

TERMS AND CONDITIONS OF SALE AND DELIVERY

EFFECTIVE: 1ST FEBRUARY 2024

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TERMS AND CONDITIONS OF SALE AND DELIVERY



GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY

AVK AUSTRALIA CIVIL GROUP

incorporating AVK Australia Holding Pty Ltd,
AVK Valves Pty Ltd, AVK Wang Pty Ltd and
AVK Currumbin Pty Ltd (effective
1 December 2023)

1. Applicability

These general terms and conditions of sale and delivery ("Conditions") govern the current and future supply and delivery of products and services ("Products") by an entity within the AVK AUSTRALIA CIVIL GROUP ("Supplier") and purchased by the purchaser ("Purchaser"), unless otherwise agreed in writing. The applicability of any general and special terms and conditions of Purchaser is excluded unless expressly adopted in writing by the Supplier.

2. Acquisition for re-supply

The Purchaser warrants and agrees that they are acquiring the Products for the purpose of re-supply or for the purpose of using them up or transforming them in trade or commerce in the course of a process of production or manufacture or of repairing or treating other products or fixtures on land and the parties agree that unless otherwise specified in writing the Products are of a kind not ordinarily acquired by the Purchaser for personal, domestic or household use or consumption.

3. Quotations and orders

Supplier's quotations of Products and pricing are not offers and are subject to change.

Contracts for delivery are accepted upon (i) written quotation by Supplier accepted by Purchaser in accordance with the terms of the quotation and subsequently confirmed by Supplier in writing (ii) written confirmation by Supplier of Purchaser's order (each a "Binding Order"). Modification of a Binding Order shall be in writing.

4. Prices

All prices quoted by Supplier are valid for 30 days only, unless otherwise communicated on an official quote. The price of the Products shall be Supplier quoted price or, where no price has been quoted (or the quoted price is no longer valid), the price listed in Supplier's published pricelist current at the date of acceptance. All prices are quoted by Supplier on ex works basis (EXW – INCOTERMS 2020) unless otherwise agreed in writing. The costs of packaging will be charged to Purchaser in addition to the price of the Products. The prices are exclusive of any import duties, GST, levies, taxes and other charges which may be imposed on the Products.

Any typographical, clerical or other error or omission in any quotation, pricelist,

acceptance offer or other document or information issued by Supplier may be corrected by Supplier without any liability on the part of Supplier.

Supplier reserves the right by giving notice to Purchaser at any time prior to dispatch to increase the price of the Products to reflect any substantial increase in the cost to Supplier which is due to factors beyond the control of Supplier (including, but not limited to, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in cost of labour, materials or other cost of manufacture or transportation) that gives Supplier a disadvantage compared to the circumstances prevailing at the date of the acceptance of the Binding Order. Any such increase of price will reflect the actual increased cost level as evidenced by Supplier's records. If the increase of price is beyond 20 %, Purchaser shall be entitled to cancel the relevant Binding Order immediately and until such time Products have been dispatched.

5. Terms of payment

Supplier shall be entitled to invoice Purchaser for the price of the Products on, or at any time after, the scheduled delivery of the Products. The time of payment of the price of the Products is of the essence. Purchaser shall pay the invoice of the Products within 30 days of the date of Supplier's invoice. If Purchaser fails to make full payment on the due date then, without prejudice to any other right or remedy available to Supplier, Supplier shall be entitled to (i) charge Purchaser interest on the amount unpaid, at a rate of, at present, 1.00 % per commenced month (interest will be added monthly) and (ii) charge a fee of AUD 20 per payment reminder.

On the request of Supplier, if the Binding Order exceeds AUD two hundred fifty thousand (250,000) Purchaser shall, (i) at its expense, provide an unconditional, irrevocable, unlimited and absolute payment guarantee from an internationally recognized bank on Supplier's first demand, or (ii) at its expense provide a letter of credit.

In case of any payment default by Purchaser, Supplier is entitled to postpone delivery and to store any undelivered Products at Purchaser's expense by use of a freight forwarding agency or by utilising Supplier's storage facilities until payment of due invoices.

The Purchaser shall pay any legal costs, stamp duties and other expenses payable on these terms and conditions or any credit application, guarantee or other security documents signed by the Purchaser together with any collection costs or dishonoured cheque fees.

In a situation of default Supplier may withdraw the Purchaser's credit facilities at any time or vary the Purchaser's credit limit and shall provide the Purchaser with notice accordingly.

6. Delivery

Delivery shall take place EX WORKS (INCOTERMS 2020). Prior to dispatch, Purchaser shall give Supplier information regarding its GST number. Upon receipt of the Products, Purchaser shall issue to Supplier a notice acknowledging the receipt of Products and return required export statements. Supplier is entitled to make partial deliveries. If Purchaser fails to take delivery, Supplier is entitled to store any undelivered Products at Purchaser's expense, i.e. by use of a freight forwarding agency or by utilising Supplier's storage facilities. In case of late delivery attributable to Supplier, Purchaser may seek liquidated damages for delay equal to zero point five (0.5%) percent of the price of the invoiced value of the delayed Products per commenced week of delay up to a maximum of five (5.0%) percent of the invoiced value of the delayed Products. If Supplier has not delivered the Products within 10 weeks from delivery date, Purchaser is entitled to terminate the Binding Order without further liability for Supplier. Termination and liquidated damages as set out in this clause 5 are the only remedies available to Purchaser in case of delay in delivery or non-delivery.

Supplier may supply Products that vary from the Products ordered by the Purchaser and the Purchaser must accept the Products supplied provided that such variations are not material.

7. Cancellation and return

A Binding Order can only be cancelled by written agreement between Supplier and Purchaser. Supplier is entitled to debit Purchaser with all costs Supplier may incur as a result of Purchaser cancelling an order. Returns cannot be accepted more than 3 months after delivery.

Purchaser cannot expect to be credited more than 70% of the purchase price debited. All returns must show original invoice number and date of delivery and be in good sellable condition.

Return of special Products, Products which have been specially manufactured for Purchaser or standard Products which have been changed to meet Purchaser's specifications, is not accepted.

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8. Certification

If the Purchaser requires that the Products be certified, then the issue of any certification certificate will be entirely at the discretion of Supplier and, if issued, will incur a fee in an amount to be advised by Supplier to the Purchaser at the time that the request for certification is received.

9. Packaging

Packaging is not returnable. Packaging which was debited separately may be returned no later than 3 months after the time of delivery but only upon written agreement.

10. Defects

Products manufactured by the Supplier are designed in accordance with the specification available from Supplier. If any specific purpose has been designated in the specifications, the Products will be fit for such purpose and, where applicable conform, to the relevant Australian standard.

Purchaser shall, however, be solely responsible for satisfying itself that the Products are suitable and/or fit for the particular purpose for which they are ordered and used.

Products shall be deemed defective only when Purchaser evidences that Products are not in conformity with the Binding Order. Defective Product is in any case understood not to include any non-conformity caused by (i) the use of a Products for an application for which it has not been designed or which has not been recommended by Supplier; (ii) any change by Purchaser of the chemical composition of the medium or treatment of the medium for which the Products is used; (iii) installation not in accordance with Supplier installation instructions (if any) and accepted codes of good practice; (iv) lack of or faulty maintenance; and (v) normal wear and tear.

Purchaser shall carry out a reasonable inspection of the Products within 5 working days following receipt of Products, ascertaining that no transport damage has occurred and notify Supplier in case of transport damage.

All other defects shall, to the extent possible, be notified to Supplier within 15 working days from discovery, time being of the essence, by defining the defect and declaring which claims are asserted (the "Notification Period"). In any event, Purchaser will lose its right to rely on lack of conformity of the Products if Purchaser does not give Supplier notice thereof at the latest within a period of (i) one (1) year from the date of installation or (ii) two (2) years (collectively the "Cut-Off Date") from the date on which the Products were delivered (whichever occurs first).

Purchaser may, at Purchaser's discretion, demand Supplier to repair or replace the non-conforming Products. Supplier will cover direct costs for access and restoration, transport of a defect free product to the site of installation, dismantling and reinstallation at the site of installation of the defect Products. In case of repair or replacement by Supplier, the Cut-Off Date period runs from the time the Products were first actually delivered, and not from the time of repair or replacement. No other remedies shall be available to Purchaser in case of lack of conformity of the Products.

10A. Extended limited warranty

Notwithstanding the Notification Period and the Cut-Off Date in clause 10, and in addition to any other rights granted under these Conditions, the Products supplied by the Supplier, are additionally guaranteed against defects in workmanship and material only for a period of five (5) years from the date on which the Products were delivered. This warranty shall not apply: (i) if the Product is used for an application for which it has not been designed or which has not been recommended by the Supplier; (ii) in case of changes to the chemical composition of the medium or treatment of the medium for which the Product is used, unless such change has been preapproved in writing by the Supplier; (iii) if the Product is not installed in accordance with Supplier's installation instructions, if any, and accepted codes of good practice; (iv) in case of lack of or faulty maintenance; (v) in case of normal wear and tear or (vi) to electronic products, incl. VIDI products.

The Purchaser must within reasonable time notify the Supplier of any claimed defect. The Supplier shall have the right to inspect the Product and the Purchaser shall, if requested, return the defective Product to the Supplier with transportation prepaid. The Purchaser shall assume all responsibility and expenses for removal and reinstallation in connection to the foregoing remedy, however the Supplier will pay for return transportation cost to the Purchaser of a new or repaired Product if the warranty claim is accepted.

The obligation under this extended limited warranty is limited at Supplier's option to adjust, repair, or replace, ex works point of sale, the defective Products. The Supplier shall accept no liability for Product failure caused by items mentioned in clause 13 (Force Majeure).

Any Product which has been supplied but not manufactured by the Supplier (traded goods) shall be subject to the warranty terms of the manufacturer. The decision of the Supplier in relation to any claims or disputes over claims under this warranty is final.

11. Personal property security

For the purposes of this clause, Personal Property and Securities Register (PPSR) and "perfected monies security interest" (PMSI) have the meanings that are ascribed to them in the Personal Property Security Act 2010 (PPSA).

11.1 The Purchaser agrees that these terms and conditions create a security interest or a PMSI that has attached or will attach in the Product (and their proceeds) supplied presently and in the future by the Supplier to the Purchaser when the Purchaser take possession of the Product and that attachment of the security interest or PMSI has not in any way been deferred or postponed from the date of these terms and conditions.

11.2 The Purchaser agrees to do all things necessary and execute all documents reasonably required by the Supplier to register the security interest or PMSI granted by the Purchaser under these terms and conditions and to ensure that the Supplier acquires a perfected security interest in the product under the PPSA. If the Supplier perfects any security interest or PMSI that the Supplier has in relation to the Product then the Purchaser must not do anything that may adversely affect, in the Supplier's opinion, its security position under these terms and conditions.

11.3 The Purchaser will, upon demand, pay all of the Supplier's expenses and legal costs (on a Solicitor/agent/client basis) in relation to or in connection with the registration of the PMSI or any other security interest and all other costs associated with protection and enforcement of the PMSI or any other security interest created by these terms and conditions, or for undertaking an audit under the provisions of the PPSA, or the repossession of the Product the subject of these terms and conditions or the exercise, enforcement or preservation of any right or interest under these terms and conditions or any contract that the Supplier has with the Purchaser. Such expenses may, where appropriate, be debited against the Purchaser's credit account with the Supplier.

11.4 This PMSI does not lose its priority as a result of the renewal, refinance, consolidation or restructure of the subject matter of these terms and conditions and any purchase money obligations of if any updated credit application is submitted by the Purchaser, a director or guarantor.

11.5 The Purchaser agrees that the Purchaser must not allow the Product to become an accession or commingled with other Product until the Supplier has first perfected any security interest or PMSI that the Supplier has in respect of the Product.



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11.6 Until ownership of the Product passes to the Purchaser, the Purchaser waives its rights under the following provisions of the PPSA, to the maximum extent that it is permitted by law, to: receive a notice of intention to remove an accession (s 95); receive a notice that the Supplier has determined to enforce its security interest in accordance with land law (s118); receive a notice of enforcement action against liquid assets; receive a notice of disposal of the Product by way of it purchasing the Product from the Supplier (s129); receive a notice of disposal of the Product (s130); receive a statement of account following disposal of the Product (s132(2)); receive a statement of account every 6 months where there has been no disposal of the Product (s132(4)); receive notice of retention of the Product by the Supplier (s135(2)); object to any proposal by the Supplier to either retain and dispose of the Product (s137(3)); redeem the Product before the Supplier disposes of it (s142); reinstate the security agreement (s143); and receive any verification statement in relation to any registration event to which the Purchaser is a party (s157(1) and 157(3)).

11.7 To the extent permitted by the PPSA, these terms and conditions exclude any provisions of the PPSA which may be excluded in our discretion and which would otherwise confer rights on the Purchaser.

11.8 The Purchaser further agrees that where the Supplier has rights in addition to those under Part 4 of the PPSA, those rights shall continue to apply.

11.9 If the Purchaser, being an individual, commits an act of bankruptcy, or the Purchaser being a company, circumstances arise where a receiver, manager, administrator or controller becomes entitled to take possession of any of the Purchaser's assets, or any proceedings are instituted for the Purchaser's winding up, or the Purchaser enters into a deed of company arrangement, or the Purchaser cease or threaten to cease conducting business in the normal manner or apply for deregistration or receive a deregistration notice, or any cheque the Purchaser provides to the Supplier is dishonoured for payment, or the Purchaser fails to comply with any demand for payment issued by the Supplier, or the Purchaser breaches any of the terms and conditions contained herein and/or are in default of any other agreement between the Supplier and the Purchaser then without prejudice to any of the Suppliers other rights the Purchaser's right to sell the Product in the ordinary course of business in accordance with the PPSA and any of the Purchaser other rights in respect of the Products, immediately cease; and the Purchaser must immediately return to the

Supplier the Product in which title has not passed.

11.10 The Purchaser agrees that: if the Supplier has cause to exercise any of its rights under section 110 of the PPSA, then the Supplier is entitled to enter any premises where the Product supplied by the Supplier and still unpaid for is located and to repossess, remove and sell such Product. The Purchaser agrees to indemnify and keep the Supplier indemnified in respect of any claims, actions and costs that may arise against the Supplier in relation to the removal, repossession and sale of the Product pursuant to these terms and conditions including any claims brought by third parties as a result of that exercise.

11.11 The Purchaser agrees that repossession and retention of the Product pursuant to the PPSA will only satisfy so much of the monies which may become payable to the Supplier by the Purchaser, as is equivalent to the Purchaser's estimation of the market value of the Product as it is at the date of repossession and the repossession and retention will immediately extinguish any rights or interest the Purchaser has on the value of Product recovered.

11.12 Until ownership of the Product passes, the Purchaser agrees not to give the Supplier a written demand or allow any other person to give us a written demand requiring the Supplier to register a financing change statement under the PPSA or enter into or allow any other person to enter into the PPSR a financing change statement under the PPSA; agree not to change the Purchaser's name or undertake any changes to any documents that the Supplier has registered, require to be registered or are capable of being registered without the Supplier prior written consent; and undertake not to remove, deface or alter any serial number appearing on any Product supplied by the Supplier.

11.13 Until ownership of the Product passes, the Purchaser agrees not to give the Supplier a written demand or allow any other person to give the Supplier a written demand requiring the Supplier to register a financing change statement under the PPSA or enter into or allow any other person to enter into the PPSR a financing change statement under the PPSA; agree not to change the Purchaser's name or undertake any changes to any documents that the Supplier has registered, require to be registered or are capable of being registered without the Supplier prior written consent; and undertake not to remove, deface or alter any serial number appearing on any Product supplied by the Supplier.

11.14 Any time that the Purchaser makes a payment to the Supplier, irrespective of whether the payment is made under or in connection with these terms and conditions, the Supplier may apply that payment first, to satisfy an obligation that is not secured; second, to satisfy an obligation that is secured, but not by a PMSI; third, to satisfy an obligation that is secured by a PMSI for that obligation and using proceeds from the sale of the Products subject to that PMSI; and fourth, to satisfy an obligation that is secured by a PMSI using funds or proceeds from any source, or, despite the foregoing, in any manner as the Supplier sees fit.

12. Liability

Notwithstanding anything to the contrary in these Conditions, for any and all claims, losses, costs and damages whether such are based on indemnification, contract negligence, breach of contract, breach of warranty, statutory rules or otherwise and to the fullest extent permitted by applicable law the liability of Supplier shall be limited to: (i) in respect of property damage the yearly limit is AUD 10 million (10,000,000); and (ii) in respect of any other liability the total aggregate liability of Supplier shall be limited to the amount of the purchase price of the Products payable under the relevant Binding Order with addition of any liquidated damages for delay, and reasonable costs for access and restoration, transport of a defect free product to the site of installation, dismantling and reinstallation at the site of installation of the defect Product to a maximum of AUD ten million a year (10,000,000).

In no event shall Supplier be liable to Purchaser or to any third party for loss of profits, loss of revenue, loss of business opportunity, loss of time, loss of data or for any indirect, incidental, special, consequential, punitive or exemplary damages arising out of or related to delivery of any Products.

The limitation of liability set out above in this clause 10 does not apply: (i) in the event of claims for compensation as a result of death or bodily injury; (ii) in the event of liability according to mandatory law; (iii) in the event of wilful intent or gross negligence on the part of the Supplier (wilful intent means a deliberate act or omission, the consequences of which were foreseen or foreseeable, that was intended to cause harm to people, property, or the environment); gross negligence means any act or failure to act (whether sole, joint, or concurrent) that is so great as to cause harm to people, property, or the environment and that: (a) seriously and substantially deviates from a diligent course of action;

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or (b) is in reckless disregard of or wanton indifference to a risk known or so obvious that it should have been known); and (iv) for reasonable costs in the event of an infringement of intellectual property rights related to Supplier's performance; except infringement or violation arising from or based upon Supplier's compliance with particular requirements of Purchaser that differ from Supplier's standard specifications for Products.

13. Force Majeure

Supplier shall not be liable for any delay or failure of performance due to strikes, lockouts, fires, floods, act of governmental authority, pandemics, epidemics, terrorism, political instability within the country in which Supplier is operating, acts of God or other causes beyond Supplier's reasonable control provided that Supplier shall have given notice to Purchaser of any such cause for delay or anticipated delay promptly following its commencement and shall have used its commercially best efforts to perform as expeditiously as possible. If the delay or failure in performance lasts more than 30 days, Purchaser shall have the right to, without liability to Supplier, immediately terminate the Binding Order(s) in respect of such part of the Products as cannot in consequence of the force majeure event be used as intended by Purchaser.

14. Software

If the Product is delivered with embedded software or any additional software is purchased, the Purchaser obtains a non-exclusive, non-transferable, non-sublicensable, and revocable software license in form of a right of use to the software solely for the purposes set out in the applicable specification of the Product.

Unless explicitly set out in the applicable Binding Order, Purchaser obtains (i) no rights in form of patent, copyright, trademark or other proprietary right connected to the software, (ii) no rights to software source codes, (iii) no authorization to make any changes, additions, improvements, alterations, or modifications of any kind to the software, (iv) no right to copy, reproduce, modify, pass on to or in any other way communicate the software to a third party without prior permission from Supplier. Purchaser is solely responsible for satisfying itself that the software supplied will function in combination with Purchaser's other equipment, software or materials. Supplier shall not be liable for, and Purchaser shall indemnify and hold Supplier harmless from, any and all claims, losses, costs and damages arising as a result of a configuration or change that is incorporated into the software at Purchaser's request or a process use requested or controlled by Purchaser.

Supplier does not guarantee that the software supplied will function uninterrupted.

If the Product is delivered with embedded software or any additional software is purchased, such software will be subject to further detailed license terms, End User License Agreement ("EULA"), which for the avoidance of doubt shall supersede any contradicting terms and conditions set out in these Conditions.

Unless otherwise agreed in writing, e.g. in the EULA, the software will be provided on an automatically renewed yearly subscription, which will be invoiced subject to clause 4 of these Conditions. Termination of such subscription shall be provided in writing end of month + 30 days.

15. Intellectual Property Rights ("IPR")

Supplier has the sole and exclusive right to all registered or non-registered IPR of any kind (including, but not limited to, patents, copyright and related rights, moral rights, trademarks and service marks, business names and domain names, goodwill, rights in designs, rights in computer software, database rights, ideas, know-how, inventions, technical improvements of any type and trade secrets) in relation to the Product, including but not limited to drawings, calculations, designs, details of production, computer programs, data, prototypes, samples, models, moulds and other physical and/or electronic documents, information and materials.

In case of an infringement or violation of IPR of any kind arising from or based upon Supplier's compliance with particular requirements of Purchaser that differ from Supplier's standard specifications for Products, Purchaser shall indemnify and hold Supplier harmless from any and all claims, losses, costs and damages arising as a result of such a deviation.

16. No waiver

Any waiver by either party of a breach of any provision of these Conditions shall not be considered as a waiver of any subsequent breach or any other provision of these Conditions.

No provision of this contract shall be deemed to have been waived by the Supplier unless such waiver shall be in writing and signed by an officer of the Supplier giving notice in that behalf.

17. Severance

If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the re-minder of the provision in question shall not be affected thereby.

18. Default:

If:

- a) The Supplier has any reasonable grounds to believe that the Purchaser may not be able to make due and punctual payment to the Supplier of any monies owing by the Purchaser or there is any default or failure by the Purchaser in making such payments; or
- b) an administrator, liquidator, provisional liquidator or external manager is appointed in respect of the Purchaser; or
- c) a receiver, receiver and manager, administrator or controller is appointed in respect of any assets or group of assets of the Purchaser; or
- d) the Purchaser goes into bankruptcy or is wound up; or
- e) the Purchaser becomes, admits in writing that it is, or is declared by a court to be unable to pay its debts as and when they fall due;
- f) there is a breach by the Purchaser of any of these terms and conditions or the terms and conditions with any other Group Company, then all monies payable by the Purchaser to the Supplier may at the Supplier's election, become immediately due and payable notwithstanding the due date for payment shall not have been expired; and (i) withdraw any credit facilities which may have been extended to the Purchaser; (ii) withhold any further delivery of Products; (iii) in respect of Products already delivered, enter onto the Purchaser's premises to recover and resell the Products for its own benefit;
- (iv) recover from the Purchaser the cost of materials or goods acquired for the purpose of future deliveries;
- (v) exercise such rights as are afforded to the Supplier under the PPSA; and
- (vi) register a default with any credit reference facility.

19. Assignment by Purchaser

The Purchaser shall not assign or purport to assign its rights and obligations herein to any third party without the prior consent in writing of the Supplier.

20. Notices

Any notice required to be given under this contract shall if the party is a Company, be signed by any person being or purporting to be a Director, Manager, or Senior officer of the party giving it, and if not a Company then by the party him-self and shall be deemed to have been given on the second day following posting if sent by pre-paid mail in an envelope addressed to the registered office or principle place of business or last known address as the case may be of the party to whom the notice is being sent.



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21. Venue and jurisdiction

These Conditions shall be governed by the laws of the State of South Australia and the Commonwealth of Australia, with exclusion of any choice of law rules. The applicability of the United Nations Convention on Contracts for the International Sale of Goods (CISG) is explicitly excluded for international sales. Any dispute or claim arising out of or in connection with these Conditions shall be referred to and resolved by arbitration, however Supplier may at its own discretion sue Purchaser at any place of jurisdiction through ordinary court.

Arbitration shall be conducted in accordance with Commercial Arbitration Act 2011 of South Australia in force at the time when such proceedings are commenced. The place of arbitration shall be in the state of South Australia the Supplier. English shall be the language used during any such proceedings unless otherwise agreed between the parties. In addition to the aforesaid, either party is entitled to seek injunctive relief by a competent court as may be necessary to restrain any breach or threatened breach of these Conditions by the other party.

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Expect... 