITY:**

Written quotations will be held valid for a maximum of 30 (thirty) days unless contradicted in writing by AVK Valves Southern Africa (Pty) Ltd. Prices are quoted by AVK Valves Southern Africa (Pty) Ltd in good faith based on the ruling costs of material, labour, transport and, if applicable, insurance, sureties and retention monies, as well as statutory government taxes, levies, duties and surcharges. Severely adverse changes and/or additions to any of these costs components which are contributory in the calculation of a price or prices quoted by the 'Company' will be for the purchasers account.

#### **14. PRICE VARIATION:**

The Purchaser undertakes to refund to AVK Valves Southern Africa (Pty) Ltd any extra costs incurred by AVK Valves Southern Africa (Pty) Ltd as a result of the Purchaser's instruction or lack of instructions and for the purpose of this paragraph extra cost shall mean any amount which AVK Valves Southern Africa (Pty) Ltd becomes liable to pay, whether in wages, for materials or otherwise howsoever in respect of the work which AVK Valves Southern Africa (Pty) Ltd would not have been liable to pay but for the Purchaser's action or default.

In the event of dispute on the amount of the extra cost, the decision of a mutually agreed upon arbitrator, shall be final and binding.

#### **15. CANCELLATION:**

Order cancellation or variation will not be considered without the written consent of AVK Valves Southern Africa (Pty) Ltd and in the case of equipment being or having been manufactured specifically for an order, the purchaser will be liable to pay proportion of the price according to the stage of completion of the equipment ordered, plus a 10% cancellation fee.

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## **16. RETURNS FOR CREDIT:**

Acceptance of goods returned will be entirely at the discretion of AVK Valves Southern Africa (Pty) Ltd and subject to a minimum restocking charge and handling fee equal to 15% of the gross invoiced value of such returned goods.

## **17. ESCALATION:**

Where the sum of the quotation validity period and delivery period is in excess of 90 (ninety) days, prices for goods or services quoted by AVK Valves Southern Africa (Pty) Ltd are subject to escalation in accordance with the relevant SEIFSA indices for material, labour and transport.

## **18. RATE OF EXCHANGE**

Where applicable, prices quoted are subject to the fluctuation in the exchange rate and are for the purchasers account.

## **19. GUARANTEE:**

AVK Valves Southern Africa (Pty) Ltd guarantees that the goods supplied will conform to specification and to any requirements specifically accepted by AVK Valves Southern Africa (Pty) Ltd in writing in regard to each order but, except as aforesaid AVK Valves Southern Africa (Pty) Ltd gives no warranty, express or implied, of material workmanship or fitness of goods for any particular purpose whether such purpose be known to us or not. In the event of the goods proving to not be in accordance with the specifications or requirements aforesaid, or should defects under proper use, appear in the goods within a period of 12 (TWELVE) calendar months after the goods have been delivered, caused solely by faulty design, materials or workmanship, we shall, if requested to do so within a reasonable time, but not later than 18 (EIGHTEEN) calendar months from date of delivery repair such goods, or at our option replace goods or the defective parts thereof, free of charge by supplying other goods or replacement parts at the initial place of delivery which do comply with the specifications or requirements aforesaid and/or which are free of the defects complained of. Refer to article V special warranties.

It is a condition of this guarantee:

That any defective parts are returned AVK Valves Southern Africa (Pty) Ltd works at the Purchaser's expense; and; in respect of parts or components not of AVK Valves Southern Africa (Pty) Ltd manufacture, AVK Valves Southern Africa (Pty) Ltd guarantee shall be limited to the guarantee, if any, which we may have received from the supplier of such parts or components in respect thereof so that AVK Valves Southern Africa (Pty) Ltd liability in terms of such guarantee shall be no greater than AVK Valves Southern Africa (Pty) Ltd liability in terms of the AVK Valves Southern Africa (Pty) Ltd own guarantee as set out in this clause; AVK Valves Southern Africa (Pty) Ltd shall be given reasonable time and opportunity to comply with the terms of the guarantee before you call upon AVK Valves Southern Africa (Pty) Ltd to pay any sums in respect of liquidated damages; and save as provided in this clause, AVK Valves Southern Africa (Pty) Ltd shall be under no liability, whether in contract, delict or otherwise in respect of defects in goods delivered, or for any injury, damage or loss resulting from defect or from any work done in connection therewith.

## **20. PATENTS:**

AVK Valves Southern Africa (Pty) Ltd will indemnify the Purchaser against any claim of infringement of Letters Patent or Registered Design (published at the date of the Contract) by the use or sale of any article or material supplied by AVK Valves Southern Africa (Pty) Ltd to the Purchaser and against all costs and damages which the Purchaser may incur in any such action. Provided always that this indemnity shall apply to an infringement which is due to AVK Valves Southern Africa (Pty) Ltd having followed a design or instruction furnished or given by the Purchaser or to the use of such articles or material in a manner or for a purpose or in a foreign country not specified by or disclosed to AVK Valves Southern Africa (Pty) Ltd, provided that this indemnity is conditional on the Purchaser giving AVK Valves Southern Africa (Pty) Ltd the earliest possible notice in writing of any claim being made or action threatened or brought against the Purchaser and on the Purchaser permitting AVK Valves Southern Africa (Pty) Ltd at AVK Valves Southern Africa (Pty) Ltd own expenses to conduct any litigation that may ensue and all negotiations for a settlement of the claim. The Purchaser on their part warrant that any design or instruction furnished or given by the Purchaser shall not be such as will cause AVK Valves Southern Africa (Pty) Ltd to infringe any Lenders Patent, Registered Design or Trade Mark in the execution of the Purchaser's order.

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**21. LIMITED LIABILITY:**

AVK Valves Southern Africa (Pty) Ltd shall not be liable for any incidental or consequential loss, damages or expense arising directly or indirectly from the use of any goods supplied, nor shall liability be accepted for any labour or other expenses incurred. AVK Valves Southern Africa (Pty) Ltd liability is limited solely to the terms of its guarantee.

**22. LEGAL CONSTRUCTION:**

Contracts entered into with AVK Valves Southern Africa (Pty) Ltd shall be interpreted and construed in accordance with the laws of the Republic of South Africa whose courts shall have jurisdiction in respect of any dispute whatsoever.

**23. LEGAL JURISDICTION:**

In terms of Section 45 of the Magistrates Court Act of 1944 the Purchaser consents to the jurisdiction of any Magistrates Court by virtue of Section 20 of the said Act, notwithstanding that any Claim against the Purchaser may exceed the jurisdiction of such Magistrates Court It is recorded that the AVK Valves Southern Africa (Pty) Ltd is not bound hereby and shall be entitled to institute any proceedings against the Purchaser out of any other Court of competent jurisdiction.

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