

# FLUIDVALVES

## L I M I T E D

### Terms and Conditions of Business

#### 1. Introduction

1.1 These terms and conditions constitute the entire terms and conditions upon which the Customer agrees to contract the purchase of Products.

1.2 This Agreement supersedes any written or oral representations, statements, understandings or agreements, except where specifically varied by written agreement by Fluidvalves.

1.3 By placing an order for the Products, you confirm your acceptance of the terms of the Agreement.

1.4 In the event of any conflict between the Agreement and any other document, the Agreement shall prevail.

#### Definitions

In this Agreement:-

“Agreement” means these terms and conditions together with the Order Confirmation.

“Customer” and “You/Your” means the company, firm person, persons, corporation or public authority identified in the Order Confirmation as purchasing the Products and includes their successors or personal representatives.

“Order” means the Customer’s instruction to Fluidvalves to proceed with the supply of the Products.

“the Order Confirmation” means the e-mail or letter sent to the Customer by Fluidvalves which sets out details of the Service provided, price, quantity and completion date (if any) and such other specific contractual terms as may be appropriate.

“Fluidvalves” means Fluidvalves Limited, a company registered in Scotland (Company Number 415412) and whose registered office is at Accountants Plus, Upper Floor Unit 1, Cadzow Park, 82 Muir Street, Hamilton ML3 6BJ, Scotland.

“Product or Products” means the provision of valves or engineering parts supplied by Fluidvalves based on the Customer’s specifications more fully described in the Order Confirmation.

“Brief Document” means pre-contract information provided by you to allow Fluidvalves to provide an accurate quotation; the information provided by you will also be used to inform the initial Design Spec.

“Design Spec” means the detailed design provided by us to you post-contract following acceptance of the Order which will require Sign Off and is required by Fluidvalves to deliver the Products.

“Charges” means the prices for the Products set out in the Order Confirmation.

“Bespoke Work” means work carried out by Fluidvalves which is not an off the shelf Product but designed and manufactured to a particular specification agreed with the Customer.

“Product Sheet” means the information provided by Fluidvalves outlining the Products performance including the pressure, flow rates and temperature tolerance levels of the Products (Schedule 1).

“Completion of work” means the delivery of the Products to you concluding our work as confirmed by Fluidvalves.

“Sign Off” means the Customer’s instruction to Fluidvalves to proceed with agreed Work post Brief Document completion and Design Spec approval as set out in the Order Confirmation.

“Working Day” means within the hours of 9.00am and 5.30pm, Monday to Friday only, not including bank holidays.

“Writing” includes any written paper document, any fax and any email correspondence.

## **2. Provision of Products**

2.1 Fluidvalves will provide and Order of Confirmation for all orders accepted but reserves the right to accept or reject any order.

2.2 Fluidvalves will use all reasonable endeavours to provide the Products as described in the Order Confirmation.

2.3 Where an order is placed orally or in the event of any dispute as to the Order, the Order Confirmation shall be deemed as the authoritative Order.

2.4 Fluidvalves reserve the right to use a third party courier companies to deliver Products as described in the Order Confirmation.

2.5 The Customer is responsible for ensuring a comprehensive feedback in terms of clause 3.3 hereunder. Fluidvalves shall carry our minor changes requested by the Customer with regards to the Completion of the Design Spec only. However, in the event that the Customer requires a material change (in respect of which Fluidvalves shall be the sole arbiter) to any aspect of the Service, additional charges may be payable by the Customer.

### **2.6 Fluidvalves Contact Details**

2.6.1 You can contact us by telephone by calling;

Tel: +44 (0) 791 401 5385      FAX: 01698 507314

(between the hours of 9.00am to 5.30pm from Monday to Friday)

2.6.2 by email, [sales@fluidvalves.com](mailto:sales@fluidvalves.com) or: SKYPE: archie.martin6

### **3. Customer Obligations**

3.1 The Customer shall pay the Charges for the Products in accordance with clauses 8 and 9 below.

3.2 The Customer is responsible for providing a satisfactory level of co-operation and for providing all necessary information and access to enable Fluidvalves to deliver a quality service including;

3.2.1 where applicable complete and sign both the credit application form and Terms and Conditions of business, including initialling each page of the terms and conditions.

3.2.2 investment of necessary time to provide a comprehensive feedback regards each stage of Sign Off including the 'Brief Document' and the 'Design Spec'.

3.2.3 provision to Fluidvalves promptly of all information and documentation reasonably required by Fluidvalves.

3.2.4 correct part number and part details, and where applicable engine numbers and serial numbers, quantity and relevant details.

3.2.5 to adhere to the instruction contained in the Product Sheet.

3.3 The Customer must read and adhere to the details listed in the Product Sheet provided by Fluidvalves (Schedule 1).

3.4 The Customer has agreed to take full responsibility for the installation of the Product when placing an order.

3.5 Without prejudice to its rights in terms of clause 14 hereof, Fluidvalves is entitled to suspend or terminate the Agreement if the Customer fails to comply with any of its obligations under this clause 3.

3.6 Orders will be subject to the following conditions:

3.6.1 different shipping costs may apply;

3.6.2 delivery times will be as agreed between the Customer and Fluidvalves.

### **4. Cancellation Policy**

4.1 All Products are made (Bespoke Work), or ordered to your specification. No cancellation will be possible and no refunds will be made.

4.2 If you cancel your Order under Condition 4.1 where Products have already been despatched, cancelled orders will be subject to a 20% re-stocking surcharge.

### **5. Returns and Inspection**

5.1 We do not offer refunds except in the case of Fluidvalves being at fault resulting in delivery of an incorrect Product or the Product delivered damaged.

5.2 Fluidvalves do not offer returns for Bespoke Work or other non-standard Orders.

5.3 Notification of damage, loss of goods in transit or of non-delivery must be given in writing to Fluidvalves and the carrier within seven (7) clear days of delivery (or, in the case of non-delivery, within ten (10) days of notification of despatch of goods) and any claim in respect thereof must be made in writing to Fluidvalves and the carrier within seven (7) clear days of delivery (or in the case of non-delivery, within ten (10) days of notification of despatch). All other claims must be made in writing to Fluidvalves within seven (7) days of delivery.

5.4 Fluidvalves shall not be liable in respect of any claim unless the aforementioned requirements have been complied with except in any particular case where the Customer proves (i) it was not possible to comply with the requirements and (ii) advice (where required) was given and the claim made as soon as possible.

5.5 It shall be your responsibility to inspect and check the received goods or part thereof as soon as reasonably practicable after delivery and in any event, not more than seven (7) days after delivery to ensure that no damage has been suffered during transportation. In the event that the Products arrive damaged, you have the option to return them to Fluidvalves, carriage being payable by you.

5.6 Due to the nature of the Services Fluidvalves does not offer refunds, where it shall be your responsibility to inspect and check the received goods or part thereof as soon as reasonably practicable after delivery and in any event, not more than seven (7) days after delivery to ensure that the Product conforms to the confirmed Order. In circumstances where you consider the received goods do not conform with the confirmed Order at the time of delivery, it is the responsibility of the Customer to return the goods to Fluidvalves in their original packaging, carriage being payable by you. In addition to 5.6:

5.6.1 within seven (7) days from receipt of goods, Fluidvalves will conduct a quality inspection and test of the Product(s) and if corrective action is required, will replace or refund the Products at the Customer's election where we will then re-issue the Products in question and forward it to you at no extra cost.

5.6.2 where a refund is due we will refund any monies to you within a maximum of thirty (30) days of completing the inspection process.

## **6. Delivery**

6.1 Completed Orders will be sent to the delivery address as described on the Order Confirmation. Fluidvalves cannot be held responsible if that delivery address is incorrect or incomplete. Please note that Fluidvalves do not deliver to PO boxes.

6.2 Fluidvalves times of delivery are based on 9.00am- 5.30pm, Monday to Friday excluding bank holidays.

6.3 Fluidvalves shall bear all risk in respect of consignments until delivered to the Customer. Once an Order has been received by you, all risk of damage to, or loss of, the Products shall pass to you.

6.4 We shall be entitled to (a) deliver a completed Order in instalments and each instalment shall be deemed to constitute a separate contract and (b) supply only part of an Order.

6.5 Delivery dates are approximate only and not an essential term of the Agreement. Fluidvalves shall have no liability in respect of delay in delivery to the Customer.

6.6 Should Fluidvalves (a) not receive delivery instructions or (b) be unable through no fault of Fluidvalves to effect delivery within ten (10) days after notification to the Customer that items are ready for despatch, the Customer shall take delivery or arrange for storage. Should the Customer fail to take delivery or arrange for storage, we shall be entitled to arrange storage either at our own works or elsewhere on your behalf and all charges for storage, for insurance or for demurrage shall be payable by you.

## **7. Indemnification**

7.1 The Customer agrees to indemnify, keep indemnified and hold harmless Fluidvalves from and against:

7.1.1 all costs (including the costs of enforcement), expenses, liabilities (including any tax liability), claims arising for death or personal injury, direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and like loss), damages, claims, demands, proceedings or legal costs (on a full indemnity basis) and judgments which Fluidvalves incurs or suffers as a consequence of a direct or indirect breach of the Agreement or negligent performance or delay or failure in performance or wilful misconduct by the Customer or its employees, agents or contractors. The foregoing indemnity shall not include any losses due solely to the negligence or wilful misconduct of Fluidvalves; and

7.1.2 any claims:-

(a) by third parties which are caused by or arise out of or in connection with:-

(i) any contact or omission of Fluidvalves carried out pursuant to instructions of the Customer: or

(ii) any breach by the Customer of any terms of the Agreement;

(b) by the Customer's customers or users of the works; and

(c) arising from use of the Products other than as specified in the specification.

## **8. Charges**

8.1 Charges shall be based upon the Customer paying the Contract price as specified in the Order Confirmation.

8.2 This contract is divisible. Each individual delivery made shall be deemed to arise from a separate contract and shall be invoiced separately; any invoice for a delivery shall be payable in full in accordance with the terms of payment provided herein, without reference to and notwithstanding any defect in delivery of any other instalment.

## **9. Payment**

9.1 Subject to any special terms which we may agree with you in the Order Confirmation or otherwise in writing the Customer is expected to make payment before despatching the Products. Charges shall be based upon the Customer paying 50% of the Contract Price upon our acceptance of the Customer's order and the remainder payable prior to despatch.

9.2 With regards to Bespoke Work Fluidvalves require the Customer to pay 100% of the contract price upfront before commencement of the work.

9.3 Where the sales order exceeds £10,000 pounds in value Fluidvalves will require 70% of the contract price upfront before the work will commence.

9.4 Time of payment shall be of the essence of the Agreement. You shall not be entitled to set off or withhold any payment for any reason whatsoever.

9.5 The Customer shall not be entitled by reason of any set-off, counter-claim, abatement, or other deduction to withhold payment of any amount due to Fluidvalves. All payments made are non-refundable.

9.6 If the Customer's cheque is returned by the bank as unpaid for any reason, Fluidvalves reserves the right to levy a "returned cheque" charge.

9.7 If you are late in making a payment under this Agreement for forty-five (45) consecutive days or more, we reserve the right to pass your Customer Agreement to a reputable debt recovery company and you shall reimburse us on demand for all costs, expenses and losses associated therewith (including lost profit) or enter the small claims process to recover payments due if necessary.

9.8 IF YOU ARE A PRIVATE LIMITED COMPANY THEN, UNLESS OTHERWISE AGREED WITH US IN ADVANCE, IT IS A CONDITION OF OUR ACCEPTING INSTRUCTIONS ON YOUR BEHALF THAT YOUR DIRECTORS ARE PERSONALLY JOINTLY AND SEVERALLY OR SEVERALLY LIABLE ALONG WITH YOU FOR ANY FEES, OUTLAYS AND OTHER SUMS DUE TO US. THAT MEANS THAT YOU AND EACH INDIVIDUAL DIRECTOR ARE EACH INDIVIDUALLY AND PERSONALLY LIABLE FOR THE WHOLE AMOUNT.

9.9 Fluidvalves reserves the right to factor any invoice to a reputable factoring agency, at the discretion of Fluidvalves.

9.10 All Products supplied shall remain the property of Fluidvalves until payment is made in full or all sums due under all contracts and/or agreements between Fluidvalves and the Customer.

## **10. Amendments to Contract**

10.1 Should the Customer require a change to any aspect of an Order or in any other aspect of this Agreement, such change shall be requested in writing. Fluidvalves shall advise the Customer of the effects including any increase in the Charges which may result and the Agreement shall be modified to reflect such changes.

## **11. Product Characteristics**

11.1 The nature of our Product requires the Customer to take particular care when installing or using them. The Customer is responsible for ensuring that goods are suitable for their intended purpose and no warranty condition or representation is given by Fluidvalves as to the fitness of the goods for any particular purpose other than what is expressly stated on the Product Sheet. The goods are sold on the express understanding that the Products can be correctly handled in order to maximise the performance and significantly increase the lifespan of your Product. All Products must be maintained and regularly inspected for correct operation. All fluids used must be clean and conform to appropriate ISO/International standards. All Products must be installed in accordance with the installation and operating procedure.

11.2 Regards the Customers use of any secondary containment or environmental protection, including tank bund or other means of environmental protection including overfill alarm. It is the Customers responsibility to ensure they have made adequate provision and it is no way the responsibility of Fluidvalves to provide such support.

## **12. Warranty**

12.1 Fluidvalves will, free of charge, within a period of twelve (12) months (according to the Manufacturer's Warranty) from the date of despatch of all Products with respect to the Products (excluding all Bespoke Work and repairs services) which in each case are proved to the reasonable satisfaction of Fluidvalves to not comply with specification due to defects in material, workmanship or design (other than a design made, furnished or specified by the Customer), repair, or at its option replace, such Products.

This obligation will not apply where:

12.1.1 the Products have been improperly altered in any way whatsoever, or have been subject to misuse or unauthorised repair;

12.1.2 the Products have been improperly installed or applied;

12.1.3 any maintenance requirements relating to the Products have not been complied with;

12.1.4 any instructions as to storage of the Products have not been complied with in all respects; or

12.1.5 the Customer has failed to notify Fluidvalves of any defect or suspected defect within fourteen (14) days of the delivery where the defect should be apparent on reasonable inspection, and in any event no later than twelve (12) months from the date of delivery or performance.

12.1.6 used equipment and spares are supplied.

12.1.7 Bespoke Work or repairs, servicing and return to base work is carried out by Fluidvalves; the warranty is extended to three months only for such services unless otherwise agreed.

12.2 Fluidvalves obligation under clause 12.1 is subject to the Products being returned, if Fluidvalves so requires, by the Customer to Fluidvalves carriage paid. Fluidvalves will refund to the Customer the cost of carriage on the return of any such defective Products if the Customers warranty claim is

substantiated to the reasonable satisfaction of Fluidvalves, and will deliver any repaired or replacement Products to the Customer at Fluidvalves own expense.

12.3 Any Products which have been replaced will belong to Fluidvalves. Any repaired or replacement Products will be liable to repair or replacement under the terms specified in this clause for the unexpired portion of the period from the original date of delivery of the replaced Products process.

### **13. Confidentiality**

13.1 Each party will keep confidential any Confidential Information disclosed to it by the other. Neither party will disclose any Confidential Information to any third party, save to its agents, subcontractors, advisors or to an employee who needs to have access to such Confidential Information in connection with the performance of any obligations under the Customer Agreement, PROVIDED THAT the disclosing party will be responsible for ensuring that any person to whom it makes any such disclosure complies with this clause.

13.2 This clause 13 shall survive termination of this Agreement.

### **14. Protection of Information**

14.1 Any personal data (as defined in the Act) provided by you to us shall at all times remain your property and we shall take all reasonable precautions to preserve the integrity of such Personal Data and to prevent any corruption or loss, damage or destruction of such Personal Data, PROVIDED THAT we reserve the right to disclose to the police, the fire authorities, any other relevant authority, our insurance company and any of their representatives details of the records kept by us.

14.2 This clause 14 shall survive termination of this Agreement.

### **15. Cancellation by Us**

15.1 Fluidvalves may without prejudice to its other rights be immediately entitled to suspend or cancel each or any of its contracts with the Customer upon the occurrence of any of the following:

15.1.1 the Customer shall fail to make payment of any sum owing on the due date or commits any act of bankruptcy or makes any arrangements with its creditors or if any execution or distress levied upon the goods of the Customer; or

15.1.2 being a body corporate shall have a receiver or administrative receiver appointed or if any petition be presented for an administration order or if any petition be presented or resolution passed for the winding up of the same (otherwise than for the purpose of a bona fide amalgamation or reconstruction) or Compounds with its creditors or becomes insolvent or any step is taken to proceed to such winding up or receivership or if any court order is made upon or against any of the Customer's property or anything similar or analogous to the foregoing occurs in any jurisdiction other than Scotland; or

15.1.3 the Customer makes default in respect of any of its obligations under any of its contracts with Fluidvalves. Any occurrence of the above events shall render all amounts owing in respect of goods sold by Fluidvalves to the Customer to become immediately due and payable.

15.2 Fluidvalves reserve the right to cancel the contract between us if: (i) Fluidvalves have insufficient stock to deliver the Products you have ordered; (ii) Fluidvalves do not deliver to your area; or (iii) one or more of the Products you ordered was listed at an incorrect price due to a typographical error or an error or change in the pricing information.

15.3 If Fluidvalves do cancel your Order Fluidvalves will notify you by e-mail or by letter and will re-credit your account any sum deducted by us from your credit card as soon as possible but in any event within thirty (30) days of your Order.

15.4 In the event of cancellation, Fluidvalves reserves the right to retrieve all property belonging to Fluidvalves.

15.5 Ethical clause – Fluidvalves will not tolerate duplicity, deceit or pretence regards the parties using the Service, or in any way abusing the Service, reserving the right to terminate services as a result of such behaviour.

15.6 Fluidvalves has the right to terminate services if the Customer consistently damages or intentionally or unintentionally damages Products over a sustained period.

## **16. Force Majeure**

16.1 Fluidvalves shall not be liable to you or be deemed to be in breach of the Agreement by reason of delay in performing, or any failure to perform, any of our obligations in relation to the Services, if the delay or failure was beyond our reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond our reasonable control:

16.1.1 act of god, explosion, flood, tempest, fire or accident; weather

16.1.2 war or threat of war, sabotage, pandemic flu or virus, insurrection, civil disturbance or requisition;

16.1.3 acts, restrictions, regulations, bye-laws, prohibitions or measures or any kind on the part of any governmental, parliamentary or local authority;

16.1.4 import or export regulations or embargoes;

16.1.5 strikes, lock-outs or other industrial actions, power cuts or trade disputes (whether involving our employees or of a third party); or

16.1.6 technical problems, external circumstances preventing Fluidvalves delivering against deadlines or preventing delivery of third party against agreed commitments.

## **17. Intellectual Property rights and ownership**

17.1 Subject to the pre-existing right of third parties, all Intellectual Property Rights generated under the Agreement in any Products or arising out of the performance of any Services shall vest in and be the exclusive property of Fluidvalves.

17.2 No right or licence is granted to the Customer in respect of the existing or future Intellectual Property Rights of Fluidvalves, except the right to use the Products, or use the Services in each case in the Customers ordinary course of business and, in the case of any Bespoke Work, design or drawings, solely for the purpose of the use of the Works.

17.3 The Customer will not without Fluidvalves prior consent allow any trademarks of Fluidvalves or other words or marks applied to the Works to be obliterated, obscured or omitted nor add any additional marks or words.

17.4 The Customer shall not cause or permit the reverse engineering, disassembly or decompilation of the Products.

17.5 Nothing in this Agreement shall be taken to prevent us from using any expertise acquired or developed during the performance of this Agreement in the provision of services to other parties.

## **18. Disputed**

18.1 Should any dispute arise in connection with this Agreement, the parties shall attempt to settle same by negotiation however should the dispute not be solved within thirty (30) days of the first intimation of the dispute then parties shall attempt to settle it by Mediation, prior to court litigation in accordance with the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure.

## **19. Assignment**

19.1 Fluidvalves may assign this Agreement and the rights and obligations under this Agreement.

19.2 This Agreement is personal to the Customer, which may not without written consent of Fluidvalves, assign, mortgage, charge (otherwise than by floating charge) or dispose of any of its rights, or subcontract or otherwise delegate any of its obligations under this Agreement.

## **20. Exclusion and limitation of liability**

20.1 Fluidvalves does not exclude or limit its liability (if any) to the Customer;

20.1.1 for death or personal injury resulting from Fluidvalves negligence;

20.1.2 for any matter for which it would be illegal for Fluidvalves to exclude or limit or to attempt to exclude or limit its liability; or

20.1.3 for fraud.

20.2 Other than any liability of Fluidvalves arising under clause 20.1, which shall not be limited, and without prejudice to the other provisions of this clause 20 (exclusion and limitation of liability), Fluidvalves aggregate liability under each contract will be limited to an amount equal to 100% of the original amount paid by the Customer to Fluidvalves under the contract.

20.3 Except as provided in clause 20.1, Fluidvalves will be under no liability to the Customer whatsoever in respect of:

20.3.1 pure economic loss, loss of profits, loss of business, loss of revenue, loss of contracts, loss of goodwill, loss of anticipated earnings or saving (whether direct, indirect, incidental or consequential): or

20.3.2 loss of use or value or damage of any data or equipment (including software), wasted management, operation or other time (whether direct, indirect, incidental or consequential): or

20.3.3 any special, indirect, punitive, incidental or consequential loss, in each case howsoever caused arising out of or in connection with:

(a) any of the works, or the manufacture or sale or supply, or failure or delay in supply, of the works by Fluidvalves or on the part of Fluidvalves employees, agents or subcontractors;

(b) any breach by Fluidvalves of any of the express or implied terms of the contract;

(c) any use made by the Customer of any Work, or of any product incorporating any of the Products;  
or

(d) any statement made or not made, or advice given or not given, by or on behalf of Fluidvalves.

20.4 Except as expressly laid out in the contract, Fluidvalves hereby exclude to the fullest extent permissible in law, all conditions, warranties and stipulations, express (other than those set out in the contract) or implied, statutory, customary or otherwise which, but for such exclusion, would or might subsist in favour of the Customer.

20.5 The Customer acknowledges that the above provisions of this clause 10 (exclusion and limitation of liability) are reasonable and reflected in the price which would be higher without those provisions, and the Customer will accept such risk and/or insure accordingly.

20.6 The Customer is solely responsible for the proper legal disposal of all materials purchased from Fluidvalves at the end-of-life cycle of such materials and the Customers sole responsibility to adhere with all relevant environmental legislation.

20.7 Fluidvalves takes no responsibility for the fitting of the Product and assumes the Customer possesses the correct skills and experience to install and fit the Products when placing the order.

20.8 It is the Customers responsibility to maintain the maintenance of all Products.

## **21. Notices**

21.1 Any notice, demand or other communication given or made under or in connection with the matters contemplated by the Agreement shall be deemed to have been duly given and received;

21.1.1 if personally delivered, upon delivery at the address of the relevant party;

21.1.2 if sent by first class post, two (2) business days after the date of posting;

21.1.3 if by email, when sent;

provided that if, in accordance with the above provision, any notice, demand or other communication would otherwise be deemed to be given after 1700 hours, it shall be deemed to be given or made at the start of the next business day.

21.2 Any notice personally delivered or sent by first class post shall be delivered to the address of the relevant party set out in the Order Confirmation for the Customer and on the Fluidvalves Website for Fluidvalves.

## **22. General**

22.1 Failure or delay by Fluidvalves in enforcing any term of the Agreement shall not be construed as a waiver of any rights under it.

22.2 The illegality, invalidity or unenforceability of any part of this Agreement will not affect the legality, validity or enforceability of the remainder.

22.3 The construction, validity and performance of this Agreement shall be governed by Scots Law and the parties submit themselves to the non-exclusive jurisdiction of the Scottish Courts.

## **SCHEDULE 1**

### **Fluidvalves Float Operated Valves**

- Valve must be operated within the pressures/flow rates/temperature specified.
- Fluidvalves valves do not exclude the users need of secondary containment, tank bund or other means of environmental protection including overfill alarm.
- Valves must be maintained and regularly inspected for correct operation.
- Fluids must be clean and conform to appropriate ISO/International standards.
- Valves must be installed in accordance to installation/operating procedure.