

Fluid Water Group General Terms and Conditions of Supply of Goods and/or Services

You should read these Terms carefully. Your attention is particularly drawn to the provisions of Clause 14 (*Limitation of liability*).

1. Definitions and Interpretation

1.1 In these standard Terms, unless the context clearly indicates another intention, the expressions detailed below will have the meanings attributed to them. Other less frequently used expressions are defined in the body of the Terms:

"Affiliate" means, in relation to a Party, any person Controlling, Controlled by or under common Control with that Party;

"Business Day" means a day (other than a Saturday or Sunday) on which banks are open for non-automated general business in London;

"Buyer", **"you"** and **"your"** means the Party that has agreed to purchase the Goods and/or Services from the Supplier as detailed in the Order Acknowledgement;

"Contract" means the contract between you and us for the supply of Goods and/or Services in accordance with these Terms;

"Control" means the beneficial ownership of more than fifty percent (50%) of the issued share capital or the legal power to direct or cause the direction of the general management and policies of the party in question whether such control be by rights of ownership, voting to nominate directors or officers, or otherwise, and **"Controlling"** and **"Controlled"** shall be interpreted accordingly;

"Default" means any act or omission by you or your failure to perform any relevant obligation under the Contract;

"Deliverables" means the deliverables set out in the Order Acknowledgement provided by the Supplier to the Buyer;

"Delivery" means completion of delivery of the Goods in accordance with Clause 6 and **"Deliver"**, **"Delivered"** and **"Delivering"** shall be construed accordingly;

"Delivery Location" means the location communicated to the Buyer in writing;

"Force Majeure Event" means any circumstance which is not within our reasonable control including: (a) acts of God, flood, drought, earthquake, or other natural disaster; (b) epidemic or pandemic; (c) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations; (d) nuclear, chemical or biological contamination or sonic boom; (e) any law or action taken by a government or public authority, including imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent; (f) collapse of buildings, fire, explosion or accident; (g) any labour or trade dispute, strikes, industrial action or lockouts; (h) non-performance by suppliers or subcontractors; and (i) any interruption of failure of utility service;

"Goods" means the goods (or any part of them) to be supplied by us as set out in the Order Acknowledgment;

"Goods Specification" means any specification for the Goods which is agreed between the Parties, including any relevant plans or drawings, that we provide through our sales documentation or which is set out in the Order Acknowledgment;

"Incoterms" means the latest edition of the ICC's Incoterms® Rules, as amended and updated from time to time;

"Insolvency Event" an Insolvency Event occurs if: (a) you suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 (IA 1986) as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the IA 1986; (b) you commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors; (c) you apply to court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986; (d) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Buyer (being a company); (e) an application is made to court, or an order is made, for the appointment of an administrator, or a notice of intention to appoint an administrator is given or an administrator is appointed, over the Buyer (being a company); (f) the holder of a qualifying floating charge over the assets of the Buyer (being a company) has become entitled to appoint or has appointed an administrative receiver; (g) a person becomes entitled to appoint a receiver over any or all of the assets of the Buyer or a receiver is appointed over any or all of the assets of the Buyer; (h) any event occurs, or proceeding is taken, with respect to the Buyer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause (a) to clause (f) (inclusive); or (g) the Buyer suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;

"Intellectual Property Rights" means any patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, any rights and all similar or equivalent rights or forms of protection that subsist or will subsist now or in the future in any part of the world;

"Legal Requirements" means all laws, regulations, rules, guidelines, codes of conduct, judgements and other measures and decisions of any Relevant Authority from time to time in force (whether or not legally binding);

"Order" means your written order for the supply of Goods and/or Services as set out in the Buyer's acceptance of our quotation;

"Order Acknowledgement" has the meaning given in Clause 3.4;

"Relevant Authority" means any international, national or local governmental or regulatory body, authority, agency, court or tribunal, in any part of the world;

"Services" means the services including the Deliverables supplied by us as set out in the Order Acknowledgement;

"Service Delivery Location" means the location detailed in the Order Acknowledgement;

"Service Period" means the performance period of the Services in accordance with Clause 10.2;

"Supplier" "we", "us" and "our" means the Party that has agreed to supply the Goods and/or Services to the Buyer as detailed in the Order Acknowledgment;

"Terms" means the terms and conditions of supply of Goods and/or Services as set out in this document as amended from time to time; and

"Warranty Period" means the warranty period specified for the Goods as set out in the installation booklet or manufacturers guide supplied with the Goods or if not otherwise specified, twelve (12) months.

1.2 In these Terms, unless the context otherwise requires, any reference to:

- (a) any legislation is a reference to that legislation and any subordinate legislation made under it as amended, extended or re-enacted from time to time;
- (b) Clauses are to clauses of these Terms;
- (c) the singular includes the plural and vice versa, and any reference to one gender includes the other genders;
- (d) a "person" includes any individual, any government, state or agency of a state, any legal person and any trust, partnership, association or unincorporated body (whether or not having legal personality);
- (e) a "Party" and "Parties" means a party or parties to the Contract;
- (f) any agreement or document is to such agreement or document as varied, supplemented, restated, renewed, novated or replaced from time to time;
- (g) "written" or "in writing" means the representation of words, in English and capable of being read with the naked eye, on paper or in similar hard copy form or in an electronic form which enables the recipient to retain a copy;
- (h) a number of days will be reckoned exclusively of the first day and inclusively of the last day unless the last day falls on a day which is not a Business Day in which case the last day will be the next succeeding day which is a Business Day;
- (i) a time of day is to London time;

- (j) a "day" is reference to a period of twenty four (24) consecutive hours ending at 12.00 midnight;
- (k) an "encumbrance" includes a mortgage, charge, debenture, pledge, lien, assignment by way of security, hypothecation, security interest, equity, right to acquire, option, right of pre-emption, title retention or any other security agreement or arrangement or other encumbrance of any kind and any agreement or arrangement to create any encumbrance;
- (l) the words "include", "includes", "including", "in particular" and "such as" are to be construed as if they were immediately followed by the words "without limitation"; and
- (m) an English legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any legal concept or thing includes, in respect of any jurisdiction other than England, is a reference to what most nearly approximates in that jurisdiction to the English legal term and a reference to any legislation includes, in respect of any jurisdiction other than England, a reference to any legislation of that jurisdiction that most nearly corresponds to the legislation referred to.

1.3 The headings in these Terms are for convenience only and do not affect its interpretation.

2. Basis of Contract

2.1 The Contract shall be between you and us.

2.2 These Terms apply to and form part of the Contract and supersede any previously issued terms and condition of purchase or supply. No other terms and conditions that the Buyer may seek to impose or incorporate by any means, or which are implied by law, trade custom, practice or course of dealing, shall form part of the Contract. For the avoidance of doubt, any terms and conditions of the Buyer diverging from these Terms shall not be valid even if the Supplier effected Delivery or rendered Services without reservation.

2.3 If there is an inconsistency between any of the provisions of these Terms and the Order Acknowledgment, the provisions of the Order Acknowledgment shall prevail.

2.4 Any samples, drawings, descriptive matter or advertising we produce and any descriptions or illustrations contained in our catalogues or brochures or on our website are produced for the sole purpose of giving an approximate idea of the Goods and/or Services referred to in them. The Supplier has the right to vary all or any of them at its discretion and they shall not form part of the Contract nor have any contractual force.

3. Placing an Order

3.1 Upon request, we shall issue a quotation to you by e-mail detailing the Goods and/or Services. It is your responsibility to check the quotation is complete and accurate and to contact us if there are any errors in the quotation. Any quotation shall not constitute an offer and shall only be valid for a period of thirty (30) days.

3.2 Acceptance of a quotation by you shall constitute an Order, which is an offer by you to purchase Goods and/or Services specified in the quotation and you are deemed to accept these Terms. The Buyer is responsible for ensuring that the terms of the Order are complete and accurate.

- 3.3 After you place an Order, you will receive an email from us acknowledging that we have received it, but please note this does not mean that your Order has been accepted.
- 3.4 Our acceptance of your Order takes place when we send you an email to accept it, at which point the Contract between you and us will come into existence ("Order Acknowledgement"). If the Order Acknowledgment stipulates that the Goods are purchased on any trade term defined in the Incoterms, the obligations of the seller and the buyer as set out in such trade term shall be incorporated into these Terms and shall apply to the Supplier and the Buyer respectively. In the event of a conflict between such trade term and these Terms, the trade term shall prevail.
- 3.5 Subject to Clause 3.6, no variation of these Terms or the Contract shall be effective unless expressly agreed in the Order Acknowledgment and duly executed by each Party by its authorised representative and the Supplier shall not be deemed to waive any of these Terms by failing to object to provisions contained in any notification or other communication from the Buyer.
- 3.6 The Supplier may vary these Terms, as a result of new applicable Legal Requirements or a change in the Supplier's operational conduct, provided that the Buyer is notified in advance of any such variation.
- 3.7 The Supplier may accept or reject an Order at its discretion. An Order shall not be accepted or deemed accepted, and no binding obligation to supply any Goods or provide any Services shall arise, until the Supplier issues an Order Acknowledgment at which point the Contract shall come into existence and the Order Acknowledgment cannot be cancelled without the prior written consent of the Supplier
- 3.8 If the Supplier is unable to accept an Order, it shall notify the Buyer as soon as reasonably practicable.
- 3.9 Rejection by the Supplier of an Order, including any communication that may accompany such rejection, shall not constitute a counter-offer capable of acceptance by the Buyer.
- 3.10 In terms of the Goods, the quantity, price and description of the Goods (including the code or product number of the Goods, where applicable) shall be set out in the Order Acknowledgment. The Order Acknowledgment shall also set out the estimated date of delivery, the date and number of the relevant Order Acknowledgement, all relevant Buyer and/or Supplier reference numbers, any special storage instructions and estimated date for the installation services to be provided in respect of the Goods, if applicable, and, if the Goods are being delivered by instalments, the quantity of instalment of Goods remaining to be delivered.
- 3.11 In terms of the Services, the price, description, Deliverables and duration of the Services shall be set out in the Order Acknowledgment.
- 3.12 If we are unable to supply you with the Goods and/or Services for any reason, we will inform you of this by email and we will not process your Order. If you have already paid for the Goods and/or Services, we will refund you the full amount including any delivery costs charged as soon as possible.

- 3.13 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, an Order, invoice or other documentation or information we issue to you shall be subject to correction without any liability.
- 3.14 By placing an Order for Goods or Services, you warrant and represent that you have the authority to bind the Buyer on all matters relating to the Goods and Services that form the Contract.

4. Goods

- 4.1 The Goods are described in the quotation and/or Goods Specification.
- 4.2 If Goods are to be manufactured, assembled or configured with other Goods (or goods supplied by you) in accordance with a Goods Specification supplied by you, you shall indemnify us against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by the Supplier arising out of or in connection with any claim made against the Supplier (a) the safety or suitability of the combined goods; or (b) for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with the Supplier's use of the Goods Specification. This Clause 4.3 shall survive termination of this Contract.
- 4.3 Some Goods we supply may only be supplied in minimum units (or multiples) as set out in the Order. Orders for quantities of Goods which do not match the minimum units in which we are able to supply shall be adjusted accordingly.
- 4.4 The Supplier reserves the right to amend the Goods Specification if required by any Legal Requirement and the Supplier shall notify the Buyer in any event.
- 4.5 Neither our employees or agents has the authority to make or give any representation or warranty in relation to the Goods unless this is confirmed in writing. Any advice or recommendations given by any of our employees or agents which is not set out in writing as to the use, applicability, and storage of the Goods which you choose to rely on is at your own risk.
- 4.6 It is your responsibility to make your own independent enquiries as to the suitability of the Goods for any specified use or purpose.

5. Quality and Warranty of Goods

- 5.1 We warrant that at the time of Delivery and for the Warranty Period, the Goods (a) correspond in all material respects with the description and any specification set out in the Order Acknowledgment; (b) be of satisfactory quality (within the meaning of the Sales of Goods Act 1979, as amended) and fit for any purpose held out by the Supplier; and (c) be free from material defects in design, material and workmanship.
- 5.2 We shall ensure that the Goods are properly packed and secured in a manner to enable them to reach their destination in good condition. All packaging materials shall remain with the Buyer.

- 5.3 You shall obtain and maintain all licences, permissions, authorisations, consents and permits required in respect of the Goods in accordance with the Contract (unless the relevant licences, permissions and consents are the responsibility of the Supplier pursuant to applicable Legal Requirements).

6. Delivery

- 6.1 Delivery of the Goods shall be Ex Works Incoterms (with the place of collection by the Buyer being the Delivery Location) unless otherwise set out in the Order Acknowledgment. The Supplier shall arrange for the Goods to be available for collection at the Delivery Location and the Buyer will be responsible for the loading of the Goods and for any further onward transportation (unless agreed otherwise by the Supplier in writing). The Supplier shall be under no obligation to give notice under section 32(3) of the Sale of Goods Act 1979.
- 6.2 The Buyer shall be responsible for ensuring that the Goods comply with all Legal Requirements applicable in the country of destination and, if different, the territory in which the Goods are used.
- 6.3 The quantity of any consignment of Goods as recorded by the Supplier upon despatch from the Supplier shall be conclusive evidence of the quantity Delivered unless the Buyer can produce conclusive evidence to the contrary.
- 6.4 Any dates quoted in the Order Acknowledgement for time of delivery of the Goods are approximate only and we shall not be liable for any delay in Delivery of the Goods howsoever caused and any delay in Delivery shall not entitle the Buyer to refuse to accept or otherwise reject the Goods. Further, no such delay in Delivery or failure to Deliver shall entitle the Buyer to withhold any payment due to the Supplier in respect of the Goods or any goods that the Supplier has supplied or agreed to supply to the Buyer. The Supplier shall notify the Buyer as soon as reasonably practicable on becoming aware that a delay in delivery is likely (and will provide a revised estimate, if possible). Time for delivery shall not be of the essence. The Goods may be delivered by us in advance of the quoted delivery date upon giving you reasonable notice.
- 6.5 We may Deliver the Goods in instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate Contract. References in these Terms to the Order Acknowledgement shall, where applicable, be read as references to instalments and any delay in Delivery or defect in an instalment shall not entitle the Buyer to cancel any other instalment.
- 6.6 The Supplier shall have no liability for any failure to Deliver, or delay in Delivery of, the Goods to the extent that such failure or delay is caused by a Force Majeure Event or by the Buyer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 6.7 Delays in the delivery of the Goods shall not entitle you to:
- (a) refuse to take delivery of that Goods; or
 - (b) terminate the Contract.

6.8 If you fail to take delivery of the Goods or you fail to provide us with adequate delivery instructions, then we may:

- (a) store the Goods until actual delivery and charge you for the reasonable costs (including insurance) of storage; or
- (b) sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to you for the excess over the price under the Contract or charge you for any shortfall below the price under the Contract,

except where the Buyer has failed to collect the Goods by reason of a Force Majeure Event or the Supplier's failure to comply with its obligations under the Contract.

7. Acceptance and Defective Goods

7.1 If the Goods do not comply with Clause 5.1 during the Warranty Period, you must notify us in writing:

- (a) in the case of a defect that is apparent on normal visual inspection, within fourteen (14) days of the date of Delivery; or
- (b) in the case of a latent defect, within forty-eight (48) hours of the latent defect having become apparent.

7.2 If you consider the Goods do not comply with Clause 5.1, then:

- (a) you shall provide us with a reasonable opportunity to examine such Goods and shall (if we request you to do so) return such Goods to us; and
- (b) we shall, at our option, repair or replace the defective Goods, or refund the price of the defective Goods in full.

7.3 Except as provided in this Clause 7, we shall have no further liability to you in respect of the Goods' failure to comply with Clause 5.1.

7.4 If you do not provide notice to us in accordance with Clause 7.1, then you shall be deemed to have accepted the Goods.

7.5 We shall not be liable for the Goods' failure to comply with the warranty set out in Clause 5.1 in any of the following events:

- (a) you make any further use of the Goods after giving notice in accordance with Clause 7.1;
- (b) the defect arises because you failed to follow our oral or written instructions for the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) standard trade practice regarding the same;
- (c) the defect arises as a result of us following any drawing, design or specification supplied by you;

- (d) you alter or repair the Goods without our prior written consent;
- (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
- (f) the Goods differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

7.6 Except as provided in this Clause 7, the Supplier gives no warranties and makes no representations in relation to the Goods, and shall have no liability for their failure to comply with the warranty set out in Clause 5.1. All warranties and conditions, whether express or implied by statute, common law or otherwise (including the conditions implied by sections 13-15 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.

7.7 These Terms shall apply to any repaired or replacement Goods we supply to you in accordance with Clause 7.

7.8 The Supplier's reasonable decision as to whether the Goods comply with the description and any specification set out in the Order Acknowledgment shall be final.

8. Title and Risk

8.1 The risk in the Goods shall pass to you immediately on Delivery.

8.2 Subject to Clause 8.5, title to the Goods shall not pass to you until we receive payment in full (in cash or cleared funds) for all sums due or outstanding (including interest) to the Supplier for (a) the Goods; and (b) any and all other goods that the Supplier has supplied or agreed to supply to the Buyer.

8.3 The Supplier shall be entitled to recover payment for the Goods notwithstanding that ownership has not passed from the Supplier.

8.4 Until title to the Goods has passed to you, you shall:

- (a) hold the Goods as the Supplier's fiduciary agent and bailee; and
- (b) store the Goods separately from all other goods you hold so they remain readily identifiable as our property; and
- (c) not remove, deface, or obscure any identifying mark or packaging on or relating to the Goods; and
- (d) maintain the Goods in satisfactory condition in which they were Delivered and keep them insured against all risks for their full price on our behalf from the date of Delivery with an insurer that is reasonably acceptable to the Supplier. The Buyer shall obtain an endorsement of the Supplier's interest in the Goods on its insurance policy, subject to the insurer being willing to make the endorsement. On request, the Buyer shall allow the Supplier to inspect the Goods and the insurance policy; and

- (e) give the Supplier promptly such information as the Supplier may reasonably require from time to time relating to the Goods and any adverse material changes to its ongoing financial position; and
 - (f) notify the Supplier immediately it (i) becomes subject to any Insolvency Event; or (ii) has concerns regarding its ability to meet its ongoing financial commitments; or (iii) starts to consider any form of corporate restructure; or (iv) becomes aware that any event has occurred, or circumstances exist, which may entitle the Supplier to terminate the Contract.
- 8.5 Notwithstanding Clause 8.4 and subject to Clause 8.6, you may resell or use the Goods in the ordinary course of your business (but not otherwise) before we receive payment for the Goods. However, if you resell the Goods before that time:
 - (a) you do so as a fiduciary and bailee of the Supplier;
 - (b) title to the Goods shall pass from us to you immediately before the time at which the resale by you occurs; and
 - (c) you shall account to us for the proceeds of sale or otherwise of the Goods, whether tangible or intangible, including insurance proceeds, and shall keep all such proceeds separate from any money or property you own and third parties and, in the case of tangible proceeds, properly stored, protected and insured.
- 8.6 The Buyer's right to possession of any Goods for which payment has not been made to the Supplier and its rights under Clause 8.5 to use them in the ordinary course of its business shall terminate immediately:
 - (a) the Buyer fails to make any payment to the Supplier on the due date; or
 - (b) on receipt by the Buyer of a termination notice; or
 - (c) the Buyer undergoes an Insolvency Event; or
 - (d) on notice that the Supplier has reasonable doubts as to the solvency of the Buyer.
- 8.7 Subject to Clause 8.6 until such time as title in the Goods passes to you (and provided the Goods are still in existence and have not been resold), we shall be entitled at any time to require you to Deliver up the Goods to us and, if you fail to do so promptly, we shall be entitled (either directly or through our representatives and/or agents) to enter upon any vehicles or premises of the Buyer or any third party where the Goods are stored and repossess the Goods (and the Buyer hereby grants the Supplier, its representatives and agents an irrevocable licence to do so).
- 8.8 The Supplier has the right to resell any Goods repossessed under Clause 8.7. If the proceeds of resale exceed the amount of the Buyer's indebtedness to the Supplier, however arising, the Supplier shall account to the Buyer for such surplus.

9. Product Recall

- 9.1 The Supplier may issue a notice to recall or withdraw some or all of the Goods from the market ("Recall Notice") if: (i) the supply or use of the relevant Goods infringes, or may infringe, a third party's intellectual property rights; (ii) the relevant Good is, or may be, unsafe; (iii) the relevant Good is, may be, or may become illegal or non-compliant with any applicable Legal Requirement; (iv) a defect in the relevant Good may cause harm to the Supplier's reputation or brand as determined by the Supplier; or (v) for any other reasonable ground.
- 9.2 The Buyer shall: (i) comply with any Recall Notice; and (ii) give such assistance as the Supplier reasonably requires to recall or withdraw the relevant Goods and comply with the Supplier's instructions about the process of implementing that recall or withdrawal.

10. Supply of Services

- 10.1 We shall supply the Services to you:
- (a) in the Service Period;
 - (b) with reasonable skill and care;
 - (c) in accordance with the Order Acknowledgment in all material respects; and
 - (d) in accordance with all Legal Requirements.
- 10.2 We shall use all reasonable endeavours to meet any performance dates for the Services and the Deliverables specified in the Order Acknowledgment, but any such dates shall be estimates only and may need to be extended depending on the Deliverables, in which the Supplier shall notify the Buyer of the revised dates and time shall not be of the essence for the performance of the Services.
- 10.3 We reserve the right to amend the Services if necessary to comply with any Legal Requirement, or if the amendment will not materially affect the nature or quality of the Services, and we shall notify you in any event.
- 10.4 You shall:
- (a) ensure that the terms of the Order Acknowledgment are complete and accurate in respect of the description of the Services;
 - (b) co-operate with us in all matters relating to the Services;
 - (c) provide us, our employees, agents, and sub-contractors with access to the premises or facilities as reasonably required by us to provide the Services;
 - (d) provide us with such information and materials as we may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
 - (e) where applicable, prepare the premises or facilities for the supply of the Services;

- (f) obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;
- (g) keep all materials, equipment, documents and other property of the Supplier ("Supplier Materials") at the Buyer's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation;
- (h) comply with all Legal Requirements; and
- (i) comply with any additional obligations as set out in the Order Acknowledgement.

10.5 If our performance of our obligations is prevented or delayed by a Default:

- (a) without limiting or affecting any other right or remedy we may have, we shall have the right to suspend performance of the Services until you remedy the Default, and we may rely on the Default to relieve us from the performance of any of our obligations insofar as the extent of the Default prevents or delays our performance of any of our obligations;
- (b) we shall not be liable for any costs or losses sustained or incurred by you arising directly or indirectly from our failure or delay to perform any of our obligations due to the Default;

10.6 you shall reimburse us on written demand for any costs or losses we sustain or incur arising directly or indirectly from the Default. If the Services do not conform with Clause 10.1, we shall, at our own expense, use reasonable endeavours to correct any such non-conformance promptly, or provide you with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes your sole and exclusive remedy for any breach of Clause 10.1.

11. Charges and Payment

11.1 Subject to Clause 11.3, the charges for the Goods shall be the price and/or charges set out in the Order Acknowledgment and shall be:

- (a) inclusive of delivery and packaging; and
- (b) exclusive of any applicable value added tax, other sales tax or import duty which you may be additionally liable to pay and will be invoiced to you separately.

11.2 The charges for the Services shall as set out in the Order Acknowledgement along with any rebates that you are entitled to claim. Any rebates must be claimed within twelve (12) months of the date of the Order.

11.3 We reserve the right, at any time before delivery and performance, to increase the price of the Goods and/or Services to reflect any increase in the cost to us which is due to any factor beyond our control (such as, without limitation, any foreign exchange fluctuation currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Goods

which you request, or any delay caused by any instructions given by you or your failure to provide adequate information or instructions to enable us to provide the Goods and/or Services.

11.4 We shall invoice you:

- (a) in respect of Goods, on or at any time after completion of Delivery.
- (b) in respect of Services, monthly in arrears.

11.5 Unless we have agreed separate payment terms with you in the Order Acknowledgment or otherwise in writing, you shall pay each invoice in the currency included in the Order Acknowledgment:

- (a) within thirty (30) days of the end date of the month of the date of the invoice;
- (b) full and in cleared funds to a bank account nominated in writing by us from time to time.

11.6 If you fail to make a payment due under the Contract by the due date, then, without limiting our remedies under Clause 15, we shall be entitled to charge interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 11.6 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when the base rate is below 0%.. Any failure to make payment will also have a negative impact on any rebates you are entitled to.

11.7 The price of the Goods and/or Services is exclusive of VAT, which the Buyer shall additionally be liable to pay to the Supplier at the prevailing rate, on receipt of a valid VAT invoice.

11.8 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

11.9 The Supplier may attribute any monies received by it from the Buyer to any debt owed by the Buyer to the Supplier whether under these Terms or otherwise, regardless of what the Buyer purports to designate the payment to be on account of. Further, the Supplier shall be entitled but not obliged at any time or times to set-off any liability of the Buyer to it against any liability it has to the Buyer (in either case however arising and whether any such liability is present or future, liquidated or unliquidated, and irrespective of the currency of its denomination) and may for such purpose convert either liability at a market rate of exchange for the purpose of set off. If any liability is unliquidated or unascertained, the Supplier may set off an amount estimated by it in good faith to be the amount of that liability.

12. Insurance

12.1 The Supplier shall maintain adequate insurance and such insurance policies will be available upon request.

12.2 The Buyer is responsible for making its own arrangements for the insurance of any excess liability. The Buyer shall also maintain in place contracts of insurance with reputable insurers to cover its obligations under the Contract.

- 12.3 Each Party shall provide the other Party a copy of the relevant insurance policies and proof of payment of the current premiums on written request

13. Compliance With Laws, Policies and Pressure Equipment Directive

- 13.1 The Supplier is the original equipment manufacturer of the Goods and is the owner of the Intellectual Property Rights vested in the technical documentation relating to the Goods. The Buyer shall comply with all applicable Legal Requirements, and shall maintain such licences, authorisations and all other approvals, permits and authorities as are required from time to time to perform its obligations under or in connection with the Contract and in relation to the use of the Goods.
- 13.2 The Goods supplied under this Contract may fall within the scope of the EU Pressure Equipment Directive (Directive 2014/68/EU) ("PED") and/or the UK Pressure Equipment (Safety) Regulations 2016 when they are installed or incorporated into a larger system or assembly.
- 13.3 The Buyer is solely responsible for ensuring that any such system or assembly into which the Goods are integrated complies with all applicable requirements of the PED and equivalent UK regulations, including carrying out any necessary conformity assessments and affixing the required CE or UKCA marking.
- 13.4 Unless otherwise expressly agreed in writing, the Supplier has no obligation to obtain or ensure PED conformity assessment or certification of the Goods in the context of their integration into the Buyer's final system.
- 13.5 At the Buyer's written request, the Supplier will provide such technical information or documentation about the Goods as is reasonably available and necessary to support the Buyer's PED conformity assessment, provided that the Parties have agreed in advance upon the scope of such support, any confidentiality protections, and reimbursement of the Supplier's reasonable costs for providing this assistance.
- 13.6 In the event that the Buyer markets and sells the Goods under its own brand and/or trading name, for the purposes of product safety legislation including (EU CE-marking directives/regulations and UK product regulations), the Buyer will be considered the "manufacturer" of the Goods. The Buyer shall not represent the Goods as PED-certified or CE/UKCA-marked unless and until all applicable conformity assessment procedures have been successfully completed by the Buyer and the Buyer shall compile and maintain a technical file or technical documentation for the Goods and shall be responsible for making the Goods available to the Relevant Authority, upon request.
- 13.7 The Supplier disclaims any liability for non-compliance with the PED or related regulations to the extent such non-compliance arises from:
- (a) the combination, installation, or use of the Goods by the Buyer in a manner that requires compliance with the PED; or
 - (b) any action or inaction of the Buyer in performing the required conformity assessment.
- 13.8 In no event shall the Supplier be responsible for the Buyer's failure to comply with the PED or other regulatory requirements applying to the Buyer's final Goods.

14. Limitation of Liability

- 14.1 References to liability in this Clause 14 include every kind of liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 14.2 Nothing in the Contract limits any liability for:
- (a) death or personal injury caused by negligence, or the negligence of its representatives, agents or subcontractors (as applicable);
 - (b) the indemnity given by the Buyer under Clause 4.3;
 - (c) fraud or fraudulent misrepresentation or wilful default;
 - (d) breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);
 - (e) defective products under the Consumer Protection Act 1987; and
- any other matter in respect of which it would be unlawful to exclude or restrict liability.
- 14.3 Nothing in this Clause 14 shall limit the Buyers's payment obligations under the Contract.
- 14.4 We shall not in any circumstances be liable, whether in tort (including negligence or breach of statutory duty however arising), contract, misrepresentation (whether innocent or negligent) or other for:
- (a) any damage caused by errors or omissions in any information or instructions provided by us or our agents to you in connection with the Goods or Services;
 - (b) loss of profits;
 - (c) loss of sales or business;
 - (d) depletion of goodwill or similar losses;
 - (e) loss of anticipated savings;
 - (f) loss of goods;
 - (g) any loss or liability (whether direct or indirect) under or in relation to any other contract;
 - (h) wasted expenditure;
 - (i) any special, indirect or consequential loss, costs, damages, charges, or expenses.
- 14.5 Our total aggregate liability to you under the Contract:
- (a) for Goods, will be limited to the price payable in respect of the Goods subject to the claim;

- (b) for Services, shall be limited to the charges paid for the Services that is subject to the Claim.
- 14.6 The Buyer acknowledges and agrees that the allocation of risk contained in these Terms is reflected in the price of the Goods and/or Services payable by the Buyer under the Contract and is reasonable in all the circumstances, having regard to all relevant factors including the ability of the Supplier to rely on its own insurance arrangements and other resources to bear or recover any loss or damage incurred for which Supplier is not liable.
- 14.7 Where the Goods or any part of them are supplied, designed or manufactured by a third party on the Supplier's behalf, the Supplier's obligations to the Buyer shall not exceed those owed to the Supplier by the relevant third party.
- 14.8 We have given commitments as to compliance of the Goods and Services with relevant specifications in Clauses 5.1 and 10.1. In view of these commitments, the terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 14.9 This clause shall survive termination of the Contract.
- 15. Suspension and Termination of the Contract and Consequence of Termination**
- 15.1 Unless terminated earlier in accordance with the termination provisions, the Contract will continue in full force and effect until the latest of:
 - (a) the conclusion of the provisions of the Goods and/or Services in accordance with any Order Acknowledgment; or
 - (b) the conclusion of payment of all sums due under the Contract.
- 15.2 We may terminate the Contract with immediate effect by giving written notice to you if:
 - (a) you commit a material breach of any term of the Contract (and if such a breach is remediable) fail to remedy that breach within fourteen (14) days of you being notified in writing to do so;
 - (b) you fail to pay any amount due under the Contract within five (5) Business Days of the due date for payment;
 - (c) an Insolvency Event occurs; or
 - (d) your financial position deteriorates to such an extent that in our reasonable opinion your capability to adequately fulfil your obligations under the Contract has been placed in jeopardy; or
 - (e) any consent, licence or authorisation held by the Buyer is revoked or modified such that the Buyer is no longer able to comply with its obligations under the Contract or receive any benefit to which it is entitled; or
 - (f) the Buyer challenges or disputes the validity or ownership of any of the Supplier's Intellectual Property Rights; or

- (g) there is a change of Control of the Buyer.
- 15.3 For the purposes of Clause 15.2, a breach shall be considered capable of remedy if the Buyer can comply with the provision in question in all respects other than as to the time of performance, provided that time of performance is not of the essence.
- 15.4 The Supplier may, immediately and without notice, stop delivery of the Goods and/or suspend the supply of Services under the Contract at any time on or after:
 - (a) the Supplier reasonably believes that the Buyer is about to undergo an Insolvency Event or cease to carry on all or a substantial part of its business; or
 - (b) if the Buyer fails to pay any amounts due under the Contract on the due date for payment.
- 15.5 The termination or expiry of the Contract shall be without prejudice to any rights or liabilities of either Party accrued at the date of termination, or which may accrue after termination in respect of any act or omission prior to termination (including any act or omission giving rise to termination).
- 15.6 On termination or expiry of the Contract:
 - (a) you shall immediately pay all of our outstanding invoices and interest, and in respect of Goods and/or Services supplied but for which no invoice has been submitted, we shall submit an invoice, which shall be payable by you immediately on receipt; and
 - (b) all licences and rights granted to the Buyer under the Contract will automatically terminate and the Buyer's right to possession of any Goods for which payment has not been made to the Supplier shall terminate immediately.
- 15.7 On termination or expiry of the Contract, any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.

16. Intellectual Property Rights

- 16.1 The Buyer acknowledges that all Intellectual Property Rights in connection with Goods and/or Services and the goodwill connected with them (other than Intellectual Property Rights in any materials you provide to us) shall be owned solely by us and nothing in the Contract is intended to pass ownership of the Supplier's Intellectual Property Rights to the Buyer.
- 16.2 The Supplier gives no warranty, either express or implied, with respect to the validity of the Supplier's Intellectual Property Rights or that the Supplier's Intellectual Property Rights will not infringe the rights of any third party
- 16.3 We grant you a fully-paid up, worldwide, non-exclusive, royalty-free licence to copy the Deliverables (excluding any materials provided by the Buyer and incorporated in the Deliverables) we produce for you as part of the Services for the purpose of receiving and using the Services in your business and operating the Goods.
- 16.4 You shall not sub-licence, assign or otherwise transfer the rights granted in Clause 16.3.

- 16.5 You grant us a fully paid-up, non-exclusive, royalty-free non-transferable licence to copy and modify any materials you provide to us for the purpose of providing you the Services.
- 16.6 The Buyer acknowledges and accepts that, otherwise than in accordance with the terms of the Contract, it shall not without the Supplier's prior written consent:
- 16.7 alter or make any addition to the labelling or packaging of the Goods displaying the Supplier's trade marks (the "Marks");
- (a) make any addition or modifications to the Goods; or
 - (b) alter, deface or remove any reference to the Marks, any reference to Supplier or any other name attached or affixed to the Goods or labelling; or
 - (c) use in relation to the Goods any marks other than the Marks.
- 16.8 The Buyer will under no circumstances seek, apply for, obtain or try to obtain registration of any trade or service mark or trade name the same or similar to the Marks or any part of them or colourable imitations of them or of any other trade mark or trade name which the Supplier or an Affiliate of the Supplier owns or claims rights in anywhere in the world.
- 16.9 The Buyer undertakes not to do or omit to do or authorise any third party to do or omit to do anything that:
- (a) could prejudice or damage Supplier's goodwill in the Marks, the Goods or Supplier's reputation; or
 - (b) is likely to bring the Marks or the Goods into disrepute or affect the validity of the Marks or the validity of any other of the Supplier's Intellectual Property Rights.
- 16.10 The Buyer shall promptly and fully notify the Supplier if it becomes aware of any actual, threatened or suspected infringement in the country of destination of the Marks or any other of the Supplier's Intellectual Property Rights.
- 16.11 This clause shall survive termination of the Contract.

17. Data Protection

Any personal data you provide under this Contract shall be processed in accordance with our privacy policy which is available here: [\[INSERT LINK\]](#) which may be amended by us from time to time.

18. Force Majeure

- 18.1 Neither Party shall liable be to the other Party for any delay or failure in the performance of any of its obligations under the Contract, to the extent that its performance is prevented, hindered or delayed by a Force Majeure Event, provided that it gives notice to the other Party as soon as reasonably practicable of the Force Majeure Event and the effect on its ability to perform its obligations under the Contract.

18.2 Where Clause 18.1 applies, the time for performance of the obligations affected shall be extended for as long as is made necessary by the Force Majeure Event. The time for performance of the corresponding obligations of the other Party shall be extended to the same extent.

18.3 If a Force Majeure Event continues for a period in excess of thirty (30) days, either Party shall have the right (without prejudice to Clause 15) to terminate the Contract immediately on giving notice to the other Party in accordance with Clause 18.1.

19. Confidentiality

19.1 Each Party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, assets, affairs, customers, clients or suppliers of the other Party or of any member of the group of companies to which the other Party belongs, except as permitted by Clause 19.2.

19.2 Each Party may disclose the other Party's confidential information:

- (a) to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of exercising the Party's rights or carrying out its obligations under or in connection with the Contract. Each Party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other Party's confidential information comply with Clause 19; and
- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

19.3 Neither Party may use the other Party's confidential information for any purpose other than to exercise

20. General

20.1 Notices

- (a) Except as otherwise specifically provided, notice under or other communication pursuant to these Terms must be in writing and will only be effective if:
 - (i) sent by hand or courier of international repute, to the address (and marked for the attention) of the relevant recipient set out in the Order Acknowledgment; or
 - (ii) sent by email to the email address of the relevant recipient set out in the Order Acknowledgment; or
 - (iii) sent as described in paragraphs (i) or (ii) above or to such other address as may be notified from time to time (in accordance with this clause), any such change taking effect on the later of the date, if any, specified in such notice as its effective date or the date five (5) Business Days after receipt of such notice.

- (b) Subject to Clause 20.1(c), a notice under or other communication pursuant to the Contract shall be treated for the purposes of the Contract as having been received by the recipient:
 - (i) if sent by hand or courier of international repute, when left at the recipient's address or an attempt has been made to leave the notice at the recipient's address but delivery has been refused by the recipient or one of their representatives; and
 - (ii) if sent by email, one hour after it was sent provided the sender proves that it was sent to the correct address and no notice of delivery failure or bounce back has been received.
- (c) Any notice under or other communication pursuant to the Contract which is received on a day which is not a Local Business Day, or after 5pm (local time at the place of receipt) on any day, will be treated as having been given at 9am on the next Local Business Day (and for this purpose "Local Business Day" means a day (other than a Saturday or Sunday) on which banks are open for non-automated general business at the place of receipt).
- (d) This clause does not apply to the service of any document in any legal action or proceedings or, where applicable, any arbitration or other method of dispute resolution arising out of or in connection with the Contract.

20.2 Assignment and Other Dealings.

- (a) We may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of your rights and obligations under the Contract.
- (b) You shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without our prior written consent.

20.3 Variation

Except as set out in these Terms, no variation of the Contract shall be effective unless it is agreed in writing and signed by the parties (or their authorised representatives).

20.4 Entire Agreement

- (a) The Contract constitutes the entire agreement between the Parties relating to its subject matter and supersedes any and all previous agreements (whether written or oral) between the Parties relating to that subject matter.
- (b) Each Party acknowledges that in entering into the Contract it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

- (c) Nothing in this Clause 20.4, however, shall limit or reduce any liability of any person except to the extent permitted by law.

20.5 No Partnership or Agency

Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the Parties, constitute either Party, the agent of the other, or authorise either Party to make or enter into any commitments for or on behalf of the other Party.

20.6 Waiver and Remedies.

- (a) Subject as otherwise expressly provided in the Contract, the rights and remedies of the Parties under the Contract are cumulative and not exclusive of any rights and remedies provided by law, and all such rights and remedies may be enforced separately or concurrently with any other right or remedy.
- (b) No failure to exercise or delay in exercising any right or remedy shall constitute a waiver of that right or remedy. No single or partial exercise of any right or remedy, and no waiver of any right or remedy, shall prevent or restrict the further exercise of that or any other right or remedy. Any waiver shall apply only in favour of the person to whom it is expressly addressed and for the specific circumstances for which it is given. Any waiver of any right or remedy shall be effective only if it is made in writing, expressly states that it is a waiver of the relevant right or remedy and is duly executed by or on behalf of the relevant Party by an authorised representative.

20.7 Severance

If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract. If any provision or part provision of the Contract is deemed deleted, the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the commercial result of the original provision.

20.8 Further Assurance

Each Party shall at its own expense (and shall use all reasonable endeavours to procure that any necessary third party shall) promptly take such action, and execute and deliver such documents, as the other Party may reasonably require to give full effect Contract.

20.9 Third Party Rights

- (a) Save as expressly provided in Clause 20.9.(b) below a person who is not a Party has no right under the Third Parties Act to enforce or avail itself of any term of the Contract.
- (b) Any Affiliate of the Supplier shall be entitled under Third Parties Rights Act to enforce and/or avail itself of any of the provisions of the Contract. The consent of any such Affiliate is not required in order to rescind or vary the Contract or any provision of it.
- (c) No Affiliate of the Supplier may (i) assign, transfer, charge, hold on trust or deal in any other manner with its right to enforce any term of the Contract under the Third Parties Act, or (ii) bring proceedings to enforce any term the Contract under the Third Parties

Act without the prior consent of the Supplier and without having given notice to both Parties that it agrees to be bound by Clause 20.10.

20.10 Governing Law and Jurisdiction

- (a) The Contract and any non-contractual obligation arising out of or in connection with it are governed by the law of England and Wales.
- (b) Each Party irrevocably agrees that the courts of England and Wales have exclusive jurisdiction to settle any dispute arising out of or in connection with the Contract or any non-contractual obligation arising out of or in connection with it.
- (c) Nothing in this clause shall limit the right of either Party to seek injunctive or other interlocutory relief in any jurisdiction at any time.