

# Terms and Conditions for Sale



Swagelok Southern Africa

## 1. DEFINITIONS

- a) "The Company" is Incanox Pty Ltd t/a Johannesburg Valve & Fitting Co Pty Ltd.
- b) "The Customer" is the business, sole trader or individual that is transacting with the Company. The customer also includes parties transacting with the Company on a cash sales basis.
- c) "Tender" means a written quotation by the Company to supply a specified quantity of specified goods to the Customer at a specified price.

## 2. GENERAL

Unless otherwise agreed upon in writing all goods sold or delivered in terms of this contract are sold or delivered by the Company subject to the terms and conditions contained herein. These terms shall override any statements that are in conflict with such terms and which statements may be contained in orders or other documents submitted by the Customer.

## 3. OFFER ACCEPTANCE & VALIDITY:

All quotations and discounts are given on all orders accepted by the Company in accordance with the following terms and conditions only.

- a) Unless otherwise stated herein or previously withdrawn, every tender from the Company is open for acceptance within one calendar month from the date submitted **subject to prior sale**.
- b) Acceptance of any tender must be in writing and accompanied by sufficient information to enable the Company to proceed with the order forthwith, failing which the Company may amend such tender price as to allow for any increase in the cost of labour or materials occurring between the date of acceptance of the tender and the date on which sufficient information is received by the Company.
- c) Alternative to 3(a) and 3(b) above, the Customer agrees that any invoice sent by the Company pursuant to a verbal or written order, by the Customer shall be deemed to be binding on the Customer in

terms of the Company's Condition of sales.

## 4. PRICING VALIDITY & VARIATIONS:

- a) Prices quoted exclude VAT. Value Added Tax will be levied on all sales to South African customers.
- b) The right is reserved to amend accidental errors and/or omissions excepted (E&OE) on quotations, invoices or order confirmations.
- c) Prices quoted are valid for 30 days from date of quotation unless stated to the contrary.
- d) If an order differs in quantity to that shown on the appropriate quotation the discounts may vary. Quotation is based on quantities stated - any variation will require a re-quote. These Conditions of Sale constitutes the sole recordal of the contract between the Customer and the Company and may only be varied, altered or amended in writing, and such variations, amendments or alternations will only be of force and effect if signed by the duly authorised representative of the Customer and the Company.
- e) Tender and contract price are based on the cost of labour and material, freight and insurance, custom tariffs and dumping duties (if any), importing chart, railage road, rate of exchange of currency between South Africa and the relevant foreign countries ruling at the date of tender or contract if, between such date and the completion of the delivery, variations occur by either a rise or fall in these cost then the contract price shall be amended accordingly. As far material and labour are concerned the contract price shall be amended on the basis of the SEIFSA contract price adjustment formula.

## 5. ACCEPTANCE OF GOODS, GOODS RETURNS AND REJECTIONS:

- a) The Customer shall only be entitled to reject goods if, upon examination, they prove to be defective in any material aspect. All goods sold or delivered shall, for all purpose, be presumed to be free of defects if the Customer fails to notify the Company in writing that the goods are defective within seven (7) days from

the date of delivery.

- b) Those product items contained in the Company's standard items list (amended from time to time) may, at the Company's discretion and subject to its prior inspection and approval, be returned for credit, less a re-stocking charge.
- c) ITEMS MARKED \*SPL\* ARE SPECIAL (NON-STANDARD ITEMS AND/OR ASSEMBLIES). ONCE AN ORDER HAS BEEN PLACED, THEY ARE DEEMED NON-CANCELLABLE, NON-RETURNABLE AND NON-REFUNDABLE. QUOTED DELIVERY ON SPL ITEMS IS BASED ON QUANTITY AND MAY BE SUBJECT TO CHANGE.

## 6. CLAIMS & SHORTAGES: ALL CLAIMS AND SHORTAGES MUST BE REPORTED WITHIN 7 DAYS OF RECEIPT OF GOODS:

In the event of any dispute, the quantity in any consignment of goods as recorded by the Company upon dispatch from the Company's place of business shall be conclusive evidence of the quantity received by the Customer on delivery unless the Customer can provide conclusive evidence proving the contrary.

## 7. TRANSPORTATION & DELIVERY:

- a) If the Company undertakes any special delivery or packing method at the request of the Customer, the Company shall have the right to charge the Customer for any extra expenses arising from such methods.
- b) Where goods are delivered by the Company's designated transport, delivery shall be deemed to take place at the point of dispatch of the goods from the Company's designated vehicle. In all other instances, delivery shall be deemed to take place when the goods are dispatched from the Company's premises detailed overleaf. Responsibility for and risk of the goods shall pass to the Customer on delivery.
  - I. If the time of the delivery is stated then such time shall be reckoned from the date of the Company's acknowledgement of the order but, whilst every effort will be made to effect delivery



by that date, time shall not be of the essence and the Company shall not be under any liability whatsoever in respect of any delay.

- II. In case of sales for delivery during a certain period of time, delivery may be by instalment at the discretion and convenience of the Company.
- III. In case where the Company over-delivers by an amount plus or minus ten (10) percent either in weight, volume or quantity of the total order, the delivery of such lesser amount of goods shall be deemed to be delivery under the contract and shall be paid for by the Customer at the contract rate.
- IV. Where the Customer in his order does not specify any particular tolerance concerning dimensions, length or weight or, if the Customer's specification is only partially complete in any respect, the goods will be supplied in accordance with the Company's manufacturing standards.

#### **8. TRANSFER OF OWNERSHIP:**

Ownership of the goods will only pass to the Customer on receipt of payment of the full purchase price (inclusive of VAT) of the goods by the Company. Until title and ownership in the goods passes to the Purchaser, the Purchaser shall be bound to hold the goods on a fiduciary basis and the Purchaser keeps the goods separate from his own goods and from those of third parties, clearly marking them as being goods of the property of the Company.

#### **9. PAYMENT:**

- a) All payments are net and due thirty (30) days net of invoice. If any amount is not paid on due date the Company shall be entitled to withhold or suspend performances in whole or part. Interest will also be levied automatically in respect of overdue amounts at the prevailing legal rate, in terms of the Prescribed Rate of Interest Act No. 55 of 1975 as amended.
- b) The Company also reserves the right to charge to the

Customer all costs, charges or expenses (such as legal costs) which may be incurred or involved in the collection of any late payments. The Customer shall not be entitled to withhold payment of any amount payable to the Company hereunder because of a disputed claim of any nature nor shall the Customer be entitled to set off any amount due by the Company to the Customer against any amount payable to the Company in terms hereof.

- c) Should the Customer account become overdue, the Company is entitled to demand payment of all amounts owed to the Company immediately.
- d) The company reserves the right to allocate any payments made by the customer to:
  - I. Previously unpaid orders
  - II. Interest
  - III. Costs
- e) In regard to these monies owed by the customer to the company for any amounts outstanding transactions on the basis of pay in advance (PIA), previously defined as cash on delivery (COD), means that the customer shall pay the company as follows:
  - I. 50% Deposit at order placement
  - II. 50% Balance of payment before delivery of goods
- f) The company reserves the right to request a payment in advance of manufacture and/or delivery of the goods from the Customer at sole and absolute discretion of the company. If the customer fails to meet demand of payment all goods will be returned to the company immediately.

#### **10. BREACH:**

If the customer is in breach of any of the terms set out herein, the Company may give the Customer seven (7) days written notice to remedy such breach, failing which the Company may without prejudice to any of its rights, cancel this agreement in writing and demand the immediate return of any of its goods held by the customer at the date of such breach.

#### **11. DATA PROTECTION & SECRECY:**

The customer hereby warrants that it shall not reveal or disclose to any party whatsoever the content of any design, specification drawing or model provided to the customer by the company.

All personal information that we may collect (including but not limited to your name, address, telephone number) will be collected, used and held in accordance with the provisions of the Data Protection Act 2018 and your rights under that Act as well as the General Data Protection Regulation (GDPR) and subsequent updates. We may use your personal information, in accordance with The Protection of Personal Information Act 4 of 2013 (POPIA), to process your payment, communicate with you about your account, products, services, events, surveys and promotions by Swagelok or The Company, sending you samples, products and information, verifying your identity, processing, evaluating and responding to your requests, inquires and applications and for purposes disclosed at the time you provide your personal information or otherwise with your consent. The Company takes the security of your personal information very seriously and has made every effort to protect your personal information from misuse, loss, interference and unauthorised access, modifications or disclosure. We are obligated to apply due care in the management of personal information and comply with the legislation as we collect, process, store and destroy personal information records as part of the executing business processes.

#### **12. JURISDICTION:**

The contract shall be construed in accordance with South African Law which shall be the proper law of contract, and the South African Courts shall have sole jurisdiction in relation to any dispute arising out of the contract. The Company and the Customer hereby prorogate the exclusive jurisdiction of the Courts of South Africa in so far as not already subject thereto.

- a) The Customer hereby submits to the jurisdiction of the Magistrate's Court in respect of any action that the Company may institute against the Customer.



- This consent is given in terms of Section 45 of the Magistrate Court Act No. 32 of 1944 as amended.
- b) Irrespective of above, the Company shall always be entitled to proceed with litigation by way of arbitration at its sole and absolute discretion. Any such arbitration ("the arbitration") will be governed by the provisions of this clause 15. The arbitration shall be held under the rules of the Arbitration Foundation of Southern Africa ("AFSA") and shall be held:
- I. Informally, with the form of proceeding to be determined by the arbitrator.
  - II. In Johannesburg.

It being the intention that as far as possible it shall be concluded within twenty-one (21) business days after it has been demanded. Each party must be represented at the arbitration by its attorneys and advocates, any of its director, alternate directors or full-time employees. The arbitrator shall be a practicing arbitrator of the commercial panel of AFSA agreed between the parties or failing agreement, nominated by the chairman for the time being AFSA. Should such nomination be necessary, such nomination shall be sought by the parties jointly or by any party to the dispute not later than seven (7) days after the arbitration has been demanded and such chairman shall be asked to make such nomination within seven (7) days of the date of the request. The arbitrator shall be empowered to appoint such assistants/experts he deems fit in the event of the subject matter of the dispute requiring expertise in any particular field for its proper resolution. The arbitrator's award shall be in writing, unless the parties otherwise agree, and shall be final and binding upon the parties. The parties agree that it shall be made an order of court. No provision in this arbitration clause shall be taken as prohibiting the rights of either party to approach the appropriate court for the purposes of any urgent interim relief. The cost relating to the arbitrator will be divided equally between the parties.

The Customer acknowledges that a certificate signed by a senior manager of the Company, shall be prima facie proof of its indebtedness to the Company, and shall be sufficient

evidence to enable the Company to obtain a judgement against the Customer.

### **13. DOMICILE:**

The Customer hereby choose as its domicilium citandi et executandi for purposes hereof, the registered office address.

### **14. WARRANTIES & LIABILITY:**

The Swagelok warranty information is available on request or on the Swagelok website at [www.swagelok.com](http://www.swagelok.com). Third party products will be covered by the original manufacturer warranty. NO OTHER WARRANTIES APPLY AND IN NO EVENT SHALL COMPANY OR MANUFACTURER BE LIABLE FOR ANY CONSEQUENTIAL OR INCIDENTAL DAMAGES. The Company undertakes to repair or replace, free of cost, any good sold by the Company which prove to be defective in materials or workmanship after delivery (misuse, fair wear and tear excepted) provided that the Customer shall have complied with the provisions of paragraph 6 and 7. hereof and provided further that the defective goods are returned to the Company two weeks from notification of such defect. This guarantee shall not apply in the case of any goods or components in relation to which the Company has provided an alternative written guarantee. The liability of the Company in respect of all goods supplied in terms of the contract shall be limited to the terms of the above guarantee and/or to the terms of any other written guarantee supplied by the company and the company shall have no further liability whatever, in particular, the company shall not be liable for any injury or damage caused by goods, for loss of profit or any other consequential damages as a result of utilising supplied goods.

### **15. CANCELLATION:**

- a) Cancellation by the Customer - Orders placed cannot be cancelled except with the consent of the Company in writing, Goods returned without the consent of the Company will not be accepted for credit and all risk in and liability therein remain with the Customer.

- b) Cancellation by the Company - If the contract is not fulfilled or is hindered or impended by circumstances beyond the control of the Company, including acts of God, Governmental or Administrative acts, labour disputes and damage to machinery, the Company shall be entitled to cancel the contract forthwith upon written notice to the Customer, Customer shall have no claim for damages of whatsoever nature against the Company.

### **16. NOTICE TO LANDLORD:**

The Customer acknowledge that in the event of it not being the owner of the premises where the goods are to be kept, it shall inform the owner of such premises and/or its landlord that the ownership of the goods supplied by the Company to the Customer is reserved and does not from part of the Customer's asset and is therefore not subject to a landlord's hypothec. The Customer shall further forward a copy of the aforesaid letter, together with proof of service thereof to the owner of the premises and/or its landlord to the Company within five days of signature hereof, failing which the Customer agrees that the Company may contact the owner of the premises and /or the Customer's landlord and advise him of such reservations of ownership.

### **17. INFRINGEMENTS OR RIGHTS OF THIRD PARTIES:**

- a) The Customer warrants that any design, specification, drawing, model or instruction given by the Customer to the Company does not infringe any letters, patents, registered designs, trademarks or copyright.
- b) That it will indemnify the Company against any claim or damage for infringement referred to above by the use of any goods supplied to the Customer.



**18. NON-VARIATION:**

These Conditions of Sale constitutes the sole recordal of the contract between the Customer and the Company and may only be varied, altered or amended in writing, and such variations, amendments or alternations will only be of force and effect if signed by the duly authorised representative of the Customer and the Credit Controller of the Company.

**19. NON-WAIVER:**

No indulgence given by the Company to the Customer shall be construed to operate as a waiver of any of the Company's right in enforcing the terms of these agreements, and such indulgence shall not be capable of operating as an estoppel against the Company.

**20. PERMISSION TO CONSULT WITH CREDIT BUREAU TO OBTAIN CONSUMER CREDIT INFORMATION REGARDING THE APPLICATION IN TERMS OF THE NATIONAL CREDIT ACT OF 2005:**

The Customer agrees on its own behalf and on behalf of its directors, partners, shareholders, members and associates that the Company is entitled at any time to communicate with any registered credit bureau to obtain any information relating to the Customer's and customer's directors', partners', shareholders', members' and associates' payment behaviour, creditworthiness, defaults and further personal information.

**21. LEGAL COSTS:**

Any action instituted by the Company against the Customer including but not limited to consultations with the company's attorneys and/or counsel, as a result of any breach of any of the terms herein, by the Customer, shall entitle the Company to recover all its attorney and own client legal cost and/or cost of counsel occasioned by such breach, from the Customer.

