



DENHOLM VALVECARE LIMITED

Repair / Service Terms and Conditions

1. Application

These Terms and Conditions shall apply to all aspects of the provision of the Services (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 Services Quotation (as hereinafter defined) between DVL and the Customer;

Customer means any person, business or partnership to whom DVL provide the Services, as set out in the Services Quotation;

Customer Site means the site specified by the Customer in the Services Quotation at which the Services will be provided by DVL to the Customer;

DVL Site means the site specified by DVL in the Services Quotation at which the Services will be provided by DVL to the Customer;

Equipment means the goods which will be subject to the Services, as set out in the Services Quotation;

Normal Working Hours means 09:00 to 17:00 from Monday to Friday, excluding bank or statutory holidays, in Glasgow;

Workshop Services means the provision of the Services by DVL to the Customer at the DVL Site;

On-Site, Offshore or International Services means the provision of the Services by DVL to the Customer at the Customer Site;

Price means the price (which is quoted 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 provision of the Services as set out in the Services Quotation;

Services means the repair and/or servicing and/or certification services, which includes all work performed by one person or a group on clients plant or equipment, which DVL has agreed to provide to the Customer as set out in the Services Quotation;

Services Quotation means the document issued by DVL to the Customer, and any subsequent or amending documents to the Services Quotation, setting out the details of the Services 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. Services

- 3.1 The Customer engages DVL to provide the Services as set out in the Services Quotation
- 3.2 The Customer accepts and hereby agrees that DVL shall be and is entitled to seek, apply for and accept contracts to supply repair/servicing/certification services to third parties and the arrangements herein are provided on a non-exclusive basis.
- 3.3 DVL shall only provide the Services during the Normal Working Hours, unless otherwise agreed in writing with the Customer, if DVL are asked to provide the Service out-with Normal Working Hours there will be an extra hourly/daily charge will be applied and detailed in service quote..

4. Workshop Services

- 4.1 Where the Customer requests DVL to provide the Workshop Services, the Customer shall at its own cost ensure that the Equipment is brought to the DVL Site for inspection
- 4.2 As soon as practicable upon arrival of the Equipment at the DVL Site, DVL shall provide the Customer with the Services Quotation and within 7 days of receipt of the Services Quotation the Customer shall confirm in writing to DVL that they either wish to accept or reject the Services Quotation
- 4.3 Where the Customer confirms in writing to DVL that it wishes to reject the Services Quotation the Customer shall pay DVL for time spent for the inspection work performed as detailed on Service Quote. Customer shall at its own cost immediately remove the Equipment from the DVL Site and DVL shall not be engaged to provide the Services.
- 4.4 Where the Customer confirms in writing to DVL that it wishes to accept the Services Quotation, the Customer agrees to engage DVL to provide the Services at the DVL Site.

5. On-Site, Offshore or International Services

- 5.1 Where the Customer requests DVL to provide the On-Site, Offshore or International Services, DVL shall provide the Customer with the Services Quotation and within 7 days of receipt of the Services Quotation the Customer shall confirm in writing to DVL that they either wish to accept or reject the Services Quotation
- 5.2 Where the Customer confirms in writing that it wishes to reject the Services Quotation DVL shall not be engaged to provide the Services
- 5.3 Where the Customer confirms in writing that it wishes to accept the Services Quotation the Customer agrees to engage DVL to provide the Services at the Customer Site

6. Duties of DVL

- 6.1 DVL shall, subject to these Terms and Conditions, use reasonable endeavours to provide the Services to the Customer (as set out in the Services Quotation).
- 6.2 Where the Customer has engaged DVL to provide the On-Site, Offshore or International Services, DVL shall ensure that the Services are carried out by a fully certified and trained representative who has undergone DVL and/or external competency training.

7. Duties of the Customer

- 7.1 The Customer shall take such steps as may be necessary to ensure the safety and welfare of any DVL representatives (whether employees, agents or otherwise) who visit any premises of, or on behalf of, the Customer (including, but not limited to, the Customer Site).

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

8. Payment

8.1 The Price is payable in pounds Sterling (£), is exclusive of VAT and is as set out in the Services Quotation

8.2 The Price is payable upon completion of the Services (in accordance with clauses 8.3 – 8.5 below), unless otherwise agreed in writing between DVL and the Customer.

8.3 Immediately upon completion of the Services DVL shall issue an invoice for the amount of the Price ("**the Services Invoice**") to the Customer, for all Customers who do not hold an approved credit account or have an outstanding balance over their credit limit.

8.4 Within 30 days of issue of the Services Invoice the Customer shall make full payment of the amount of the Services Invoice to DVL

8.5 If any part of the Price is not paid to DVL within 30 days of issue of the Services 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

8.6 For the avoidance of doubt, DVL shall be entitled to suspend or terminate the provision of the Services in the event that there are any sums owing by the Customer in respect of any other goods and/or services provided by or on behalf of DVL to the Customer (whether in relation to a separate agreement or otherwise).

9. Beyond Reasonable Repair

9.1 DVL shall give the Customer written notice if, in its reasonable opinion, the Equipment (or any part of it) is identified as "end of life", becomes beyond reasonable repair or spare parts become not readily available (at reasonable commercial prices), or if faults and/or its condition are such that overhaul or replacement is necessary. Upon such notice any obligations of DVL to provide the Services will be terminated and DVL shall issue an invoice ("**Terminated Services Invoice**") to the Customer for the Services carried out up to the date of such notice.

9.2 Within 30 days of issue of a Terminated Services Invoice the Customer shall make full payment of the amount of the Terminated Services Invoice to DVL. In the event of failure by the Customer to make payment, DVL shall have the same rights available as in clause 8.5 above.

9.3 Where DVL has given notice to the Customer in accordance with clause 9.1 above, but the Customer in any event requests that DVL carry out the Services, DVL may at its sole discretion carry out the Services on the same terms and conditions as contained in this Agreement.

10. Liability

10.1 The entire liability of DVL is as set out in this Clause 10 (including any acts or omissions of its employees, agents, and sub-contractors) to the Customer in respect of:

10.1.1 any breach of the Agreement;

10.1.2 any use made by the Customer of the Services;

10.1.3 any representation, statement or delictual/tortious act or omission (including negligence) arising under or in connection with the Agreement.

10.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Agreement.

10.3 Nothing in this Agreement excludes or limits the liability of DVL:

- 10.3.1 for death or personal injury resulting from negligence; or
- 10.3.2 for any damage or liability incurred by the Customer as a result of fraud or fraudulent misrepresentation by DVL.

10.4 Subject to Clauses 10.2 and 10.3:

10.4.1 DVL shall not be liable for:

- (i) loss of profits;
- (ii) loss of business;
- (iii) depletion of goodwill and / or similar losses;
- (iv) loss of anticipated savings;
- (v) loss of goods;
- (vi) loss of contract;
- (vii) loss of use;
- (viii) loss or corruption of data or information;
- (ix) and special, interdict, consequential or pure economic loss, costs, damages, charges or expenses.
- (x) Late deliveries

10.4.2 DVL's total liability in contract, delict/tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising out of or in connection with the performance or contemplated performance of this Agreement shall be limited to the order value.

10.4.3 DVL shall have no liability for any failure of the Services (save for as in clause 10.3) caused by an act, delay or omission of a third party supplier of DVL or other party for whom DVL is not responsible.

10.4.4 DVL shall have no liability for loss, theft or damage to any items or equipment of the Customer as used as part of the Services.

11. Subcontracting and Assignment

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

11.2 The Customer acknowledges and agrees that DVL may perform the Services through suitably qualified sub-contractors, DVL remaining responsible for any act or omission of any such sub-contractor.

12. Termination

12.1 DVL may terminate this Agreement at any time without liability, by notice to the Customer, in the event that:

12.1.1 The Customer fails to pay the Price, or any invoice rendered by DVL, when due;

12.1.2 DVL, in its reasonable opinion, considers it expedient in the interests of the efficient and effective management of its business;

12.1.3 The Customer breaches any term of the Agreement and fails to remedy same within 14 days of being required to do so in writing (such notice expressly stating DVL's intention to terminate);

12.1.4 The Customer has a receiver, administrative receiver, liquidator or provisional liquidator or trustee in bankruptcy appointed over all or any part of its assets;

12.1.5 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;

12.1.6 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;

12.1.7 Any event analogous to the events described in Clauses 12.1.4 – 12.1.6 occurs in any jurisdiction in which the Customer is incorporated or resident or carries on business; or

12.1.8 If the Customer ceases for any reason to carry on business.

12.2 Where DVL terminates this Agreement in accordance with any of the provisions of clause 12.1 above, DVL shall be entitled to issue an invoice to the Customer for the Services carried out up to the termination date and

payment shall be made in accordance with the provisions of clauses 8.4 – 8.6 above.

- 12.3 The Customer may terminate this Agreement forthwith by notice to DVL at any time in the event that the DVL breaches any term of the Agreement and fails to remedy same within 30 days of being required to do so in writing (such notice expressly stating the Customer's intention to terminate).
- 12.4 Where the Customer terminates this Agreement in accordance with clause 12.3 above, DVL shall be entitled to issue an invoice to the Customer for the Services carried out up to the terminate date and payment shall be made in accordance with the provisions of the clauses 8.4 – 8.6 above.
- 12.5 Notwithstanding the provisions of Clause 8.6, Clause 9.1, Clause 12.1, or Clause 12.3, and unless otherwise terminated by either party, this Agreement shall continue in full force and effect.

13. Intellectual Property

- 13.1 All ideas, methods, processes, inventions, discoveries, designs and other copyright work made or created by DVL in providing the Services or relating to or capable of being used by the Customer will remain in the ownership of DVL unless otherwise stated Services Quotation. All Intellectual Property used by DVL in the performance of the Services shall be the exclusive property of the party owning it prior to the commencement of the Services.
- 13.2 All Intellectual Property made or created by DVL for the purpose of and/or in the provision of the Services (including, but not limited to, DVL's Asset Group Management Software), together with any modifications, enhancements or alterations thereto, shall vest and be owned absolutely by DVL, unless otherwise agreed in writing by DVL.
- 13.3 The Customer hereby warrants that any Intellectual Property it provides to DVL for the purposes of DVL providing the Services is either owned by the Customer or appropriately licensed and its use by DVL for the purposes of providing the Services will not infringe the Intellectual Property rights of any person. The Customer shall indemnify and hold harmless DVL from any and all loss, damage, liability, cost and expense against all claims in respect of a breach by the Customer of this warranty.

14. Non-Waiver

No failure of DVL to exercise, nor any delay in exercising any right hereunder, shall operate as a waiver of that or any other right or remedy of DVL nor shall any partial exercise preclude any further or other exercise.

15. Non-Solicitation

Neither the Customer nor any subsidiary or associated company of the Customer, nor any connected person as defined in terms of s.1122 of the Corporation Tax Act 2010 as amended or replaced from time to time, shall, directly or indirectly, solicit or offer employment to any employee or sub-contractor of DVL for any of the Services or engage any such person to provide any services.

16. 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 8, 10, 12, and 15) 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.

17. Third Parties

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

18. 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.

19. 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.

20. Variation

DVL may from time to time and without notice, change this Agreement in order to comply with any applicable safety or statutory requirements, provided that such changes do not materially affect the nature or scope or the Price for the provision of the Services. Any other substantive variation to Services will be agreed in writing between the parties.

21. No Partnership or Agency

21.1 Nothing in this Agreement is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for or to bind the other in any way.

21.2 Nothing contained in this Agreement shall be construed or implied to have the effect of constituting any kind of employer / employee relationship between DVL and the Customer.

22. Notices

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

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

22.1.2 in the case of the Customer to the address specified in the Services Quotation

23. 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