



# Terms and Conditions

## TERMS AND CONDITIONS OF SALE

### 1. DEFINITIONS

The SELLER shall mean the selling organization or entity set forth on the front of this CONTRACT and all its subsidiaries, related and associated companies. The "BUYER" shall mean the person or entity to whom the GOODS are sold by the SELLER. "GOODS" shall mean all goods and services sold to the BUYER including but not limited to pressure relief devices and related equipment and articles, engineering services, and software or software-related services, including documents supplied by the SELLER to the BUYER. "INSTALLATION INSTRUCTIONS" means the information supplied by the SELLER to ensure correct installation, operation and safe use of the GOODS.

"CONTRACT" shall mean the agreement of the parties as evidenced by the terms and conditions contained herein.

### 2. AGREEMENT

In the event the BUYER's purchase order contains language which modifies, adds to, or otherwise includes additional or different terms from those contained herein, or is repugnant to or inconsistent with the CONTRACT, then the SELLER's order acknowledgement form including these terms shall constitute a rejection of the BUYER's offer to purchase. In either event, the SELLER's order acknowledgement form shall constitute an offer to sell which may be accepted only in accordance with its terms and without modification, addition or alteration. The failure of the BUYER to deliver written notification of objection to these conditions of sale within a reasonable time, and the absence of the SELLER's written consent to the BUYER's proposed conditions of sale, shall constitute BUYER's acceptance of SELLER's terms and conditions of sale and a contract shall be formed only upon such conditions of sale. Errors and omissions, including clerical and typographical errors, are subject to correction by SELLER without penalty. In the event the SELLER's acknowledgement prices differ from those shown on the BUYER's purchase order, BUYER's records should be corrected accordingly or a change order issued.

### 3.

#### A. ORDERS

All orders shall be addressed to the SELLER.

#### B. ACCEPTANCE OF QUOTATION

The acceptance of the SELLER's quotation must include information sufficient to enable the SELLER to proceed with the order forthwith; otherwise the SELLER shall have the right to amend the delivery period and/or quoted prices to cover any increase in cost which has taken place after the acceptance. All telephone and telegraphic orders must be confirmed by an official written order.

#### C. QUOTATIONS

Quotations are valid for thirty (30) days and represent no obligation until the SELLER accepts the BUYER's offer.

#### D. PRICES

Prices exclude Value Added and other Taxes and delivery charges.

#### E. DELIVERY

Delivery will be Ex Works point of Manufacture, unless otherwise agreed. The SELLER reserves the right to deliver GOODS in more than one consignment and to invoice and be paid for each consignment separately. The SELLER reserves the right at its option, by giving reasonable notice to the BUYER, to amend the delivery date of any consignment, and any such amendment shall not constitute a breach of the CONTRACT by the SELLER.

#### F. PACKING, MARKING, FREIGHT, AND INSURANCE

Unless otherwise agreed, packing and markings will be standards for domestic shipments. Special packaging, marking, export crating, freight and insurance will be undertaken as extras at BUYER's expense. In respect of these extra expenses only the SELLER shall be acting as BUYER's agent and the BUYER hereby appoints the SELLER for that purpose.

#### G. CLAIMS

Claims for shortage or error will be entertained only if reported in writing to the SELLER within ten (10) business days of receipt or due date of receipt. Risk to the GOODS passes to the BUYER when delivered to the carrier as set out in Section 13. BUYER shall file all claims for damage or loss-in-transit with carrier.

#### H. PRICE VARIATIONS

The SELLER reserves the right to increase the price of the GOODS agreed to be sold in proportion to any increase of costs to the SELLER between the date of acceptance of BUYER's order and the date of delivery (including, but not limited to, those relating to exchange rates, labour, material, transport and taxes) or where the increase is due to an act or default of the BUYER, including cancellation by the BUYER of part of the order.

### 4. FORMATION OF THE CONTRACT

The CONTRACT between the SELLER and BUYER shall be complete upon BUYER's receipt of the SELLER's written acknowledgement of BUYER's order.

### 5. LIMITS OF CONTRACT

A quotation includes only such GOODS, work and services as are expressly stated therein. The BUYER shall not transfer its rights under the CONTRACT to any person without the SELLER's written consent. The SELLER, at its option, may sub-contract any and all orders accepted by it without the consent of the BUYER.

### 6. EXTRA COSTS AND RETURNS

Should the SELLER incur any additional expense not provided for in its quotation for any reason beyond the SELLER's control, including (but not limited to) errors or omissions in

the BUYER's instructions or suspension of work due to the BUYER's instruction of delay, the SELLER reserves the right to add a reasonable sum in respect of such extra cost to the CONTRACT price, to be paid by the BUYER.

### 7. PATENTS

The SELLER endeavours not to offer for sale GOODS which infringe known and valid patents. The SELLER shall not, however, be liable, and no claim shall be made against it by the BUYER or any customer of BUYER, for any damage or loss of profit arising from infringement or alleged infringement of any patent or registered design for use or sale of the GOODS, nor from any legal or other proceeding relating thereto. Any condition of warranty implied under the Sale of Goods Act of 1979 or otherwise is limited accordingly. Where the SELLER provides advice to the BUYER in matters of technique or supplies GOODS for carrying a technique into effect, the tendering of such advice or the supply of such GOODS carries no guarantee that such technique is free from patent restriction. The SELLER expressly disclaims any liability arising from infringement or alleged infringement of patent as a result of the BUYER following the advice tendered by the SELLER or using the SELLER's products.

### 8. DRAWINGS AND TECHNICAL SPECIFICATIONS

All descriptive and technical specifications, drawings, catalogues, illustrations and particulars of weights and dimensions submitted with a quotation are approximate only and shall not form part of the contract. All information, designs, drawings and technical specifications supplied by the SELLER are highly confidential, and the BUYER shall not copy, use or communicate these or the contents thereof to third parties at any time without the prior written consent of the SELLER.

### 9. HEALTH AND SAFETY AT WORK

The SELLER has enclosed or will provide upon request at no cost INSTALLATION INSTRUCTIONS to minimize health and safety risks related to the proper installation and use of the GOODS. The INSTALLATION INSTRUCTIONS detail the procedures necessary to ensure that the GOODS supplied will be safe and with a minimum risk to health. In the event INSTALLATION INSTRUCTIONS are not enclosed, BUYER is required immediately to request them from the SELLER. Under no circumstances is BUYER to attempt installation without the INSTALLATION INSTRUCTIONS.

The SELLER expressly disclaims, without prejudice to the provisions of Paragraph 14, liability of any nature (whether in respect of damage to the GOODS or otherwise) resulting from BUYER's failure to obtain and comply strictly with the INSTALLATION INSTRUCTIONS.

### 10. LOCAL LAWS AND REGULATIONS

The BUYER shall, upon the SELLER's request and to the best of BUYER's ability, assist the SELLER in obtaining all necessary information concerning local laws and regulations applicable to the GOODS. If, by reason of any changes in such laws and regulations occurring after the date of the quotation, the cost of the GOODS is increased or reduced, the amount of such increase or reduction shall be added to or deducted from the price as appropriate.

### 11. DELAYED ACCEPTANCE OF DELIVERY

If the BUYER fails or refuses to accept delivery of the GOODS on the due date, BUYER shall nevertheless make any payment required upon delivery as if the GOODS have been delivered. The SELLER may arrange to store the GOODS at the BUYER's risk and expense. Provided, however, that if the delay in accepting delivery is due to one of the circumstances referenced in Section 20 (Reliefs) and the SELLER is able to store the GOODS on its premises without prejudice to its business, the cost of storing the GOODS shall not be charged to the BUYER. The SELLER, by written notice, may thereafter require the BUYER to accept delivery within a reasonable time. BUYER's failure to accept such delivery shall entitle the SELLER to terminate the CONTRACT without further notice and to recover from the BUYER any loss suffered by reason of such failure.

### 12. TERMS OF PAYMENT

Unless otherwise specified on the face of the SELLER's order acknowledgement form, payment is due net 30 days from date of shipment. No cash discounts are allowed. BUYER shall pay all accounts in full and not exercise any rights of offset or counterclaim. BUYER's financial status is at all times subject to review by the SELLER's credit department, and the SELLER may at any time require from the BUYER payment in advance or satisfactory security of guarantee for the performance of any or all of its obligations. Any advance payments or payments on account do not constitute a deposit, the abandonment of which would entitle either party to terminate the CONTRACT. If delivery has been made before payment of the whole sum payable under the CONTRACT, the GOODS delivered may be deemed, in the SELLER's sole discretion, to remain the property of the SELLER until such payment has been made. The BUYER shall give the SELLER every assistance in taking all measures necessary to protect the SELLER's property and other rights in the GOODS until BUYER has completely performed its obligations under the CONTRACT. Upon BUYER's failure to pay within fifteen (15) days from the date on which the sum became due, the SELLER shall be entitled to interest on the sum due at the rate of 1.5% per month, calculated on a daily basis compounded annually, accrual commencing thirty (30) days from the date of shipment.

If delay by the BUYER in making payments is due solely to one of the circumstances referenced in Section 20 (Reliefs), the SELLER shall not be entitled to interest on the sum due during the period such conditions apply.

### 13. PASSING OF RISK

Unless otherwise expressly stated in the CONTRACT, the risk to the GOODS will pass to the BUYER at the time and place of shipment as evidenced by the shipped Bill of Lading, other Carriers' Receipt or any Airway Bill date and the SELLER shall thereupon cease to be liable for loss thereof or damage thereto from whatever cause arising.

#### 14. INSPECTION AND TESTING OF THE GOODS

If the CONTRACT provides for testing and inspection of the GOODS, the SELLER shall give the BUYER or his nominated representative notice that the GOODS are ready for inspection and/or testing sufficient to permit the BUYER's representative to attend. If the BUYER is not represented at the tests, then the relevant test report(s) shall be communicated to the BUYER and shall be accepted as accurate by the BUYER Inspection and/or testing shall be carried out during normal working hours at the place of manufacture.

- A. If as a result of an inspection and/or test the BUYER or his nominated representative believes the GOODS do not conform to the CONTRACT, he shall provide his written objections and the reasons therefor to the SELLER within ten (10) days.
- B. If on any test the GOODS shall be found to be defective or not in accordance with the CONTRACT, the SELLER shall with all reasonable speed ensure that the GOODS comply with the CONTRACT, including repair or replacement of the GOODS at its sole option.

#### 15. DESPATCH

Shipment and delivery dates are estimates only, and are based on current conditions and the SELLER's ability to secure labour, materials, and parts. Delivery is subject to any and all requisitions, priorities, allocations, restrictions, or controls now or hereafter established by competent authority. There shall be no penalty for delay without the SELLER's prior written consent. The SELLER will use its best endeavors to despatch within the time stated which will run from the latest of the following dates:

- A. The date of the formation of the CONTRACT as defined in Paragraph 4; or
- B. The date when approved shop drawings are received by the SELLER; or
- C. The date of receipt by the SELLER of payment in advance of manufacture as is stipulated by the parties; or
- D. The date on which the SELLER receives notice of the issue of valid import/export license where such is necessary for the execution of the CONTRACT; or
- E. Should delay in completion be caused by any of the circumstances referenced in Section 20 (Reliefs) or by an act or omission of the BUYER, there shall be granted such extension of the completion period as is reasonable having regard to all the circumstances of the case.

#### 16. LIABILITY

The liability of the SELLER under the CONTRACT excludes and replaces to the extent permitted by law all other conditions, obligations or liabilities imposed or implied by common law, statute, usage or otherwise. The maximum liability of the SELLER under the CONTRACT, whether such liability arises under the provisions of this Paragraph or otherwise, shall be the greater of US \$1,000.00 or the CONTRACT price.

#### 17. WARRANTY

The express warranties hereinafter given by the SELLER are exclusive and are given in lieu of all warranties, express or implied by operation of law or otherwise including without limitation any implied warranty of merchantability or of fitness for any particular purpose.

The SELLER warrants the GOODS against defective workmanship and material under normal and proper use in service for twelve (12) months from the date of shipment when owned by the original BUYER and only when subjected to normal operating conditions as outlined by the BUYER at the time the BUYER's order is placed, except that rupture disks and explosion vents are not guaranteed except to burst within specified pressure ranges and at temperatures specified at the time of sale.

Where the GOODS involved include a rupture disk inside a rupture disk holder or explosion vent and vent frame, each must be of the proper type to be utilised with its mating part as otherwise recommended and manufactured by the SELLER; failure to do so voids the aforementioned warranty. The SELLER specially disclaims any and all liability for damages, either direct or indirect, incidental or consequential, arising from the use of assemblies not wholly comprised of the SELLER's manufactured products.

- A. Except for the express warranty set forth herein, the SELLER shall have no obligations or liabilities connected with or resulting from the sale, installation or use of the GOODS, and final determination of the suitability of the products for the use contemplated by the BUYER is the sole responsibility of the BUYER. Failure by the BUYER to install, use or maintain the GOODS in strict compliance with the INSTALLATION INSTRUCTIONS and product specifications shall void all warranties.
- B. There is no guarantee against loss or damage caused directly or indirectly by improper pressure relief system design; by the improper use, maintenance or installation (including improper torque) of this product; or by corrosion, erosion or malfunction caused by acids, chemicals, fumes, rust, dirt, debris, thermal shock, shock waves or other external agencies over which the SELLER has no control.

#### 18. LIABILITY FOR PERSONAL INJURY AND DAMAGE TO PROPERTY

In respect of personal injury, the respective liabilities of the BUYER and the SELLER towards the injured person shall be governed by the law of the country where the injury occurred and by the foregoing provisions as permitted by such law. If an action is brought in respect of death or personal injury against the SELLER, the BUYER shall, to the full extent permitted by the law of the country where the injury or death occurred, indemnify the SELLER against such claim save to the extent that the death or injury was caused by the willful misconduct of the SELLER.

- A. Subject to the limitations of Section 17 and elsewhere herein, the SELLER shall be liable for damage to BUYER's property solely to the extent that the damage was caused by the SELLER's willful misconduct.

- B. The SELLER shall not be liable for any indirect or consequential loss or damage (including without limitation to the generality of the foregoing loss of profit or goodwill) suffered by the BUYER or any third party, howsoever caused.

#### 19. CLAIMS

The BUYER shall return to the SELLER at the BUYER's risk and cost any part in which an alleged defect covered by this Paragraph has appeared, for repair or replacement by the SELLER at its option. All returned parts shall be accompanied by a written notice of claim including a description of the alleged defect sufficiently specific to enable the SELLER to determine to its satisfaction the cause of the defect. In such case the delivery to the BUYER of such part properly repaired, or a part in replacement thereof shall constitute a fulfillment by the SELLER of its obligations under subparagraph (B) in respect of such defective part. In any event, the BUYER must give written notice of a claim to the SELLER no later than two (2) months of the date upon which the defect is first discovered or such claim is waived.

#### 20. RELIEFS

The following shall be considered as cases of relief if they intervene after the formation of the CONTRACT and impede its performance: industrial disputes and any other substantially impeding circumstances (e.g. fire, mobilisation, requisition, embargo, currency restrictions, insurrection, shortage of transport, a general shortage of materials and restrictions in the use of power) when such circumstances are beyond the control of the parties.

- A. The party wishing to claim relief shall notify the other party in writing without delay on the intervention and cessation thereof.
- B. In the event any of the above circumstances prevents the SELLER or the BUYER from timely performing its obligations within a reasonable time, either party shall be entitled to terminate the CONTRACT by notice in writing to the other party without requiring the consent of any Court. The division of expenses incurred in respect of the CONTRACT shall be determined by agreement between the parties. If the parties cannot agree, the division of expenses shall be determined by the Arbitrator.

#### 21. RIGHTS AT TERMINATION

Termination of the CONTRACT from whatever cause arising, shall be without prejudice to the rights of the parties accrued under the CONTRACT up to the time of termination.

- A. No delay or failure by the SELLER or by BUYER to exercise its rights under the CONTRACT shall operate as a waiver of those rights. A partial exercise of those rights shall not prevent their exercise in the future.
- B. The SELLER may terminate the CONTRACT immediately by giving written notice if:
  1. BUYER breaches any material provision of this CONTRACT; or
  2. The BUYER: cannot pay its debts when due; goes into liquidation (except for a solvent reconstruction or amalgamation); has a receiver or administrator appointed over any part of its business, property or assets; has its assets seized or a judgment rendered against it; allows its assets to be seized or a judgment rendered against it because of its debts; stops or threatens to stop carrying on all or a substantial part of its business; or takes or suffers any action in its country or incorporation or operation which is equivalent to any of the above actions.
- C. If the SELLER terminates the CONTRACT pursuant to any provision above, all monies owed by the BUYER shall be paid immediately to the SELLER.

#### 22. ARBITRATION AND LAW APPLICABLE

The validity, construction and performance of the CONTRACT shall be governed by the Law of Ireland and any dispute that may arise out of or in connection with the CONTRACT may be determined by a Sole Arbitrator appointed by the President of the Institution of Mechanical Engineers, by arbitration under the Rules of the London Court of Arbitration at the date hereof, which rules with respect to matters not regulated by them incorporate the UNCITRAL Arbitration Rules. "UNCITRAL Arbitration Rules" means the Arbitration Rules of the United Nations Commission on International Trade Law in force at the time of commencement of the Arbitration. The arbitration shall be held in London and shall be conducted in the English language.

- A. If the Arbitrator determines that any portion of this CONTRACT is unenforceable, that portion shall be severable and the remainder of the CONTRACT shall remain in full force and effect.
- B. Any notice required under the CONTRACT or by law or regulation must be sent by first class mail to the recipient's address stated in the CONTRACT. A notice sent by mail shall be treated as having been served on the second business day following mailing.

#### 23. PARTS SOURCED IN THE UNITED STATES

The SELLER may, from time to time, source GOODS or component parts of the GOODS from United States entities or nationals. BUYER agrees and affirms that its purchase of any such products complies with all export laws, rules and regulations currently in force in the United States and any country in which BUYER is located or does business. BUYER certifies that such GOODS are not intended for utilization or inspection by, or shipment or trans-shipment to, any country, entity individual or end use prohibited under United States law or regulations.