

## Terms and Conditions Page 1 of 2

### CHALLENGER VALVES AUSTRALIA - CONDITIONS OF QUOTATIONS, SALE & DELIVERY

#### 1. GENERAL

- (a) In the following all references to 'The Company' denotes CMW-BVA Pty Ltd, Challenger Valves and Actuators Australia Pty Ltd.
- (b) All tenders and quotations are made by The Company without engagement. Goods are supplied only upon the Conditions set out below unless otherwise varied by agreement in writing.
- (c) Any concession or waiver by The Company shall not prejudice the exercise by The Company of its rights hereunder.
- (d) The unenforceability or invalidity of any one Condition shall not affect enforceability of the remainder.

#### 2. QUOTATIONS & ORDERS

- (a) All due care is taken in the preparation of quotations. However no liability will be accepted for omissions or errors related to quantity or product quoted. Quoted availability will be subject to prior sales.
- (b) The Company will endeavour to maintain prices quoted but reserves the right to alter prices should quantities change or validity period expires.
- (c) Prices quoted do not include GST (Goods & Services Tax) unless specifically shown. The price payable by the customer will be increased by the GST payable in respect of the supply of goods.
- (d) Quotations shall be subject to confirmation at time of order (unless prior written acceptance has been given to the contrary). Orders shall be accepted at The Company's discretion based on stock availability, prices and terms agreed. The Company will confirm order acceptance in writing.

#### 3. PAYMENT TERMS

- (a) Unless otherwise agreed in writing payment shall be made within 30 days of the invoice date.
- (b) If payment is overdue, The Company reserves the right to withhold or suspend deliveries and stop credit facilities. Any such action shall not give rise to any claim by the customer, or stop The Company from recovering amount due by customer.
- (c) The Company reserves the right to charge interest on overdue payments. Interest shall be calculated at a rate of 1.25% per commenced month the payment is overdue and shall be added to the account monthly.
- (d) Date of payment made shall be deemed the date payment is received by The Company.

#### 4. DELIVERY

- (a) If the quoted price includes carriage, the method of delivery will be selected at The Company's discretion and delivery deemed to take place at the point of entry to the customer's specified site. Unless otherwise stated The Company will not be responsible for offloading.
- (b) If the quoted price does not include carriage, point of delivery will take place when the goods leave The Company's store, whether in vehicles of The Company or the customer or any third party or otherwise howsoever.

#### DELIVERY (Continued)

- (c) Quoted times for delivery will be from receipt of order by The Company. Times of delivery shall as far as possible be in accordance with the customer's request. The Company will do its best to comply with customer requirements for delivery, but does not accept liability for any loss or damage arising directly or indirectly from delivery performance. Delay in delivery shall not entitle the Customer to terminate the order in whole or part unless circumstances are exceptional and the customer shall have served notice to that effect on The Company and shall not have received the goods within four weeks thereafter.
- (d) Notwithstanding that property of the goods shall not pass until payment has been received in full, all goods shall be at risk of the customer from point of delivery.
- (e) Where the quoted price includes carriage, The Company cannot accept liability for loss or damage in transit unless the notice of such loss or damage is given to the carriers and to The Company verbally within 8 hours and in writing within 3 days of delivery. In the case of overseas destinations within 14 days of arrival at destination.
- (f) The Company is prepared to arrange specific types of carriage and/or insurance at the request and cost of the customer or agent of the customer only and without liability or obligation on the part of The Company.
- (g) The Company is not responsible for any charges or additional costs resulting from delay in unloading.

#### 5. CANCELLATION AND RETURNS FOR CREDIT

- (a) Product return will be at The Company's discretion and the customer must ensure to obtain proper return reference from The Company. The Company reserves the right not to accept all or any product for return. Product will not be accepted for return after 3 months from date of delivery.
- (b) The Company reserves the right to apply a handling or restocking fee debited for products returned for credit.
- (c) The return of product to The Company shall be at the customer's expense and risk.
- (d) An order can only be cancelled by written agreement or other communication at The Company's discretion between The Company and the customer. Moreover The Company reserves the right to debit the customer for costs which The Company may incur owing to the customer's wish to cancel the order.

#### 6. PACKAGING

- (a) The packaging is not returnable if it was included in the price, specially produced for the product supplied, or if it is disposable.
- (b) Packaging which was debited separately may only be returned for credit upon previous agreement and no later than 3 months after the time of delivery.

#### 7. WARRANTY CLAIMS & LIMITATION OF LIABILITY

- (a) Products manufactured by The Company are for the normal purpose for which they have been designed and where applicable conform to the relevant Australian Standard.
- (b) The customer shall have no other rights in connection with defects than a claim for a rectification of the defects as soon as possible in the form of repair, replacement delivery or subsequent delivery, with the means of remedy being at the option of The Company. The Company accepts no liability for costs associated with dismantling, transportation or reinstallation. A replacement delivery by The Company shall be conditional upon the purchaser returning the defective parts.

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#### WARRANTY CLAIMS & LIMITATION OF LIABILITY (Continued)

- (c) Only documented defects in the design, workmanship or material of the product supplied or faulty performance of work shall be considered defects.
- (d) The customer shall immediately after delivery carry out a reasonable examination of the product.
- (e) The customer cannot adduce defects which could have been established at such an examination unless the customer proves The Company received a written complaint no later than 8 days after delivery was effected.
- (f) The customer cannot adduce defects which could not have been established at an examination as the one mentioned above unless The Company has received a written complaint within 1 year after delivery was effected.
- (g) In the event of any products supplied by The Company not being of its own manufacture being proved to be defective or failing in service, the customer shall be entitled only to such restitution as The Company may receive from the manufacturer and/or supplier to The Company.
- (h) The Company shall have the right to inspect and conduct its own tests upon any goods that are the subject of a damage or loss or quality claim or have failed in service.
- (i) The right of the Customer to offset the value of any shortage, defective goods not otherwise conforming to a particular order shall be restricted to the specific invoice for the goods in question and shall not apply to previous or future accounts.
- (j) The Company shall in no case be liable for any trading loss, loss of time, loss of profit or any similar consequential losses owing to the defects.
- (k) The Company shall not be liable for any pollution of or through air, ground or water nor for any damage caused to things being used for purposes of trade.
- (l) The Company shall not be liable for damage to any real or personal property occurring while the goods sold are in the customer's possession. Nor shall The Company be liable for any damage to products produced by the Customer or to products in which the goods sold forms part, including real property, or to products for the production, treatment or processing of which the goods are used for, built into or forms part of another finished product which is used for the operation of an air craft or in offshore installations.
- (m) Moreover, The Company's liability for any damage to real or personal property cannot exceed \$220,000.00 - for each cause of damage for which The Company can be held liable.

#### 8. INDEMNITY

- (a) The customer shall indemnify The Company in respect of all damage or injury occurring to any person, firm, Company or property and against all actions, suits, claims, demands, charges or expenses in connection therewith for which The Company may become liable in respect of the products sold by The Company in the event that the damage or injury shall have been occasioned otherwise than by the negligence of The Company.
- (b) The customer shall indemnify The Company against all damages, penalties, costs and expenses to which The Company may become liable through any work done in accordance with specifications, drawing or special requirements of the Customer which may involve an infringement of a Patent Registered Design or other industrial property of a third party or may cause any actionable damage or loss to any third party.

#### 9. TECHNICAL ADVICE AND INFORMATION

- (a) Any descriptive information or samples supplied by The Company, or on its behalf, are for general guidance only and do not form part of any contract between The Company and the customer and the customer admits that it was not induced to enter into the contract by any representation contained in such information or sample.
- (b) The Company may at the request of the customer without being under any obligation to do so, furnish technical advice concerning the use of the products and such assistance will be given to the best of The Company's ability but this shall be on the express understanding that any such advice or assistance is given and accepted at the customer's risk and The Company shall not be liable for any loss, damage or claims arising therefrom.
- (c) No liability will be accepted for work carried out or material supplied to the customer's own drawings, design or specifications.
- (d) The submission of a quotation or acceptance of any order by The Company in no way implies any responsibility on its part for any by-law, planning or other approval which may be required by the customer.

#### 10. ESCAPE CLAUSE (FORCE MAJEURE)

- (a) The following circumstances shall mean an exemption from liability if they prevent The Company from performing a contract or make the performance unreasonably burdensome: fire, explosion, Act of God, epidemic, war, riot or civil commotion, unrest, martial law, mobilisation or similar military measures, seizures, currency restrictions, import and export prohibition, strike, lockout or other circumstances of a similar nature beyond the control of The Company.

#### 11. DEFAULT

- (a) The Company reserves the right (without prejudice to its other rights and remedies) either to terminate the Contract or outstanding orders between the parties or to suspend further deliveries under it or require payment in advance in the event that the customer fails to pay for any one delivery when the same becomes due or the customer's financial position becomes unsatisfactory in the opinion of The Company or if the customer goes into liquidation or has a receiver appointed or (not being a company) had a receiving order made against them or enters into any arrangement with creditors.

#### 12. VENUE & LAW

- (a) Any dispute which may arise between The Company and the customer shall be settled finally and binding on both parties by the Courts of Australia pursuant to State or National law - unless a written acceptance has been given to the contrary.
- (b) When one or several of the above conditions are reversed totally or partly by a legal decision or by an amendment in legislation, this does not mean that the Terms and Conditions of Quotation, Sale and Delivery shall be cancelled as a whole, but that they are amended according to the legal decision and/or to the amendment of law.