

TERMS AND CONDITIONS

THE BUYER'S ATTENTION IS DRAWN TO THE PROVISIONS OF CONDITION 13 WHICH SEEK TO LIMIT THE SELLER'S LIABILITY

1 INTERPRETATION

1.1 In these Conditions the following words have the following meanings:

"Buyer" means the person(s), firm or company who purchases the Products and/or Services from the Seller

"Conditions" means the terms and conditions set out in this document

"Contract" means any contract between the Seller and the Buyer for the sale and purchase of the Products and/ or the provision of Services

"Delivery Point" means the place where delivery of the Products is to take place under Condition 4

"Products" means goods to be supplied to the Buyer by the Seller

"Recommended Service Life" means the time duration as listed on the acknowledgement of order, packaging of the Products or as notified by the Seller to the Buyer

"Seller" means Filtration Control Limited

"Services" means the services to be supplied by the Seller to the Buyer

"Specification" means the description of the Products as provided by the Buyer or by the Seller as a functional design specification

1.2 In these Conditions:

1.2.1 references to any statute or statutory provision shall, unless the context otherwise requires, be construed as a reference to that statute or statutory provision as from time to time amended, consolidated, modified, extended, re-enacted or replaced;

1.2.2 references to the masculine include the feminine and the neuter and to the singular include the plural and vice versa as the context admits or requires; and

1.2.3 headings will not affect the construction of these Conditions.

2 APPLICATION OF TERMS

2.1 Subject to any variation under Condition 2.3, the Contract will be on these Conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Buyer purports to apply under any purchase order, confirmation of order, specification or other document).

2.2 No terms or conditions endorsed upon, delivered with or contained in the Buyer's purchase order, confirmation of order, specification or other document will form part of the Contract simply as a

result of such document being referred to in the Contract. The parties acknowledge to each other that they have not relied upon any statement or representation by the other when entering into the Contract unless expressly set out in these Conditions or incorporated pursuant to Condition 2.3.

- 2.3 Any variation to these Conditions and any representations about the Products shall have no effect unless expressly agreed in writing and signed by a Director or authorised representative of the Seller.
- 2.4 Each order for Products and/or Services by the Buyer to the Seller shall be deemed to be an offer by the Buyer to purchase Products and/or Services subject to these Conditions.
- 2.5 No order placed by the Buyer shall be deemed to be accepted by the Seller until a written acknowledgement of order is issued by the Seller and the Seller confirms to the Buyer the date of delivery of the Products or performance of the Services to the Buyer or (if earlier) the Seller delivers the Products to the Buyer or performs the Services.
- 2.6 The Buyer must ensure that the terms of its order and any applicable specification are complete and accurate.
- 2.7 Any quotation is given on the basis that no contract will come into existence until the Seller despatches an acknowledgement of order to the Buyer. Any quotation is valid for a period of 30 days only from its date, provided that the Seller has not previously withdrawn it.
- 2.8 Each purchase order issued by the Buyer to the Seller for Products and/or Services and accepted by the Seller shall constitute a separate contract.

3 **DESCRIPTION**

- 3.1 The description of the Products and any Services shall be as set out in the Seller's quotation, if any.
- 3.2 All drawings, descriptive matter, specifications and advertising issued by the Seller and any descriptions or illustrations contained on the Seller's website or in the Seller's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Products and Services described in them. They will not form part of this Contract.

4 **DELIVERY**

- 4.1 Unless otherwise agreed in writing by the Seller, delivery of the Products shall take place when the Products arrive at the Delivery Point. Carriage will be arranged by the Seller at the request and expense of the Buyer.
- 4.2 If the Buyer elects to collect Products from the Seller then delivery shall take place within 7 days of the Seller giving the Buyer notice that the Products are ready and available for collection at the Delivery Point.
- 4.3 The Buyer shall not refuse to take delivery of the Products and will take delivery of the Products within 7 days of the Seller giving it notice that the Products are ready for delivery.
- 4.4 The Buyer warrants to the Seller that in cases where the Seller is to arrange carriage for the Products and delivery is to be made by road transport by the Seller or its carrier sufficient and

suitable access to the said destination, including a road surface capable of withstanding the weight and size of transport and loads is available. In the event of additional costs being incurred by the Seller directly or indirectly through the carrier the full amount thereof will be payable by the Buyer on demand.

- 4.5 If for any reason the Buyer will not accept delivery of any of the Products, or the Seller is unable to deliver the Products on time because the Buyer has not provided appropriate instructions, documents, licences or authorisations:
- 4.5.1 risk in the Products will pass to the Buyer (including for loss or damage caused by the Seller's negligence);
 - 4.5.2 the Products will be deemed to have been delivered; and
 - 4.5.3 the Seller may store the Products until collected by the Buyer and the Buyer will be liable for all related costs and expenses (including, without limitation, storage and insurance).
- 4.6 The Buyer will provide at its expense at the Delivery Point adequate and appropriate equipment and manual labour for unloading the Products.
- 4.7 Purchasers outside the UK are responsible at their own expense for obtaining any import licence in the country for which the Products are destined and the payment of any duties or taxes applicable.
- 4.8 The Seller may deliver the Products by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of these Conditions.

5 **NON-DELIVERY OR LATE DELIVERY**

- 5.1 Time of delivery shall not be of the essence and any delivery date is an estimate only. The Seller acknowledges that time of delivery may be important to the Buyer, and shall use all reasonable endeavours to avoid late deliveries.
- 5.2 The Seller shall not be liable for any non-delivery of Products (even if caused by the Seller's negligence) unless written notice is given to the Seller within 5 days of the date when the Products would in the ordinary course of events have been received.
- 5.3 Any liability of the Seller for non-delivery of the Products shall be limited to, at its discretion, replacing the Products within a reasonable time, issuing a credit note at the pro rata Contract rate against any invoice raised for such Products or a refund of the purchase price paid.

6 **RISK AND TITLE**

- 6.1 The Products are at the risk of the Buyer from the time of delivery.
- 6.2 Ownership of the Products shall not pass to the Buyer until the Seller has received in full (in cash or cleared funds) all sums due to it in respect of:
- 6.2.1 the Products and any Services; and
 - 6.2.2 all other sums which are or which become due to the Seller from the Buyer on any account.

- 6.3 Until ownership of the Products has passed to the Buyer, the Buyer must:
- 6.3.1 hold the Products on a fiduciary basis as the Seller's bailee;
 - 6.3.2 store the Products (at no cost to the Seller) separately from all other products of the Buyer or any third party in such a way that they remain readily identifiable as the Seller's property;
 - 6.3.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the Products;
 - 6.3.4 maintain the Products in satisfactory condition and keep them insured on the Seller's behalf for their full price against all risks to the reasonable satisfaction of the Seller. On request the Buyer shall produce the policy of insurance to the Seller; and
 - 6.3.5 hold the proceeds of the insurance referred to in Condition 6.3.4 on trust for the Seller and not mix them with any other money, nor pay the proceeds into an overdrawn bank account.
- 6.4 The Buyer may resell the Products before ownership has passed to it solely on the following Conditions:
- 6.4.1 any sale shall be effected in the ordinary course of the Buyer's business at full market value; and
 - 6.4.2 any such sale shall be a sale of the Seller's property on the Buyer's own behalf and the Buyer shall deal as principal when making such a sale.
- 6.5 The Buyer's right to possession of the Products shall terminate immediately if:
- 6.5.1 the Buyer (being an individual) has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or a resolution is passed or a petition presented to any court for the winding up of the Buyer or for the granting of an administration order in respect of the Buyer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer in any jurisdiction; or
 - 6.5.2 the Buyer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe/perform any of his/its obligations under the Contract or any other contract between the Seller and the Buyer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Buyer ceases to trade; or
 - 6.5.3 the Buyer encumbers or in any way charges any of the Products; or

6.5.4 anything analogous to the foregoing occurs in any other jurisdiction.

6.6 The Seller shall be entitled to recover payment for the Products notwithstanding that ownership of any of the Products has not passed from the Seller.

6.7 The Buyer grants the Seller, its agents and employees an irrevocable licence at any time to enter any premises where the Products are or may be stored in order to inspect them, or, where the Buyer's right to possession has terminated, to recover them.

7 **PRICE**

7.1 Unless otherwise agreed by the Seller in writing the price for the Products shall be the price set out in the Seller's quotation together with the cost of any additional items provided by the Seller in the course of providing the Services not otherwise included in the quotation.

7.2 The price for the Products and any Services shall be exclusive of any value added tax and all costs or charges in relation to loading, unloading, carriage and insurance all of which amounts the Buyer will pay in addition when it is due to pay for the Products and Services.

8 **PAYMENT**

8.1 The Buyer shall pay for the Products within 30 days of the date of the Seller's invoice.

8.2 Time for payment shall be of the essence.

8.3 All payments will be in pounds sterling unless the Seller states otherwise.

8.4 No payment shall be deemed to have been received until the Seller has received cleared funds.

8.5 The Buyer shall make all payments due under the Contract without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by the Seller to the Buyer.

8.6 The Seller shall have the right to allocate any payments made by the Buyer to any sums due from the Buyer under previous Contracts.

8.7 If the Buyer fails to pay the Seller any sum due pursuant to the Contract the Buyer will be liable to pay interest to the Seller on such sum from the due date for payment in accordance with the Late Payments of Commercial Debts (Interest) Act 1998.

8.8 Without prejudice to any other right or remedy the Seller may have, if the Buyer fails to pay the Seller any sum due pursuant to the Contract on the due date, the Seller shall have the right to suspend the supply of Products or performance of Services until payment has been made in full.

9 **SPECIFICATION BY THE BUYER**

9.1 The Buyer shall indemnify and keep indemnified the Seller against all liabilities, claims, costs, damages and expenses (including but not limited to legal costs and expenses) incurred by the Seller as a result of the Seller supplying Products and/or Services to the Buyer to the extent that such liabilities, claims, costs, damages and expenses arise as a result of the Seller supplying Products and/or Services in accordance with any specification supplied to the Seller by the Buyer.

10 **VARIATION OF DESIGN**

10.1 The Seller hereby reserves the right at any time to make such alteration to the Specification, design or construction of the Products as the Seller shall in its sole discretion deem necessary provided always that the Products shall comply with the warranties set out in Condition 12 below.

11 **INTELLECTUAL PROPERTY**

11.1 All intellectual property rights in the Products shall remain the exclusive property of the Seller, unless otherwise agreed in writing by the Seller. Subject to the Buyer paying all monies due to the Seller under the terms of the Contract and any other contract between the Seller and the Buyer, the Seller hereby grants to the Buyer a non-exclusive, royalty free, non-transferable licence of such intellectual property rights for the purpose of utilising the Products in its normal course of business.

11.2 The Buyer shall have no claim to intellectual property rights created by the Seller during the performance of Services by the Seller to the Buyer.

12 **QUALITY**

12.1 Subject to Condition 12.2, the Seller warrants that (subject to the other provisions of these Conditions) upon delivery and for a period of the Recommended Service Life, the Products will:

12.1.1 be safe and fit for the use for which such Products are manufactured;

12.1.2 be free from defects in materials and workmanship, and conform in all material respects to the approved samples and all other applicable specifications; and

12.1.3 be of satisfactory quality within the meaning of the Sale of Goods Act 1979 (as amended).

12.2 The warranty applicable to third party products supplied by the Seller shall be limited to the warranty offered by the manufacturer of such product.

12.3 The Seller warrants that (subject to the other provisions of these Conditions) the Services:

12.3.1 will be provided with reasonable skill and care; and

12.3.2 be free from defects in materials and workmanship, and conform in all material respects to all applicable specifications

12.4 The Seller shall not be liable for a breach of any of the warranties in Conditions 12.1 and 12.3 unless:

12.4.1 the Buyer gives written notice of the defect to the Seller, and (if the defect is as a result of damage arising during transit at the risk of the Seller) to the carrier, within 14 days of the time when the Buyer discovers or ought to have discovered the defect; and

12.4.2 the Seller is given a reasonable opportunity after receiving the notice of examining such Products or the result of the provision of Services and the Buyer (if asked to do so by the Seller) returns such Products to the Seller's place of business at the Seller's cost for the examination to take place there.

- 12.5 If any Product does not comply with the warranties set out in Condition 12.1 ("Defective Product") the Seller shall at its cost and expense and discretion either:
- 12.5.1 repair or replace the Defective Product; or
 - 12.5.2 give a full credit or refund for the price paid by the Buyer for such Defective Product.
- 12.6 If any Services do not comply with the warranty set out in Condition 12.2 ("Defective Services") the Seller shall at its cost and expense and discretion either:
- 12.6.1 provide additional or replacement Services to replace or to remedy the Defective Services; or
 - 12.6.2 give a full refund for the price paid by the buyer for such Defective Services.
- 12.7 Further to Condition 12.5 and Condition 12.6 if there is an engine failure directly attributable to the Defective Product or Defective Services the Seller will restore the engine to the condition existing before the failure. The restoration condition will be decided by the Seller at all times acting reasonably.
- 12.8 The Seller shall not be liable for a breach of any of the warranties in Conditions 12.1 or 12.3:
- 12.8.1 to the extent that it is attributable to further use of such Products or the result of the Services after giving notice pursuant to Condition 12.4.1; or
 - 12.8.2 if the defect arises because the Buyer failed to follow the Seller's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Products or (in the absence of such instructions) good trade practice;
 - 12.8.3 that are attributable to fair wear and tear, abuse, improper use or use in an environment or for a purpose for which the Product was not designed or intended by the Seller;
 - 12.8.4 if the Buyer alters or repairs such Products without the written consent of the Seller; or
 - 12.8.5 if the Buyer performs further services in relation to the Products or the Services without the written consent of the Seller.
- 12.9 If the Seller complies with Condition 12.5 or Condition 12.6 it shall have no further liability for a breach of any of the warranties in Conditions 12.1 or 12.3 in respect of such Products or the Services.
- 12.10 Any Products or parts replaced will belong to the Seller and any repaired or replacement Products will be guaranteed on these terms for the unexpired portion of the Recommended Service Life.

13 **LIMITATION OF LIABILITY**

- 13.1 Subject to the provisions of these Conditions, the following provisions set out the entire financial liability of the Seller (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of:
- 13.1.1 any breach of these Conditions; and

- 13.1.2 any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.
- 13.2 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979 (as amended) or a breach of the clause as to title or the warranty as to quiet possession implied by section 2 of the Supply of Goods and Services Act 1982) are, to the fullest extent permitted by law, excluded from the Contract.
- 13.3 Nothing in these Conditions excludes or limits the liability of the Seller for death or personal injury caused by the Seller's negligence or fraudulent misrepresentation.
- 13.4 Subject to Condition 13.3 the Seller shall not be liable to the Buyer for:
- 13.4.1 any indirect or consequential, special or punitive loss, damage, costs or expenses;
 - 13.4.2 loss of profit;
 - 13.4.3 loss of business;
 - 13.4.4 loss of revenue; or
 - 13.4.5 depletion of goodwill.
- 13.5 Subject to Conditions 13.3, 12.5 and 12.6, the Seller's total liability to the Buyer under or connected with these Conditions for:
- 13.5.1 damage to the Buyer's tangible property resulting directly from the Seller's negligence or that of its employees shall not exceed £100,000 for any one event or series of connected events;
 - 13.5.2 any other direct loss not covered by Condition 13.5.1 shall not exceed 125% of the price payable for the Products.
 - 13.5.3 the limits in Conditions 13.5.1 and 13.5.2 are based on the Seller's insurance cover and ability to compensate. The limits may be increased if requested but shall be subject to the Seller securing suitable cover and may require an adjustment to the price payable for the Products to reflect any increased premiums.

14 **SUB-CONTRACTORS**

- 14.1 The Seller may sub-contract the manufacture or production of the Products or performance of the Services. The Seller agrees that it shall be responsible for the actions or omissions of any sub-contractor used by it in connection with any of the Products or Services or with satisfying any of the Seller's responsibilities under the Contract.

15 **ASSIGNMENT**

- 15.1 The Buyer shall not be entitled to assign, transfer or dispose of any right, obligation or interest in or arising out of the Contract or any part of it without the prior written consent of the Seller.
- 15.2 The Seller may assign the Contract or any part of it to any other person, firm or organisation.

16 **FORCE MAJEURE**

16.1 A party shall not have any liability for any loss or damage if its performance of any obligations under the Contract (other than non-payment of amounts that are due and payable) is delayed, hindered or prevented by any cause beyond its reasonable control, including, without limitation, fire, storm, flood, earthquake, accident, adverse weather conditions, explosions, Acts of God, war, governmental controls, restrictions or prohibitions, strikes, lock-outs, industrial action, employment dispute, protests, traffic congestion, vandalism, interruptions in communications or power supply and mechanical breakdown, failure or malfunction of computer systems. In the event of such delay, hindrance or prevention, such party shall be entitled to postpone delivery or performance by the duration of interference plus a reasonable start-up time thereafter, or to cancel the Contract in its entirety or partially, insofar as it has not been performed without incurring any liability for non-performance.

17 **TERMINATION OF CONTRACT**

17.1 The Seller shall have the right to terminate the Contract at any time by giving at least 7 days' notice to the Buyer (or immediately as provided in Condition 17.1.2) in any of the following events, which termination shall be effective upon expiry of such notice (or immediately as provided in Condition 17.1.2):

17.1.1 if the Buyer commits a material breach of any of the terms of the Contract and fails to remedy the same within 30 days of being notified of the breach;

17.1.2 immediately upon the occurrence of the events in Condition 6.5, or if any material or significant part of the Buyer's undertaking, property, or assets shall be intervened in, expropriated, or confiscated by action of any government.

17.2 The Seller may terminate any Contract or suspend further deliveries (without prejudice to the foregoing right of termination) if the Buyer fails to pay any sum as it falls due, unless subject to a bona fide dispute and provided the undisputed amount has been paid.

17.3 The Buyer shall not be entitled to terminate the Contract for any reason.

17.4 On the termination of the Contract for any reason, the Seller shall not be obliged:

17.4.1 to supply any Products ordered by the Buyer unless already paid for;

17.4.2 to perform any Services ordered by the Buyer unless already paid for; and

17.4.3 all payments payable to the Seller under the Contract shall become due immediately upon termination of this Contract despite any other provision.

17.5 The termination of this Contract shall not affect the respective rights and liabilities of each of the parties thereto which accrued prior to such termination nor any provisions which either expressly or impliedly are to remain in operation after termination.

18 **GENERAL**

18.1 Each right or remedy of the Seller under the Contract is without prejudice to any other right or remedy of the Seller whether under the Contract or not.

- 18.2 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.
- 18.3 Failure or delay by the Seller in enforcing or partially enforcing any provision of the Contract will not be construed as a waiver of any of its rights under the Contract.
- 18.4 Any waiver by the Seller of any breach of, or any default under, any provision of the Contract by the Buyer will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of the Contract.
- 18.5 The parties to this Contract do not intend that any term of this Contract will be enforce-able by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

19 **COMMUNICATIONS**

- 19.1 All communications between the parties about this Contract must be in writing and delivered by hand or sent by pre-paid first class post by facsimile transmission or by e-mail to its registered office or such changed address as shall be notified to the other party from time to time.
- 19.2 Communications shall be deemed to have been received:
- 19.2.1 if sent by pre-paid inland first class post, 4 days after posting (exclusive of the day of posting);
 - 19.2.2 if delivered by hand, on the day of delivery;
 - 19.2.3 if sent by facsimile transmission or e-mail on a working day (in England) prior to 4.00 p.m., at the time of transmission and otherwise on the next working day provided sender can show satisfactory transmission.

20 **LAW AND JURISDICTION**

- 20.1 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the non-exclusive jurisdiction of the English courts.