

**AIV INTERNATIONAL, INC., d.b.a. AIV CANADA**  
**General Terms & Conditions of Orders**

**1. DEFINITIONS**

- (a) "The CONTRACT" means each transaction for the sale, by the COMPANY, and the purchase, by the CUSTOMER, of the PRODUCTS, subject to and formed under these General Terms & Conditions together with the COMPANY's quotation and any schedules, exhibits, attachments and other documents incorporated therein by reference.
- (b) "The PRODUCTS" means valves and related products and services as well as their packaging that form the subject-matter of the relevant CONTRACT.
- (c) "The COMPANY" means AIV INTERNATIONAL, INC., d.b.a AIV CANADA, a body corporate incorporated in the State of Texas ("AIV") or alternatively the body corporate named in the quotation issued to the CUSTOMER by any body corporate affiliated with AIV.
- (d) "The CUSTOMER" means the individual, firm, partnership, body corporate, or other party with whom the COMPANY contracts in respect of the relevant CONTRACT.
- (e) "FORCE MAJEURE" means any cause or circumstances (including but not limited to, act of God, fire, storm, flood, drought, earthquake, malicious damage, shortage of material, manufacturer's inability to provide the PRODUCT, embargo, riot, strike, lock-out, trade dispute, civil disturbance, war, compliance with any law or government order, rule or direction or any other event or accident) beyond the reasonable and direct control of the COMPANY.
- (f) "ORDER" means any written or oral purchase order received from the CUSTOMER by the COMPANY.

**2. SCOPE**

- (a) These General Terms & Conditions set out the standard terms on which the COMPANY supplies the PRODUCTS to the CUSTOMER. Accordingly, these General Terms & Conditions apply to all CONTRACTS, quotations and sales unless otherwise expressly agreed in writing.
- (b) The legality, validity and enforceability of other clauses in these General Terms & Conditions will not be affected if any of the clauses is or becomes illegal, invalid or unenforceable.

**3. QUOTATIONS AND ORDERS**

- (a) Unless otherwise expressly stipulated, all of the COMPANY's quotations and prices are subject to change without notice at any time before the relevant ORDER is accepted and the PRODUCTS are subject to availability.
- (b) Each ORDER shall be construed as the CUSTOMER's offer to purchase the PRODUCTS set out in such ORDER subject to these General Terms & Conditions. These General Terms & Conditions shall prevail over any conflicting or different terms in the CUSTOMER's ORDER. The CUSTOMER's standard terms of purchase will not apply. The COMPANY will not be bound by conflicting purchasing terms, conditions or reservations made by the CUSTOMER even if the COMPANY does not explicitly contradict the terms, conditions or reservations.
- (c) No ORDER in pursuance of any quotation or otherwise shall be binding on the COMPANY unless and until such ORDER is accepted by the COMPANY. The COMPANY may reject any ORDER in whole or part. A CONTRACT between the COMPANY and the CUSTOMER is finalized once the COMPANY issues an oral, electronic or written ORDER confirmation to the CUSTOMER or ships the relevant PRODUCTS to the CUSTOMER. By accepting delivery of any PRODUCTS, the CUSTOMER agrees to be bound by these General Terms & Conditions.
- (d) Subject to the specific procedures for changes to the ORDER set out in clause 7(c), none of the terms and conditions contained herein may be added to, modified, superseded or otherwise altered except by a written instrument specifically referencing the affected provision of the ORDER signed by the President or Vice President of the COMPANY.

**4. PRICES**

- (a) Unless otherwise expressly agreed in writing by the COMPANY, the price of the ordered PRODUCTS shall be the COMPANY's quoted price or, where no price has been quoted (or a quoted price is no longer valid), the price specified in the COMPANY's standard price list current at the date of the COMPANY's acceptance of the relevant ORDER (which is available to the CUSTOMER on request to the COMPANY and the CUSTOMER agrees that it shall be bound by such pricing notwithstanding any failure to request the current standard price list), less any applicable discount that may be expressly agreed in writing by the COMPANY from time to time.

- (b) All prices shown are, unless otherwise expressly agreed, in Canadian Dollars and are F.O.B. (Incoterms 2010) COMPANY's designated shipping point, unless otherwise expressly agreed to by the COMPANY.
- (c) Prices exclude taxes, duties and packaging, delivery and insurance costs, which the CUSTOMER must pay unless the law specifically provides that such payment must be made by the COMPANY in which case the CUSTOMER shall reimburse COMPANY for such payment in addition to the purchase price. All prices include the COMPANY's standard packing, but not pallets or crating for export goods.

## 5. PAYMENTS AND LICENCES

- (a) Unless otherwise expressly agreed in writing by the COMPANY, the COMPANY shall be entitled to invoice the CUSTOMER in respect of the relevant ORDER, on or following the COMPANY's acceptance of the relevant ORDER.
- (b) Payment must be made in the currency specified in the COMPANY's invoice.
- (c) The CUSTOMER must pay the full invoice amount within 30 days from the date of the invoice unless otherwise agreed in writing. The COMPANY is entitled to charge interest on overdue payments at 1.5% per month (18% per annum). The CUSTOMER shall reimburse the COMPANY for all costs and expenses, including legal fees on a solicitor and his own client full indemnity basis, which the COMPANY incurs in collecting overdue amounts.
- (d) The CUSTOMER is not entitled to withhold, set off or deduct claims against the COMPANY from an amount that it owes the COMPANY under any CONTRACT or other agreement with the COMPANY.
- (e) The COMPANY is obligated to deliver a PRODUCT only if the CUSTOMER has made due payment of all amounts that it owes to the COMPANY at the date of delivery under the relevant CONTRACT or as otherwise agreed expressly in writing with the COMPANY. The COMPANY is entitled to suspend delivery of a PRODUCT if the CUSTOMER is in default without this affecting the COMPANY's other rights under the relevant CONTRACT or other agreement with the CUSTOMER. The COMPANY is not obligated to resume deliveries until the CUSTOMER has paid all overdue amounts, including all expenses and accrued interest.
- (f) It is the CUSTOMER's exclusive responsibility to obtain all licences, exchange control documents and

other consents needed for the import and use of the PRODUCTS as well as for payment of the PRODUCTS. The CUSTOMER will not be discharged from his obligations under these General Terms & Conditions because it fails to obtain a licence or other consents.

## 6. DELIVERY AND FORCE MAJEURE

- (a) While the COMPANY will endeavour to deliver the PRODUCTS by any date or within any period agreed upon, such dates and periods are estimates only given in good faith and the COMPANY will not be liable for any failure to deliver by such date or within such a period. Time for delivery shall not be of the essence of the CONTRACT.
- (b) Should the COMPANY be delayed in or prevented from making the delivery of the PRODUCTS due to FORCE MAJEURE, the COMPANY may terminate the CONTRACT or suspend the ORDER without incurring any liability for any loss or damage arising therefrom, but without prejudice in any such case to rights accrued to the COMPANY for deliveries already made.
- (c) Unless otherwise agreed to in writing by the COMPANY, the COMPANY shall deliver the PRODUCTS by the means most convenient to the COMPANY to the address or addresses specified by the CUSTOMER at the time of placing the Order or (in the event that the CUSTOMER fails so to specify an address) to any address at which the CUSTOMER resides or carries on business. Deliveries are made F.O.B. (Incoterms 2010) COMPANY's designated shipping point.
- (d) The CUSTOMER is obligated to pay all costs that the COMPANY incurs because of the CUSTOMER's failure to take delivery when delivery is tendered (including, without limitation, the reasonable costs of storage and insurance).
- (e) Promptly following delivery, the CUSTOMER must thoroughly inspect the PRODUCTS delivered. The CUSTOMER shall notify the COMPANY immediately of loss, damage or shortage on arrival of the PRODUCTS and in no event later than within 48 hours of delivery. If the CUSTOMER does not receive the PRODUCTS on the agreed date of delivery, it is to notify the COMPANY and in any case no later than 48 hours of the agreed date of delivery. The COMPANY disclaims all liability, and the CUSTOMER waives its rights of recovery, in relation to PRODUCTS that are lost or damaged on arrival unless the CUSTOMER's information is sufficient to allow the COMPANY to make a valid claim against the carrier of the PRODUCTS for their loss or damage.

## **7. PASSING OF RISK AND TITLE, CANCELLATION AND RETURNS**

- (a) The COMPANY's liability for the PRODUCTS passes from the COMPANY to the CUSTOMER in accordance with the provision of F.O.B. (Incoterms 2010).
- (b) The COMPANY remains the owner of the PRODUCTS until it receives full payment for all PRODUCTS and all other sums which are due from the CUSTOMER under any other agreement with the COMPANY, whether or not the PRODUCTS are delivered to the CUSTOMER. Until title to the PRODUCTS passes to the CUSTOMER: (i) the CUSTOMER shall store the PRODUCTS separately from all other products of the CUSTOMER or any third party in such a way that they remain identifiable as property belonging to the COMPANY; (ii) the CUSTOMER shall maintain the PRODUCTS in satisfactory condition and keep them insured on behalf of the COMPANY for their full price against all risks to the reasonable satisfaction of the COMPANY; (iii) the COMPANY is entitled to recover, sell or otherwise deal with and/or dispose of the PRODUCTS or any part of the PRODUCTS; and (iv) the CUSTOMER grants an irrevocable licence to the COMPANY, its agents and employees to, at any time and without the need to give notice, enter upon any property upon which the PRODUCTS are stored, or upon which the COMPANY reasonably believes them to be stored in order to inspect them or recover them.
- (c) ORDERS once placed by the CUSTOMER and accepted by the COMPANY can be cancelled or changed only with the COMPANY's written consent and upon terms which will indemnify the COMPANY against all loss and expense. No PRODUCTS may be returned for credit or adjustment without written permission from the COMPANY's officer authorized to issue such permission.
- (d) All sales are final. If the parties expressly agree in writing that the COMPANY will credit the CUSTOMER for returned PRODUCTS, the CUSTOMER must return the PRODUCTS promptly, carriage-paid, and in the COMPANY's opinion in good condition to receive the credit.
- (e) In addition to exercising its rights at common law or under statute, the COMPANY is entitled to terminate any CONTRACT by written notice to the CUSTOMER if the CUSTOMER is in material breach of any of its obligations under the CONTRACT or other agreement with the COMPANY or if the CUSTOMER: (i) becomes insolvent; (ii) fails to meet its liabilities when they fall due; (iii) seeks an assignment to the benefit of its creditors; (iv) has all or part of its property subject to receivership; (v) presents or has filed against it a petition

for its bankruptcy, liquidation, winding-up or administration; or (vi) ceases, or threatens to cease, to carry on business.

## **8. WARRANTY AND LIMITATIONS OF LIABILITY**

- (a) The COMPANY shall, to the extent it is legally able to do so, pass through to the CUSTOMER, such warranties and other contractual assurances as the COMPANY itself receives from the relevant manufacturer and/or supplier of each PRODUCT ("Supplier Terms"), details of which shall be provided upon request. If the CUSTOMER has reason to believe that any PRODUCT is defective, it shall promptly notify the COMPANY in writing and the COMPANY shall, as the CUSTOMER's exclusive remedy and the COMPANY's sole liability, use all reasonable efforts to obtain, or to assist the CUSTOMER to obtain, an appropriate remedy for the CUSTOMER, as determined by the COMPANY in its absolute discretion, (including, without limitation, a repair or replacement of such PRODUCT) from the applicable manufacturer or supplier, in accordance with the relevant Supplier Terms.
- (b) Without limiting the generality of the foregoing, the COMPANY shall not be liable whether in contract, tort (including negligence), misrepresentation, breach of statutory duty, or otherwise for any loss, expense or liability incurred or sustained as a result of any: (i) use of any PRODUCT other than for its normal intended purpose; (ii) defect arising in any PRODUCT as a result of the COMPANY following any drawing, design or specification supplied by or on behalf of the CUSTOMER; (iii) adaptation, modification, repair of any PRODUCT, or integration or combination with any other product not supplied by the COMPANY, in each case carried out by anyone other than the COMPANY or without the COMPANY's express written consent; and/or (iv) defect arising in any PRODUCT as a result of reasonable wear and tear, or misuse, wilful damage, negligence on the part of anyone other than the COMPANY or abnormal storage or working conditions.
- (c) EXCEPT AS EXPRESSLY SET OUT IN THESE GENERAL TERMS & CONDITIONS, THERE ARE NO IMPLIED CONDITIONS, WARRANTIES OR OTHER TERMS OF ANY KIND, INCLUDING ANY IMPLIED TERMS, UNDER CONTRACT, COMMON LAW, STATUTE OR OTHERWISE THAT ANY PRODUCTS ARE OF MECHANTIBLE QUALITY OR THAT THEY ARE FIT FOR THE CUSTOMER'S PURPOSE.
- (d) Subject always to clause 8(e), the COMPANY's total liability to the CUSTOMER arising under or in connection with each CONTRACT, whether in contract, tort (including negligence), misrepresentation, breach of

statutory duty, under any indemnity or otherwise, shall be limited, in aggregate for all claims arising, to all amounts payable by the CUSTOMER under such CONTRACT.

- (e) The COMPANY shall not be liable to the CUSTOMER, whether in contract, tort (including negligence), misrepresentation, breach of statutory duty or otherwise, for any loss of profit or revenues, loss of time or loss of use, cost of capital, diminution of goodwill, or indirect or consequential loss arising under or in connection with any CONTRACT.
- (f) Any exclusions or limitations of liability in these General Terms & Conditions in favour of the COMPANY are agreed to be extended for the benefit of all companies and/or individuals within the COMPANY's group of companies each of whom may enforce these General Terms & Conditions. No third party's consent shall be required to rescind or vary any CONTRACT for such benefit.

#### **9. SPECIFICATION, INSTRUCTIONS AND/OR DESIGN**

If PRODUCTS are manufactured or modified to a specification, instruction or design supplied by the CUSTOMER or any third party on behalf of the CUSTOMER, then:

- (a) The suitability and accuracy of that specification, instruction and/or design will be the CUSTOMER's responsibility;
- (b) The CUSTOMER will indemnify the COMPANY against any infringement or alleged infringement of any third party's intellectual property rights including but not limited to patent, design right, registered design, trade

mark, trade name or copyright, and any loss, damage or expense which the COMPANY may incur by reason of any such infringement or alleged infringement in any country; and

- (c) The CUSTOMER will indemnify the COMPANY against any loss, damage or expense in respect of any liability arising in any country by reasons of the PRODUCTS being made to such specification, instruction or design.

#### **10. CHOICE OF LAW AND JURISDICTION**

- (a) The laws of Alberta shall govern these General Terms & Conditions and each CONTRACT. Both parties submit to the exclusive jurisdiction of the Alberta courts in relation to any dispute between the parties arising out of or in connection with these General Terms & Conditions and/or any CONTRACT or their interpretation. The application of 1980 United Nations Convention on Contracts for the Sale of Goods is expressly excluded.
- (b) Each CONTRACT constitutes the entire agreement between the COMPANY and the CUSTOMER concerning the subject-matter of such CONTRACT. The CUSTOMER agrees that it has no other rights of recourse to the COMPANY other than those expressly stated in these General Terms & Conditions.

#### **11. LANGUAGE**

It is the express wish that the CONTRACT and any related documents be drawn up and executed in English. Les parties conviennent que la présente convention et que tous les documents qui s'y rattachent soient rédigés et signés en anglais.