



Form Number: IVS-T&C-CONTRACT-1.1	Rev: 1.2	Page: 1 OF 3	Original Issue Date: AUG 2017	Revision Date: SEP 2017
PREPARED BY: S. Jones	REVIEWED BY: T. Hair	APPROVAL DATE: SEP 2017	NEXT REVIEW DATE: SEP 2018	
INDUSTRIAL VALVE SERVICES LTD: TERMS & CONDITIONS OF SUPPLY				

1. Scope/Applicability

- 1.1 These terms and conditions shall apply to all contracts entered into by **South Wales Industrial Valve Services Limited (IVS Ltd)** (including any and all subsidiaries) for the provision of its specialist Services and/or Goods (the "Agreement") except to the extent of any other valid written agreement expressly modifying or waiving all or any part of these terms and conditions. Placement of any Purchase Order or other relevant and valid instruction to proceed shall be deemed to constitute acceptance of these terms and conditions in their entirety on the part of the Client.
- 1.2 Unless otherwise expressly agreed in writing, all offers and proposals to supply Goods and/or Services are only given and all orders only accepted subject to these conditions of contract which apply to all instances of supply by IVS Ltd and override and exclude any other conflicting terms or conditions stipulated or incorporated or referred to by the Client.

2. Price

- 2.1 The price payable by the Client for Goods and Services shall be stipulated in the applicable quote or offer document. In the absence of such formal agreement, all orders placed for the supply of Goods and/or Services are accepted for execution at either IVS Ltd.'s current list price or subject to quotation after original assessment which will be charged at current list prices as at the commencement date of supply (a copy of which will be made available for review upon request).
- 2.2 Any sum payable by the Client to IVS Ltd under the contract is expressed exclusive of any value added tax or duties which the Client shall pay in addition when it is due to pay the principle sum. Prices payable by the Client to IVS Ltd under the contract are exclusive of the costs of transport and packaging (unless otherwise agreed in writing by IVS Ltd) which the Client will pay in addition at the same time.
- 2.3 Minimum Order Charge. The standard minimum order charge for any valve and / or parts is £100.
- 2.4 IVS Ltd will accept at no charge changes to purchase orders up to (1) week from order placement. After (1) week from order placement IVS Ltd will charge a minimum £50.00 administrative fee. Other charges may apply depending on the order's production status.
- 2.6 IVS Ltd

3. Payment

- 3.1 Unless expressly agreed in writing between IVS Ltd and the Client, payment shall be due in full within 30 days from date of invoice without any deductions whether by way of set-off, counterclaim or otherwise. Time for payment shall be of the essence; no payment shall be deemed to have been received by IVS Ltd until IVS Ltd has received cleared funds.
- 3.2 If the Client fails to make any payment by the agreed due date then (without prejudice to its other rights and remedies) IVS Ltd may charge the Client interest (both before and after judgement) on the amount unpaid at the maximum rate permitted by law until payment is made in full (a part of a month being treated as a full month for the purpose of calculating interest) (as defined in the Late Payment of Commercial Debs (Interest) Act 1998).
- 3.3 All payments payable to IVS Ltd shall become due immediately upon termination of the contract despite any other provision.
- 3.4 For orders deemed by IVS Ltd to be of significant capital investment IVS Ltd requires the customer to pay in stage payment terms where 50% of the order value is paid upfront prior to IVS Ltd ordering or carrying out the agreed scope of work.

4. Time of Performance

- 4.1 IVS Ltd shall act with diligence and good faith to discharge its obligations but shall have no liability for not providing or completing its service(s) by or within any particular time unless and only to the extent otherwise agreed in writing.
- 4.2 For the avoidance of doubt, IVS Ltd does not accept liquidated damages.

5. Risk and Title

- 5.1 Risk in the Goods and/or Services shall pass to the Client on the delivery date or at such other time as agreed in writing.
- 5.2 Title in the Goods and/or Services shall pass to the Client upon receipt by IVS Ltd of payment of the sums due in full irrespective of the delivery status.
- 5.3 At all times, the Client shall use and administer the Goods with due diligence. Unless expressly agreed in writing, delivered Goods may not be transferred, alienated, modified nor be used as collateral to the benefit of third parties if payment for such Goods has not been received in full.
- 5.4 In the event any Goods are seized prior to full payment being received by IVS Ltd the Client shall, with immediate effect, confirm in writing to its creditor and/or the administrator or receiver that the Goods are the property IVS Ltd. The Client shall provide IVS Ltd with a copy of the confirmation issued to the creditor and/or the administrator or receiver immediately thereafter.

6. Client's Obligations

- 6.1 In order for IVS Ltd to supply the Goods and/or Services, the Client shall agree to: (a) permit IVS Ltd, its employees and agents to carry out a survey (if required) at such times as is convenient for both parties; (b) carry out the Client responsibilities as specified in the quote; (c) provide IVS Ltd with such information and documentation as is reasonably required; (d) obtain all permissions, consents and health and safety approvals from such organisations and authorities which are required for the Goods to be installed and for the Services to be performed; and (e) make available to IVS Ltd the facilities, resources, working space and personnel as specified in the quote and/or as IVS Ltd reasonably requires from time-to-time.

7. Intellectual Property and Non-Disclosure

- 7.1 All intellectual property provided by IVS Ltd to the Client or used or created during the supply of Goods and/or Services shall remain the sole property of IVS Ltd together with all rights of use and ownership to it. All such intellectual property shall be deemed Confidential and treated accordingly.
- 7.2 IVS Ltd will afford such access to and right of use of its intellectual property as is necessary for the Client to discharge its statutory, regulatory and safety obligations in respect of such goods or items with which IVS Ltd intellectual property may be associated. Such access to and right of use shall not be transferrable or assignable and nothing contained or implied in this provision shall be construed as conferring any ownership or right of use of any patent, design or trade mark applied for or registered in the name of or on behalf of IVS Ltd.
- 7.3 For the purposes of this clause, intellectual property shall include (but not be limited to) all technical information, drawings, designs, reports, data, methods and techniques, patents, trademarks, and patent or trademark applications.
- 7.4 The Client shall not at any time disclose, release or make accessible in any way to any person, firm or company any trade secrets, methods, technical or commercial know-how, documents, plans, designs, statistics or any other confidential information of any kind relating to or belonging to IVS Ltd or IVS Ltd.'s Goods or processes which may be received or come to the knowledge of the Client at any time in any way.
- 7.5 Such confidential information shall not be used by the Client or any other person, firm or company except insofar as is necessary for the performance of the contract or as required by law.
- 7.6 This clause 7 shall not apply to information which is or comes into the public domain through no fault of the Client.



8. Warranty

8.1 IVS Ltd warrants that the Goods and/or Services to be supplied pursuant to this contract will be free from defects in materials and workmanship. In the case of Repaired & Refurbished valves, IVS Ltd warranty covers the work carried out as outlined in the RFQ & PO. Upon notification IVS Ltd shall, at its option, either correct any non-conformity, or refund the price of such Goods and/or Services at the pro-rata contract rate. In the event IVS Ltd chooses to correct any non-conformity, IVS Ltd shall do this, at its option, either by repairing or altering any defective part or parts, or by supplying a replacement part.

8.2 No obligation shall exist with respect to any alleged defect that is not reported within the timeframe stipulated in clause 9.1 and is not discovered within: (i) twelve (12) months from the date of substantial completion of the Services or dispatch of the Goods; or (ii) a period of twelve (12) months from the date of acceptance of the Goods and/or Services by the end-user; whichever is the greater, but in no event longer than a period of fourteen (14) months following the date of substantial completion.

8.3 IVS Ltd shall not be liable for any defect in the quality of the Goods and/or Services (whether in contract, tort or otherwise) if: i) Client continues to use the Goods or the affected plant after giving notice of such defect; or ii) the defect arises as a result of: (a) underlying conditions of the plant precluding the formation and/or preservation of a seal; or (b) Client failing to operate its plant within the parameters as advised originally by Client to IVS Ltd or as recommended to IVS Ltd by Client; or (c) Client failing to follow IVS Ltd oral or written instructions as to the storage or use of the Goods. For the avoidance of doubt, IVS Ltd's warranty shall not apply to leak seals/repairs when plant or pipeline conditions have experienced a process change including, but not limited to, spikes in temperature or pressure, unit shutdowns or chemical composition changes.

8.4 This warranty is in lieu of all other warranties, including alleged warranties related to any course of dealing or usage of trade. No warranty of merchantability, warranty of fitness for any purpose or compliance with sample, or other warranty (whether expressed, implied, or statutory) is made or created by IVS Ltd. Further, the Client warrants that it is not contracting as a person who deals with consumer (as defined in s12 Unfair Contract Terms Act 1977).

9. Limitation of Liability

9.1 IVS Ltd shall not be liable for any defect in the quality of the Goods and/or Services (whether in contract, negligence or otherwise) unless the Client gives written notice of the defect to IVS Ltd and (if the defect is a result of damage in transit) to the carrier within fifteen (15) days of: (i) the date of delivery of the Goods or completion of the Services (where the defect would be apparent to the Client upon a reasonable inspection); or (ii) the date when the Client knew or ought reasonably to have known of the defect (where the defect would not be apparent to the Client upon a reasonable inspection); and IVS Ltd is given a reasonable opportunity after receiving the notice of examining such Goods or completed Services and the Client (if asked to do so by IVS Ltd) returns such Goods to IVS Ltd for the examination to take place there.

9.2 IVS Ltd shall have no further liability to the Client for any defect in the quality of the Goods and/or Services upon fulfilment of its obligations as set out in clause 8.1.

9.3 Nothing in these Conditions shall exclude or limit the liability of IVS Ltd for death or personal injury caused by IVS Ltd negligence.

9.4 Except as set out in clause 9.3, IVS Ltd liability under the Agreement shall not exceed the amount paid to it for the relevant claim under its insurance policy covering such risks. Further, the Client acknowledges that delay in notifying any claim may prevent IVS Ltd recovering any money under such policy.

9.5 Neither Party shall be liable to the other for any consequential loss (including, but not limited to, any actual or anticipated economic loss or other loss of revenue, profits, production, business or goodwill), costs, damages, charges or expenses arising out of the delivery, non-delivery, supply or use of the Goods or performance, non-performance or supply of the Services (even if caused by the respective Party's negligence).

10. Industrial Valve Services Ltd Equipment

10.1 IVS Ltd shall supply the Goods and/or Services on the basis of utilising equipment and/or materials that IVS Ltd or its sub-contractor has procured, hired or designed and manufactured. For the avoidance of doubt, IVS Ltd reserves the right to decline instructions from the Client stipulating the use of other equipment and/or materials.

10.2 All tools, vehicles, equipment and/or materials taken into or onto the premises of the Client that are not intended for incorporation in the works shall at all times remain the property of IVS Ltd.

10.3 If any tools, vehicles, equipment and/or materials utilised during the supply of Goods and/or Services are damaged beyond repair, lost, stolen or cannot be returned to IVS Ltd due to nuclear contamination or other causes, the Client will be responsible for the full replacement value of such item, as new, and the cost of such item will be invoiced to the Client at IVS Ltd.'s current standard list price in effect at that time.

10.4 IVS Ltd reserves the right to invoice the Client for any costs associated with cleaning any tools, vehicles, equipment and/or materials which are contaminated during the supply of Goods and/or Services.

10.5 The Client hereby agrees to bring to the attention of its employees and other contractors that any equipment used by IVS Ltd in any operation and attached to the plant must not be removed, adjusted or otherwise tampered with whilst in position on the valve, vessel or pipe work (whether such valve, vessel or pipe work is or is not under pressure) and the Client hereby agrees to indemnify IVS Ltd against all actions, proceedings, costs, claims and demands brought by reason of any such removal, adjustment or tampering.

10.6 In the event that IVS Ltd hires plant, equipment, tools or machinery to the Client for operation and use by persons other than IVS Ltd.'s employees or its sub-contractor, the Client shall see to it that these goods are used and administered with due diligence. The Client will be responsible for their return in the same condition as these goods were at the time the Client received them. The Client will in any case, notwithstanding the cause, be liable for damages and loss.

10.7 IVS Ltd shall have no liability or responsibility for any of the Client's financial or economic loss or indirect or consequential loss or damage of whatever nature including, but not limited to, loss of profit, loss of use of the plant or any asset or facility, loss of production or productivity, loss of contracts with any third party or liabilities of any nature to any third party. Solely the Client will be liable and responsible for damages or loss, for which risk the Client has to provide adequate insurance.

10.8 Further, IVS Ltd shall have no liability or responsibility caused to third parties by use or wrongful use of the goods and the Client shall indemnify, protect, defend and hold IVS Ltd, its suppliers, affiliates, subsidiaries, parent company, and their respective officers, directors, managers, agents, and employees, harmless from any and all claims, actions, suits, damages, liabilities (including negligence, tort and strict liability), and any costs or expenses of any nature whatsoever (including legal fees), arising out of death, injury or damages to person or property resulting from or arising out of the use of these goods.

11. Client's Equipment

11.1 In the event that the Parties agree to utilise equipment and/or materials sourced by the Client then the Client shall: (i) supply the equipment and accept all liability associated thereto; and (ii) pay such reasonable sum that IVS Ltd may charge for the provision of labour and/or consumables.

11.2 The Client shall indemnify, protect, defend and hold IVS Ltd, its suppliers, affiliates, subsidiaries, parent company, and their respective officers, directors, managers, agents, and employees, harmless from any and all claims, actions, suits, damages, liabilities (including negligence, tort and strict liability), and any costs or expenses of any nature whatsoever (including legal fees), arising out of death, injury or damages to person or property resulting from or arising out of IVS Ltd utilising the Client's equipment during the supply of Goods and/or Services.

12. Cancellation or Suspension

12.1 In the event that the Client cancels or postpones an order relating to the supply of Goods and/or Services, IVS Ltd shall be reimbursed for all costs incurred in relation to any preparatory work, any work performed and any procured or subcontracted items for which IVS Ltd cannot avoid making payment, together with a fair and reasonable contribution to overheads and profit. For the avoidance of doubt, any cancellation or postponement of the supply of Goods and/or Services after IVS Ltd.'s personnel have been mobilised at the Client's request shall be subject to a minimum charge of eight hours per technician together with any associated additional charges incurred for the transportation of equipment.

12.2 IVS Ltd will make every effort to meet or improve scheduled delivery dates. No penalty or default charges will be accepted where shipment is delayed. Should an item be cancelled, the following charges would apply:



VALVE CATEGORY	NON-ASSEMBLED	ASSEMBLED & TESTED, NOT SHIPPED
Standard valves (Carbon or St. St. Body)	15% of selling price	40% of selling price
Nonstandard valves	Up to 30 days from order entry: 15%	After 30 days of order entry: 100%
Restocking: Unused standard valves shipped and returned in 90 days of shipment (subject to inspection and acceptance)		40% of selling price
Spare parts	Standard: 15% of selling price	Nonstandard: 100% of selling price

13. Breach

13.1 In the event that a material breach of any term of this Agreement is committed, the Client shall agree to notify IVS Ltd in writing as soon as practicable and, in the case of a breach capable of being remedied, shall provide IVS Ltd with a reasonable opportunity to remedy such breach, prior to any right of termination or cancellation being invoked.

14. Termination

14.1 IVS Ltd may by written notice to the Client, terminate this Agreement with immediate effect if:

- 14.1.1 The Client is in material or persistent breach of any of its obligations under this Agreement and fails to remedy the breach (if capable of remedy) within thirty (30) days of the date of a written notice by IVS Ltd specifying the breach and requiring the same to be remedied;
- 14.1.2 The Client is in breach of clause 7 (Intellectual Property and Non-Disclosure) or clause 19 (Compliance with Bribery Laws);
- 14.1.3 A resolution is passed, a petition is presented or an order is made for the winding up of the Client (otherwise than for the purpose of solvent amalgamation or reconstruction where the resulting entity assumes all of the obligations under this Agreement) or an administrator, receiver or administrative receiver is appointed over all or part of the Client's undertaking and assets;
- 14.1.4 The Client ceases or threatens to cease to carry on its business or is unable to pay its debts or becomes insolvent (within the meaning of section 123 Insolvency Act 1986) or makes or proposes to make any arrangement or composition with its creditors; or
- 14.1.5 The Client (being an individual) is the subject of a bankruptcy order, dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.

15. Dispute Resolution

- 15.1 Genuine and reasonable attempts shall be made to resolve any disputes that may arise under or in connection with any contract resulting from this Agreement by senior management of both parties.
- 15.2 If the Parties are unable to resolve the dispute as a result of such meeting, either Party may (at such meeting or within seven (7) working days of its conclusion) apply to the International Court of Arbitration for independent arbitration.
- 15.3 If the Parties accept the independent arbitrator's recommendations or otherwise reach agreement on the resolution of the dispute, such agreement shall be reduced to writing, and once it has been signed by their duly authorised representatives, shall be binding on both Parties. The Parties shall share equally the costs incurred for such independent arbitration.
- 15.4 In the event that the dispute is not settled by negotiation between the Parties or by independent arbitration, then either Party may have recourse to court proceedings and both Parties shall be responsible for their own legal expenses incurred thereafter. For the avoidance of doubt, the Client agrees to submit to the exclusive jurisdiction of the courts of England and Wales.

16. Force Majeure

- 16.1 Neither Party shall have any liability under or be deemed to be in breach of this Agreement for any delays or failures in performance of this Agreement which result from circumstances beyond the reasonable control of that Party. The Party affected by such Force Majeure event shall promptly notify the other Party in writing of the circumstances when they arise and, where possible, indicate how long the delays are anticipated to last.
- 16.2 Either Party may terminate this Agreement upon written notice if such circumstances continue for a period of two months or more. For the avoidance of doubt, in the event the Client terminates the Agreement due to a force majeure event extending beyond the two-month period, the Client shall reimburse IVS Ltd for all costs incurred in relation to any preparatory work, any work performed and any procured or subcontracted items for which IVS Ltd cannot avoid making payment, together with a fair and reasonable contribution to overheads and profit.

17. Nature of Agreement

- 17.1 This Agreement is personal to the Client who may not without the written consent of IVS Ltd assign, mortgage, charge or dispose of any of its rights under the contract or sub-contract or otherwise delegate any of its obligations under the Agreement (and this includes pursuant to the Contracts (Rights of Third Parties) Act 1999). IVS Ltd may assign or sub-contract its rights or obligations under the Agreement and will serve notice on the Client of its intention to do so.
- 17.2 Nothing in the Agreement shall create or be deemed to create any agency or partnership between the parties.
- 17.3 This Agreement contains the entire agreement between the parties with respect to its subject matter, supersedes all previous agreements and understandings between the parties and may not be modified except by an instrument in writing signed by the duly authorised representatives of the parties.
- 17.4 Any failure by IVS Ltd to exercise any rights under the Agreement shall not constitute a waiver or prevent the subsequent exercise of such rights. Any waiver of a right must be express and in writing. A waiver by IVS Ltd of any breach of the Agreement by the Client will not be construed as a waiver of any subsequent breach of the same or any other provision.
- 17.5 Each right or remedy of IVS Ltd under the Agreement is without prejudice to any other right or remedy available to IVS Ltd whether under the Agreement or not.
- 17.6 If any provision is held by any court or other competent authority to be void or unenforceable in whole or part the other provisions of the Agreement and the remainder of the affected provisions shall continue to be valid.

18. Governing Law

- 18.1 The Agreement shall be governed by and construed in all respects in accordance with the laws of England and Wales.
- 18.2 IVS Ltd and the Client expressly agree to exclude from this Agreement the United Nations Convention on Contract for the International Sale of Goods 1980 and any successor thereto

19. Compliance with Anti-Bribery & Corruption Laws

- 19.1 The Parties are aware and acknowledge that many countries, including the United States of America and the member states of the European Union, have adopted and enforce laws that prohibit the payment of bribes for the purpose of facilitating, obtaining or retaining business opportunities, and accordingly, to ensure that financial transactions and any other activities undertaken pursuant to this Agreement do not violate these anti-bribery laws.
- 19.2 The Client represents and warrants that it and its personnel, including its officers, directors, employees, agents and representatives shall:
 - 19.2.1 comply with all applicable laws, statutes, regulations relating to anti-bribery and anti-corruption (including but not limited to the UK Bribery Act 2010 and the US Foreign and Corrupt Practices Act of 1977) and not engage in any activity, practice or conduct which would constitute an offence under such laws, statutes and/or regulations;
 - 19.2.2 comply with IVS Ltd.'s Anti-Corruption and Bribery Policy (a copy of which is available upon request);
 - 19.2.3 promptly report to IVS Ltd any request or demand which if complied with would amount to a breach of either said laws, this Agreement or IVS Ltd.'s Anti-Corruption and Bribery Policy;
 - 19.2.4 ensure any person associated with it who is performing services or providing goods in connection with this Agreement does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Client in this clause.