



Sales / Purchase Terms and Conditions

1. 1. Application

These Terms and Conditions shall apply to all aspects of the provision of the Goods (as hereinafter defined) by Denholm Valvecare Limited, a company incorporated under the Companies Acts (registered number 02468254) and having its registered office at Welbourn, Lincoln, Lincolnshire, LN5 0ND ("**DVL**") to the Customer (as hereinafter defined). No amendments to these Terms and Conditions shall be effective unless agreed in writing by DVL.

2. Definitions and Interpretation

2.1 In these Terms and Conditions the following words shall have the following meanings unless the context otherwise requires:

Agreement means these Terms and Conditions together with the Manufactured Goods Quotation or Sourced Goods Quotation (as the case may be), both between DVL and the Customer, for the sale and purchase of the Goods;

Associated Party means any person, business, partnership or company which is a subsidiary of or a holding company of the Customer, or a subsidiary of such holding company (as the terms "subsidiary" and "holding company" are defined in Section 1159 of the Companies Act 2006)

Customer means any person, business, partnership or company to whom DVL is supplying the Goods, as set out in the Manufactured Goods Quotation or Sourced Goods Quotation (as the case may be);

Customer Address means the address to which the Goods are to be delivered by DVL to the Customer, as set out in the Manufactured Goods Quotation or Sourced Goods Quotation (as the case may be);

DVL Address means Denholm House, Minto Place, Altens, Aberdeen AB12 3SN, or such other address that may be agreed between the parties;

Ex Works Manufacturer means the goods shall be made available by the third party manufacturer of the Sourced Goods, at the place of business of the said third party, with all subsequent transportation costs and risk being met by the Customer

Fit for Purpose means the Goods being fit for the purpose for which they are usually ordered in the context of the general valvecare industry;

Force Majeure Event means a force majeure event as set out in clause 11 below;

Goods means the Manufactured Goods or the Sourced Goods, as the case may be;

Incoterms 2010 means the 8th Edition of The International Rules of the Interpretation of Trade Terms of the International Chamber of Commerce as in force from 1st January 2011;

Manufactured Goods means goods which are manufactured by DVL specifically for the Customer, or goods which have been manufactured by DVL and meet the Customer's specification;

Manufactured Goods Quotation means the document issued by DVL to the Customer (and any subsequent or amending documents thereon) setting out the details of the Manufactured Goods to be provided by DVL to the Customer;

Normal Working Hours means 09:00 to 17:00 from Monday to Friday, excluding bank or statutory holidays, in Aberdeen, Lincoln & Great Yarmouth;

Price means the price (exclusive of Value Added Tax or other indirect taxes or duties which shall be payable in addition thereto where such is applicable) payable by the Customer in Sterling (£) to DVL for the purchase of the Goods, as set out in the Manufactured Goods Quotation or Sourced Goods Quotation (as the case may be);

Sourced Goods means goods, manufactured by a third party other than DVL, procured by DVL from such third party to meet the specification of the Customer;

Sourced Goods Manufacturer means the third party manufacturer from whom DVL has procured the Sourced Goods;

Sourced Goods Quotation means the document issued by DVL to the Customer (and any subsequent or amending documents thereon) setting out the details of the Sourced Goods to be provided by DVL to the Customer

- 2.2 The provisions of the Interpretation Act 1978 with respect to interpretation and construction shall apply *mutatis mutandis*
- 2.3 The headings contained herein are for convenience only and shall not be construed as forming part of this Agreement or be taken into account in the interpretation hereof
- 2.4 Reference to any section of, or part of, or Schedule to, any Act of Parliament shall include any re-enactment or modification thereof
- 2.5 The singular includes the plural and vice versa and any gender includes all genders
- 2.6 If any term in these Terms and Conditions cannot be enforced or is no longer enforceable, this will not affect the remaining terms
- 2.7 Words of a technical nature used in these Terms and Conditions will (unless inconsistent with the context) be construed in accordance with the general trade use in the valvecare industry in the United Kingdom.

3. Manufactured Goods

- 3.1 Where the Customer requests DVL to manufacture any goods on their behalf, the Customer shall make such a request to DVL, in writing or otherwise, specifying the details of the Manufactured Goods required.
- 3.2 DVL shall, as soon as practicable, provide the Customer with the Manufactured Goods Quotation and the Customer shall within 30 days of receipt of the Manufactured Goods Quotation confirm in writing to DVL whether it wishes to accept the Manufactured Goods Quotation
- 3.3 Where the Customer does not confirm in writing (in accordance with clause 3.2 above) that it wishes to accept the Manufactured Goods Quotation, DVL shall not provide the Manufactured Goods to the Customer
- 3.4 Where the Customer confirms in writing (in accordance with clause 3.2 above) that it wishes to accept the Manufactured Goods Quotation, the Agreement shall come into existence and DVL shall manufacture and provide the Manufactured Goods to the Customer
- 3.5 The Manufactured Goods Quotation shall only be deemed to be accepted when the Customer issues **written** acceptance to DVL. For the avoidance of doubt, if the Manufactured Goods Quotation is not accepted within 30 days of being issued to the Customer it shall be deemed to be withdrawn for acceptance.
- 3.6 DVL shall, following receipt of confirmation from the Customer (in accordance with clauses 3.4 and 3.5), manufacture the Manufactured Goods to the specification and timescale as set out in the Manufactured Goods Quotation.
- 3.7 Unless otherwise agreed in writing, the Manufactured Goods shall be delivered Ex-works (as defined in Incoterms 2010) and for the avoidance of doubt DVL shall have no obligation to give notice under section 32(3) of the Sale of Goods Act 1979.
- 3.8 Any dates quoted for delivery of the Manufactured Goods are approximate only, and the time of delivery is not of the essence. DVL shall not be liable for any delay in delivery of the Manufactured Goods.
- 3.9 Immediately upon delivery or part thereof of the Manufactured Goods, DVL shall issue an invoice ("**the Manufactured Goods Invoice**") to the Customer for the Price of the Manufactured Goods
- 3.10 Within 30 days of issue of the Manufactured Goods Invoice the Customer shall make full payment of the Price to DVL.

- 3.11 If any amount of the Price is not paid to DVL within 30 days (or such other period as may have been agreed) of issue of the Manufactured Goods Invoice, DVL shall be entitled to charge interest to the Customer on any portion of the Price not paid at the rate of 5% per annum above the base rate of [The Royal Bank of Scotland plc] as applying from time to time (or if higher the rate prescribed in terms of the Late Payment of Commercial Debts (Interest) Act 1996) to run from the due date for payment until receipt by DVL of the full amount whether or not after judgement and without prejudice to any other rights or remedies of DVL
- 3.12 For the avoidance of doubt, DVL shall be entitled to cancel the Agreement (without liability) and suspend any further deliveries or services to the Customer in the event that there are any sums owing by the Customer, or any Associated Party, in respect of any other goods and/or services provided by or on behalf of DVL to the Customer or any such Associated Party (whether in relation to a separate agreement or otherwise).
- 4. Sourced Goods**
- 4.1 Where the Customer makes a request for goods which DVL does not manufacture, DVL may offer to the Customer the Sourced Goods. For the avoidance of doubt, the Customer shall make such a request in writing or otherwise.
- 4.2 DVL shall, after obtaining the details of such Sourced Goods, provide the Customer with the Sourced Goods Quotation and the Customer shall within 30 days of receipt of the Sourced Goods Quotation confirm in writing to DVL whether it wishes to accept the Sourced Goods Quotation.
- 4.3 Where the Customer does not confirm in writing (in accordance with clause 4.2) that it wishes to accept the Sourced Goods Quotation, DVL shall not be engaged to procure or provide the Sourced Goods to the Customer.
- 4.4 Where the Customer confirms in writing (in accordance with clause 4.2) that it wishes to accept the Sourced Goods Quotation, the Agreement shall come into existence and DVL shall be engaged to procure and provide the Sourced Goods to the Customer
- 4.5 The Sourced Goods Quotation shall only be deemed to be accepted when the Customer issues **written** acceptance to DVL. For the avoidance of doubt, if the Sourced Goods Quotation is not accepted within 30 days of being issued to the Customer it shall be deemed to be withdrawn for acceptance.
- 4.6 DVL shall following receipt of confirmation from the Customer (in accordance with clauses 4.4 and 4.5), procure the Sourced Goods to the specification as set out in the Sourced Goods Quotation.
- 4.7 For the avoidance of doubt, the Sourced Goods shall be supplied by DVL to the Customer on the same terms and conditions, *mutatis mutandis*, as between the Sourced Goods Manufacturer or Distributor and DVL. Time shall not be of the essence in the procuring of the Sourced Goods by DVL from the Sourced Goods Manufacturer.
- 4.8 Unless otherwise agreed in writing, the Sourced Goods shall be delivered Ex-Works Manufacturer or Distributor and for the avoidance of doubt DVL shall have no obligation to give notice under section 32(3) of the Sale of Goods Act 1979.
- 4.9 Any dates quoted for delivery of the Sourced Goods are approximate only, and the time of delivery is not of the essence. The Customer acknowledges that DVL shall have to procure the Sourced Goods from the Sourced Goods Manufacturer or Distributor and that the Sourced Goods shall be delivered Ex Works Manufacturer, and further acknowledges that DVL shall not be liable for any delay in delivery to the Customer of the Sourced Goods.
- 4.10 Immediately upon delivery or part thereof of the Sourced Goods, DVL shall issue an invoice ("**the Sourced Goods Invoice**") to the Customer for the Price of the Sourced Goods
- 4.11 Within 30 days of issue of the Sourced Goods Invoice the Customer shall make full payment of the Price to DVL.
- 4.12 If any amount of the Price is not paid to DVL within 30 days (or such other period as may have been agreed) of issue of the Sourced Goods Invoice, DVL shall be entitled to charge interest to the Customer on any portion of the Price not paid at the rate of 5% per annum above the base rate of [The Royal Bank of Scotland plc] as applying from time to time (or if higher the rate prescribed in terms of the Late Payment of Commercial Debts (Interest) Act 1996) to run from the due date for payment until receipt by DVL of the full amount whether or not after judgement and without prejudice to any other rights or remedies of DVL

- 4.13 For the avoidance of doubt, DVL shall be entitled to cancel the Agreement (without liability) and suspend any further deliveries or services to the Customer in the event that there are any sums owing by the Customer, or any Associated Party, in respect of any other goods and/or services provided by or on behalf of DVL to the Customer or any such Associated Party (whether in relation to a separate agreement or otherwise).

5. Cancellation Indemnity

- 5.2 If the Customer attempts to terminate an Agreement other than in accordance with these Terms & Conditions, then the Customer shall fully indemnify and free and relieve DVL for:

5.2.1 in the case of the Manufactured Goods, the full amount of the costs of the manufacturing process (including, but not limited to: (1)the costs of manual labour and the cost of the materials used in the manufacturing of the Manufactured Goods; (2) any cancellation charges or fees incurred by DVL as a result of the cancellation of the Agreement by the Customer; and (3)any loss of profits suffered by DVL as a result of the cancellation of the Agreement by the Customer), and any other reasonable costs that DVL may have incurred in relation to the Manufactured Goods. No materials will be offered or made available.

5.2.2 in the case of the Sourced Goods, the full amount of the costs of procuring the Sourced Goods (including, but not limited to: (1)the price paid by DVL to any third party to source and/or purchase the Sourced Goods; (2)any cancellation charges or fees incurred by DVL as a result of the cancellation of the Agreement by the Customer; and (3)any loss of profits suffered by DVL as a result of the cancellation of the Agreement by the Customer), and any other reasonable costs that DVL may have incurred in relation to the Sourced Goods. No materials will be offered or made available.

6. Duties of the Customer

The Customer shall provide DVL with such information and / or facilities that DVL may require to provide the Goods. DVL shall accept no liability whatsoever for the failure to provide the Goods as a result of any failure on the part of the Customer to observe any terms of this Agreement.

7. Title and Risk

- 7.1 The risk in the Goods shall pass to the Customer on completion of delivery of the Goods to the Customer.
- 7.2 Property in the Goods shall not pass to the Customer until DVL has received payment in full (in cash or cleared funds) for:
- 7.2.1 the Goods (that is, full payment of the Price); and
- 7.2.2 any other goods or services that DVL has supplied to the Customer or any Associated Party (whether in relation to this Agreement or otherwise)
- 7.3 Until such time as the property in the Goods passes to the Customer, the Customer shall hold the Goods as DVL's fiduciary agent and bailee, and shall keep the Goods separate from those of the Customer and third parties and properly stored, protected and insured and identified as the DVL's property, but the Customer may resell or use the Goods in the ordinary course of its business.
- 7.4 Until such time as the property in the Goods passes to the Customer (and provided the Goods are still in existence and have not been resold), DVL may at any time require the Customer to deliver up the Goods to DVL and, if the Customer fails to do so forthwith, enter on any premises of the Customer or any third party where the Goods are stored and repossess the Goods.
- 7.5 The Customer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of DVL, but if the Customer purports so to do, all moneys owing by the Customer to DVL shall (without limiting any other right or remedy of DVL) forthwith become due and payable.
- 7.6 If before property in the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 10 below, or DVL reasonably believes that any such event is about to happen and notifies the Customer accordingly, then, provided that the Goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy DVL may have, DVL may at any time require the Customer to deliver up the Goods and, if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

8. Warranty

- 8.1 DVL warrants that on delivery, and for a period of 12 months from the date of delivery, the Goods shall:
- 8.1.1 conform in all material respects with their description and any applicable Customer specification;
 - 8.1.2 be free from material defects in design, material and workmanship;
 - 8.1.3 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979); and
 - 8.1.4 be Fit for Purpose
- 8.2 Subject to clause 8.5 below, if:
- 8.2.1 the Customer gives notice in writing to DVL during the 12 month period beginning from the date of delivery, within a reasonable time of discovery, that some or all of the Goods do not comply with the warranty set out in clause 8.1; and
 - 8.2.2 DVL is given a reasonable opportunity of examining such Goods; and
 - 8.2.3 the Customer returns, at its sole cost, such Goods to the nearest DVL Address
- then DVL shall, at its option, repair or replace the defective Goods
- 8.3 Subject to clause 8.4, once the Goods have been repaired or replaced (as the case may be) DVL shall inform the Customer and the Goods (having been repaired or replaced) shall be made available to the Customer Ex-works (as defined in Incoterms 2010).
- 8.4 Notwithstanding clause 8.3, where any Goods to be replaced in accordance with clause 8.2 above must be procured by DVL from a third party then the Goods, having been replaced, shall be made available to the Customer Ex-Works Manufacturer.
- 8.5 DVL shall not be liable for Goods' failure to comply with the warranty set out in clause 8.1 if:
- 8.5.1 the Customer makes any further use of such Goods after giving notice in accordance with clause 8.2; or
 - 8.5.2 the defect arises because the Customer failed to follow DVL's oral or written instructions as to the storage, commissioning, installation, use or maintenance of the Goods or (if there are none) good trade practice; or
 - 8.5.3 the defect arises as a result of DVL following any drawing, design or specification supplied by the Customer; or
 - 8.5.4 the Customer alters or repairs such Goods without the written consent of DVL; or
 - 8.5.5 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions.
- 8.6 Except as provided in this clause 8, DVL shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 8.1.
- 8.7 Except as set out in these Terms & Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Agreement.
- 8.8 These Terms & Conditions shall apply to any repaired or replacement Goods supplied by DVL.
- 8.9 For the avoidance of doubt, the extent of the warranty given in clause 8.1 is given by DVL in relation to the Sourced Goods only insofar as the same is given by the Sourced Goods Manufacturer.

9. Limitation of Liability

9.1 Nothing in these Terms and Conditions shall limit or exclude DVL's liability for:

- 9.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
- 9.1.2 fraud or fraudulent misrepresentation; or
- 9.1.3 any matter in respect of which it would be unlawful for DVL to exclude or restrict liability.

9.2 Subject to clause 9.1:

- 9.2.1 DVL shall not be liable to the Customer, whether in contract, tort or delict (including negligence), breach of statutory duty, or otherwise, for any loss of profit or indirect or consequential loss, or any third party or contingent losses, arising under or in connection with the Agreement (including any losses that may result from DVL's deliberate, personal or repudiatory breach of the Agreement or a deliberate breach of the Agreement by DVL, its employees, agents or subcontractors); and
- 9.2.2 DVL's total liability to the Customer in respect of all other losses arising under or in connection with the Agreement, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, (including losses caused by DVL's deliberate, personal, or repudiatory breach or a deliberate breach of the Agreement by DVL, its employees, agents or subcontractors) shall not exceed the relevant Customer Order Value

10. Insolvency of Customer

10.1 This clause 10 applies if:-

- 10.1.1 The Customer has an administrator, receiver, administrative receiver, liquidator or provisional liquidator or trustee in bankruptcy appointed over all or any part of its assets;
- 10.1.2 An event takes place which would entitle the appointment of a receiver or trustee in bankruptcy over the assets of the Customer or which could cause any floating charge on its assets to crystallise;
- 10.1.3 The Customer has stopped payment of, or is unable to pay, its debts or enters into an arrangement with its creditors or some action is taken to terminate its business;
- 10.1.4 Any event analogous to the events described in Clauses 10.1.1 – 10.1.3 occurs in any jurisdiction in which the Customer is incorporated or resident or carries on business; or
- 10.1.5 If the Customer ceases for any reason to carry on business.

10.2 If this clause applies then, without limiting any other right or remedy available to DVL, DVL may cancel this Agreement or suspend any further deliveries under this Agreement without any liability to the Customer, and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

11. Force Majeure Event

Neither party shall be liable for any failure or delay in performing its obligations under the Agreement to the extent that such failure or delay is caused by a Force Majeure Event. A Force Majeure Event means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors.

12. Subcontracting and Assignment

12.1 DVL may assign the benefit and / or burden of this Agreement without the consent of the Customer.

12.2 The Customer may not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Agreement without the prior written consent of DVL.

13. Non-Waiver

A waiver of any right or remedy under the Agreement is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

14. Survival

Those provisions of these Terms and Conditions which by their nature or implication are required to survive expiry or termination of the Agreement (including but not limited to Clauses 3.11, 3.12, 4.12, 4.13, 7, 9 and 10) shall so survive and continue in full force and effect, together with any other provisions of these Terms and Conditions necessary to give effect to such provisions.

15. Third Parties

A person who is not a party to this Agreement shall not have any rights under or in connection with it.

16. Severability

Each provision of these Terms and Conditions shall be construed separately and, save as otherwise expressly provided herein, none of the provisions hereof shall limit or govern the extent, application or construction of any of them and, notwithstanding that any provision of these Terms and Conditions may prove to be unenforceable by law, the remaining provisions shall continue in full force and effect.

17. Entire Agreement

This Agreement constitutes the entire agreement between the parties hereto in relation to the provision of the Services and supersedes and extinguishes all (if any) prior drafts, agreements, understandings, undertakings, representations, warranties and / or arrangements of any nature whatsoever (whether or not in writing) between the parties hereto in connection therewith.

18. Notices

18.1 Any notice to be served in terms of the Agreement shall be validly served if sent by first class or priority recorded delivery post.

18.1.1 in the case of DVL to Denholm House, Minto Place, Altens, Aberdeen AB12 3SN; and

18.1.2 in the case of the Customer to the address specified in the Manufactured Goods Quotation or Sourced Goods Quotation (as the case may be)

19. Choice of Law and Jurisdiction

The Agreement shall be governed by the Laws of Scotland and all matters relating thereto shall be subject to the exclusive jurisdiction of the Scottish Courts, without prejudice of the rights of DVL to seek recovery of any sums due before any competent Court