

Directors: G.C. Harris (Managing)
 W.H. Harris B.Sc. Eng. (Executive)
 A.S.P. Zini B.Sc. Eng. B.A. Hon. (Quality Assurance)
 S.T. Khumalo M.Sc. Eng (Non-Executive)

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TERMS AND CONDITIONS OF SALE

I. GENERAL

I.1 In these conditions: -

I.1.1 “**Business Day**” means a day other than a Saturday, Sunday and a public Holiday in the Republic of South Africa;

I.1.2 “the **Contract**” means any contract or quotation between HVA and the Purchaser for the sale and purchase of the Products;

I.1.3 “**Delivery Note**” means a record of items, which have been purchased by the Purchaser from HVA and received by the Purchaser or his representative.

I.1.4 “**HVA**” means Heaton Valves Africa (Proprietary) Limited, a company registered in accordance with the laws of South Africa under registration number 1992/006825/07;

I.1.5 “**Listed Price**” means a price for a Product based on HVA’s internal price lists which may vary from time to time;

I.1.6 “the **Products**” means all products, services and associated documentation to be supplied or distributed under this Contract;

I.1.7 “the **Purchaser**” means any customer of HVA to whom Products are supplied and distributed under these terms and conditions;

I.1.8 “**Purchase Order**” means when HVA receives a purchase order in Writing from the Purchaser;

I.1.9 “**Quotation**” means a quotation prepared by HVA for the Purchaser in respect of Products requested by the Purchaser;

I.1.10 “**Quoted Price**” a price quoted for a Product in Writing or telephonically to the Purchaser.”

I.1.11 “**VAT**” means Value-Added Tax payable in terms of the VAT Act.

I.1.12 “**Writing**” includes cable, facsimile transmission, electronic data transfer, e- mail and comparable means of communication

I.2 All quotations are made and all orders are accepted subject to these conditions. All other terms, conditions or warranties whatsoever are excluded from the Contract or any variation thereof unless expressly accepted by HVA (order acknowledgements do not constitute such acceptance). In particular, in no circumstances will any conditions of purchase submitted at any time by the Purchaser be applied to this Contract and any failure by HVA to challenge any such conditions of purchase does not imply acceptance.

I.3 In the event of a conflict between these conditions and the specific terms and conditions of quotation then the latter shall prevail. Acceptance by the Purchaser of delivery of the Products shall be deemed to constitute unqualified acceptance of these conditions.

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2. ELECTRONIC TRADING

- 2.1 Electronic orders shall be valid if all the information agreed between the Purchaser and HVA as being required is properly set out in the agreed format and the order is transmitted by the Purchaser to HVA by reference to the correct identification code and is received by HVA when collecting its electronic mail from the relevant system.
- 2.2 Subject to clause 2.1, each valid electronic order will be deemed accepted by HVA unless HVA communicates rejection of the order to the Purchaser by electronic or other means (including telephone) within five (5) business days of receipt. Acceptance of an order shall constitute a contract of sale and purchase to which these conditions shall apply.

3. PRICES

- 3.1 Unless otherwise agreed in Writing all prices are quoted -
- 3.1.1 ex works and ex stock;
- 3.1.2 in South African Rands;
- 3.1.3 excluding VAT
- 3.2 Unless otherwise agreed in Writing, all quoted prices are fixed and firm.
- 3.3 Quoted prices are valid for 30 days unless otherwise agreed in Writing.
- 3.4 All quotations in respect of stock values and / or associated products are subject to availability at the time of the quotation and which may vary thereafter due to subsequent sales.
- 3.5 Stock values and associated products may be reserved upon request for an agreed period of time.
- 3.6 HVA shall be entitled at any time on written notice to make a reasonable adjustment to the price in the event of any alteration in quantity, design or specification requested by the Purchaser.
- 3.7 HVA reserves the right at any time prior to delivery and on written notice to increase the Listed Price and / or Quoted Price if there are any increases in the costs of materials, labour, transport, utilities, foreign currency fluctuations, currency regulation or alteration of duties or if the costs of HVA are increased by any other factor beyond the reasonable control of HVA.

4. DELIVERY

- 4.1 Delivery will be calculated from the receipt of a correct, signed hard copy of the Purchase Order.
- 4.2 The time of delivery is as specified in the Purchase Order, which is based on a quotation given by HVA or a supply contract agreement.

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- 4.3 Delivery as specified in the Purchase Order is quoted in working weeks excluding manufacturer's shutdowns.
- 4.4 Any additional time for witnessed inspection / witnessed testing has not been included in the delivery time specified in the quotation provided by HVA or the supply contract agreement.
- 4.5 Delivery is based upon all documentation being approved within the time as indicated in clause 7 below.
- 4.6 Delivery is based upon the manufacturer's capacity at the time of quotation. This may be impacted if there is a delay in receiving the Purchase Order after the quotation is provided to the Purchaser.
- 4.7 All dates and periods for delivery are estimated and do not constitute fixed times for delivery by HVA and time of delivery shall not be the essence of the Contract nor shall the Purchaser be entitled to make, or to purport to make, time for delivery of the essence of the Contract unless otherwise agreed.
- 4.8 The date for delivery shall in every case be dependent upon prompt receipt of all necessary information, final instructions or approvals from the Purchaser.
- 4.9 Where the Purchaser requests and HVA agrees to postpone delivery, or where delivery is otherwise postponed without default by HVA, the Purchaser shall upon demand pay all reasonable costs and expenses including reasonable storage and transport costs.

5. TECHNICAL NOTES

All Quotations provided by HVA are based on the specifications provided by the Purchaser. It is the Purchaser's responsibility to ensure that the selections of materials offered are suitable for the services required. In the event that any discrepancies exist between HVA's quotation and the Purchaser's requirements, HVA must be advised immediately otherwise HVA shall be deemed to have quoted correctly.

6. TESTING AND INSPECTION

- 6.1 If witnessed testing and / or inspection are requirements of the Purchaser, it will be necessary for the Purchaser to fully identify the scope of such witnessed testing and / or inspection prior to placing the order.
- 6.2 If the scope of witnessed testing and / or inspection is not advised in full prior to placing the order, HVA reserves the right to review the price and the delivery terms stipulated in the Purchase Order.
- 6.3 If witnessed testing and / or inspection are requirements of the Purchaser, it must be clearly stipulated as such in the Purchase Order.

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- 6.4 Unless specifically provided for in the Purchase Order, non destructive testing shall not be included.
- 6.5 Pressure testing of valves, if expressed in the Purchase Order or at the point of the manufacturer, shall be tested according to API 598 / BS 6755 standard leakage.
- 6.6 No other testing shall be performed by HVA, an approved tester or manufacturer unless specifically provided for in the Purchase Order.

7. DOCUMENTATION & CERTIFICATIONS

7.1 Where applicable, only on the valve body/ies and bonnet/s of the following valves the EN 10204 3.1 certification will be provided: -

- 7.1.1 carbon;
 7.1.2 stainless;
 7.1.3 alloy steel gate;
 7.1.4 globe;
 7.1.5 check valves; and
 7.1.6 ball valves.

- 7.2 A letter of conformity shall only be provided by HVA on bronze or cast iron valves.
- 7.3 Upon request, a letter of conformity on valve trims can be provided by the valve manufacturer via HVA.
- 7.4 Pressure test certificates shall be provided by HVA with all safety relief and pressure relief valves.
- 7.5 Material certification for API safety relief and pressure relief valves shall be supplied from the valve manufacture via HVA.
- 7.6 If specifically requested in the Purchase Order, material certification for steam traps and associated products can be provided by the manufacturer via HVA.
- 7.7 HVA shall not be responsible for providing any other documentation or drawings unless specifically agreed upon and expressly provided for in the Purchase Order.

8. PAINTING, MARKING AND SPARES

- 8.1 Unless otherwise agreed upon and specified in the Purchase Order, only the manufacturer's standard painting is offered.
- 8.2 To maintain the Product/s warranty, all parts, Product/s and / or spares must be purchased from HVA.

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9. TERMS OF PAYMENT

- 9.1 One hundred percent (100%) of the invoice price shall be due and payable within thirty (30) days from the date of the invoice unless otherwise agreed in Writing.
- 9.2 Time for payment of the price is of the essence of the Contract. No payment shall be deemed to have been received until HVA has received cleared funds.
- 9.3 Unless HVA agrees otherwise in Writing, all payments made by the Purchaser to HVA under any Contract subject to these conditions shall be made free of any restriction or condition and without deduction or withholding on account of any other amount and/or claim, whether by way of set-off or otherwise and whether such amount and/or claim is connected to any Contract subject to these conditions or otherwise.
- 9.4 Unless agreed to in Writing by HVA prior to the placement of the order, retention bonds and performance bonds shall not be accepted by HVA.
- 9.5 In the event of default in payment by the Purchaser, HVA shall be entitled (without prejudice to any other right or remedy):-
 - 9.5.1 to suspend without notice all further deliveries on any Contracts between HVA and the Purchaser; and
 - 9.5.2 to charge interest on a daily basis on any amount outstanding at the rate of the prime lending rate.
- 9.6 Payment terms are passed upon reputable credit references. If the credit references are not acceptable to HVA then the terms of payment may vary at the discretion of HVA.

10. RISK AND TITLE

- 10.1 Risk of damage to or loss of the Products shall pass to the Purchaser upon delivery to the Purchaser. The Purchaser is then solely responsible for all loss damage or deterioration to the Products.
- 10.2 Title to the Products shall not pass to the Purchaser until either:-
 - 10.2.1 HVA has received in cash or cleared funds for all monies payable (whether or not due) to HVA under all Contracts between the Purchaser and HVA.
 - 10.2.2 When HVA serves on the Purchaser notice in Writing specifying that title in the Products or any part thereof has passed to the Purchaser.
- 10.3 Until title to the Products has passed to the Purchaser, the Purchaser shall ensure that the Products are stored and clearly identifiable as belonging to HVA.

11. CANCELLATION AND AMENDMENT

- 11.1 Cancellation or amendment of any Contract requires the prior approval in Writing of HVA and shall be conditional upon the Purchaser indemnifying HVA against all reasonable costs and expenses incurred by HVA as a result of such cancellation and amendment.

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11.2 Products returned to HVA without HVA's written consent shall not be accepted for credit.

12. WARRANTIES

12.1 Insofar as is permitted by law, HVA excludes all terms and conditions that may otherwise be implied by state, common law or otherwise. Notwithstanding this, nothing in this Clause 12 is intended to restrict the Purchaser's statutory rights.

12.2 The obligations of HVA relating to defects in Products are limited to the guarantee (if any), which HVA receives from any manufacturer or supplier of such products.

12.3 Any warranty given is valid for a period of twelve (12) months from delivery, provided that the Products are stored, operated, installed and maintained in strict accordance with the manufacturer's operations and maintenance procedures, which shall be made available upon request to HVA.

12.4 Any claim made by the Purchaser under the warranty is limited to the unit price of the individual Product as specified in the Purchase Order or Delivery Note.

12.5 Any additions or modifications carried out by the Purchaser shall render any warranty on the Products purchased void.

12.6 HVA shall not be liable for and the Purchaser shall indemnify HVA against all costs, claims, damages, liabilities and expenses incurred by HVA arising from any use by the Purchaser of Products after the Purchaser became or ought reasonably to have been aware of a defect.

13. LIMITATION OF LIABILITY

13.1 Under no circumstances whatsoever shall HVA be liable in contract, delict or otherwise howsoever arising for any claim, damage, loss or costs in respect of any:-

13.1.1 loss of profit;

13.1.2 loss of anticipated savings;

13.1.3 loss of business;

13.1.4 loss of opportunity;

13.1.5 loss of goodwill;

13.1.6 loss of reputation;

13.1.7 loss of data;

13.1.8 any wasted expenditure; or

13.1.9 any indirect or consequential loss or damage howsoever caused.

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13.2 Without prejudice to Clause 13.1, HVA's maximum aggregate liability for all claims made by the Purchaser in relation to any Contract shall not exceed the contract price for the Products, and the Purchaser agrees to insure adequately to cover claims in excess of such amount.

13.3 The Purchaser shall indemnify HVA against all losses, costs, claims, damages, expenses and liabilities in respect of or arising out of any injury, loss or damage whatsoever suffered by or occasioned to any person arising out of or in connection with the supply by HVA of the Products or any act or omission of the Purchaser in its performance of its obligations under the Contract, except where any such claim or loss is a direct result of any negligent act or default of HVA.

14. CONFIDENTIAL INFORMATION

All drawings, documents, records, computer software and other information supplied by HVA whether produced by itself or a third party, are supplied on the express understanding that copyright is reserved to HVA or the third party and that the Purchaser will not without written consent of HVA either give away, loan, exhibit or sell the same or extracts there from or copies thereof or use the same in any way except in connection with Products in respect of which they are issued.

15. CUSTOMER'S DRAWINGS

The Purchaser shall be solely responsible for ensuring that all drawings, information, advice and recommendations specified or given to HVA by the Purchaser or its agents, servants, consultants or advisers are accurate, correct and suitable. Examination or consideration by HVA of such drawings, information, advice or recommendations shall not result in any liability on the part of HVA.

16. TERMINATION

16.1 Without prejudice to any other rights or remedies of HVA, it shall be entitled in any of the following circumstances to terminate (in whole or in part) the Contract and/or to suspend deliveries and/or to receive upon demand payment of all monies due and payable by the Purchaser:-

16.1.1 if the other party is unable or is deemed to be unable to pay its debts in accordance with the provisions of section 345 of the Companies Act, 1973 (as amended) or otherwise defaults generally in the payment of its liabilities;

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- 16.1.2 if any provisional or final order is made or an effective resolution passed for the winding up of the other party otherwise than for the purposes of its reconstruction or an amalgamation with another company where the reconstruction or amalgamation has been approved by the first party, provided its approval may not be unreasonably withheld;
- 16.1.3 if any provisional or final order is made for the judicial management of the other party;
- 16.1.4 if any scheme of compromise is entered into or attempted by the other party;
- 16.1.5 if any of the assets of the other party are attached under a writ of execution issued out of any court and the writ is not satisfied within 14 days from its service or if satisfactory steps are not taken for the rescission of the judgment within that period; or
- 16.1.6 if the Purchaser or any connected person commits or allows to be committed any material breach of a Contract or these terms and conditions.

17. FORCE MAJEURE

- 17.1 HVA shall not be liable for any failure to perform any of its obligations under the Contract for any reason whatsoever outside its reasonable control including without limitation:-
- 17.1.1 Acts of God;
- 17.1.2 Strikes;
- 17.1.3 Riots;
- 17.1.4 Lock-outs or other industrial action including trade disputes (whether such dispute involves its employees or not);
- 17.1.5 delays or any of the above experienced at the point of manufacture or in transport; or
- 17.1.6 by any other act, matter or thing beyond its reasonable control.
- 17.2 In the event that HVA does not perform its obligations by reason of any of the causes referred to in Clause 17.1 above within six (6) months after the time for performance; either party may, by written notice, terminate the Contract without liability save that the Purchaser shall pay for any Products delivered or completed at the time of termination.

18. HEALTH AND SAFETY

The Purchaser agrees to comply with any information and instructions supplied by HVA relating to the Products including but not limited to any conditions necessary to ensure that they will be safe and without risk to health at all times when they are being set, used, serviced or maintained by any person, The Purchaser shall take such steps as specified by such information or otherwise necessary to ensure that as far as is reasonably practicable the Products will be safe and without risk to health at all times.

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VALVE COMPANY, INC.



19. GENERAL

- 19.1 This Contract and all other Contracts, Delivery Notes, Quotations and Purchase Orders are governed according to the laws of the Republic of South Africa.
- 19.2 No waiver of or delay or failure by HVA to exercise any rights or remedies shall prejudice or preclude any future or further exercise thereof.
- 19.3 If any provision of these conditions shall be held invalid or unenforceable in whole or in part then the unaffected provision (or part of the provision, as the case may be) shall remain in full force and effect.
- 19.4 Headings appear for convenience only and shall not affect the construction of these conditions.
- 19.5 Nothing in these conditions shall create a partnership, agency or relationship of employment between the parties.
- 19.6 Except as otherwise provided in this Contract, a person who is not a party to this Contract shall have no right pursuant to this or any other Contract or to enforce any terms of the Contract.