

# Standard Terms and Conditions of Sale

## 1. Definitions

- ‘Seller’ shall mean Portsmouth Aqua Limited of The Airport, Portsmouth, Hampshire, PO3 5PF
- ‘Quotation’ shall mean a formal offer by the Seller to supply certain goods and/or services at the prices and within the timescales specified thereon subject to these terms and conditions.
- ‘Buyer’ shall mean the person, firm or company to whom the Seller provides the goods and/or services under these conditions and by whom the relevant charges are payable.
- ‘Supplies’ shall mean all goods, materials, equipment and services to be supplied by the Seller to the Buyer.
- ‘Contract’ shall mean the agreement between the parties governing the supply of the Supplies and shall include these terms and conditions, the Quotation and the Buyer’s order for the Supplies.
- ‘Standard Conditions’ shall mean these Standard Terms and Conditions of Sale.

## 2. Contracts

- 2.1 The Seller’s Quotation is an offer to supply the Buyer with the Supplies subject to these terms and conditions. The Quotation shall remain valid and open for acceptance for the period specified therein but the Seller reserves the right to revise or withdraw the Quotation at any time prior to its acceptance by the Buyer.
- 2.2 Acceptance of the Seller’s Quotation by the Buyer shall include acceptance of these terms and conditions and any other conditions mentioned in the Quotation. However, notwithstanding any such acceptance, the Seller shall not be under any obligation to supply the Supplies in accordance with the Contract until it has accepted the Buyer’s order in writing.
- 2.3 An accepted order may only be cancelled or varied with the Seller’s consent. The granting of such consent shall not in any way prejudice the Seller’s rights to recover from the Buyer full compensation for any loss or expense arising from such cancellation or variation.

## 3. Buyer’s Obligations

- 3.1 The Buyer shall provide the Seller with any goods and services, including drawings, specifications, pattern equipment and tooling, as may reasonably be required by the

Seller for the performance of the Contract within such timescales as shall be specified in the Contract or if no timescale is specified, in sufficient time to allow the Seller to meet its obligations under the Contract.

#### **4. Seller's Personnel**

- 4.1 The Seller shall ensure that all of its employees, agents and subcontractors are aware of their relevant responsibilities to ensure that:
- 4.1.1 the Supplies meet all applicable product safety requirements;
  - 4.1.2 the Supplies conform with all of the Contract requirements;
  - 4.1.3 the requirements of Clauses 16, 17 and 18 of these Standard Conditions are met.
- 4.2 The Seller shall ensure that at all times during the performance of the Contract it has amongst its staff a sufficient number of suitably qualified and experienced personnel engaged in the provision of the Supplies. The Seller shall ensure that all its staff receive appropriate training in their functions and duties.

#### **5. Delivery of the Supplies**

- 5.1 The Seller shall supply the Buyer with the Supplies specified in the Contract. The Seller shall take all reasonable steps to meet any delivery dates quoted but all such dates shall be estimates only and the Seller shall not be liable for failure to meet them.
- 5.2 The Buyer shall notify the Seller within three days of delivery of any obvious damage or shortage otherwise delivery will be deemed to be complete.

#### **6. Passing of Risk and Title**

- 6.1 Risk in the Supplies shall pass from the Seller to the Buyer on delivery of the Supplies to the Buyer or the Buyer's carrier in accordance with Clause 5 above. Title shall pass on payment for the Supplies in accordance with Clause 7 below. Until full payment for the Supplies has so been made, the Buyer shall ensure that the Supplies are clearly marked as being the Seller's property.

#### **7. Price and Terms of Payment**

- 7.1 The Buyer shall pay the price for the Supplies as specified in the Contract. Payment for the Supplies shall become due in the amounts and at the times specified in the Contract.
- 7.2 Unless otherwise agreed, prices include the Seller's standard inspection and works testing, and suitable packaging. Any additional testing, non-standard packaging requirements, delivery or installation work may be arranged by the Seller if requested by the Buyer, subject to the payment of additional charges which will be covered by a separate Quotation.

- 7.3 All prices quoted shall be exclusive of Value Added Tax or any other similar tax or levy which may be payable thereon. Such taxes or levies will be added to the Seller's invoice, as appropriate, at the rate prescribed by legislation.
- 7.4 The Buyer shall pay the Seller within 30 days of the date of the Seller's invoice. Interest may be charged on sums overdue at the rate of 2% per month calculated on a daily basis from the date payment was due until the date payment is received, such interest to be compounded monthly.
- 7.5 If the accuracy of any invoices is contested, the Buyer shall pay the amount not in dispute pending reconciliation of the reported discrepancy.

## **8. Warranty**

- 8.1 The Seller warrants that, for a period of twelve months from delivery of the Supplies to the Buyer, the Supplies will function correctly. The Seller will at its own option and expense repair or replace all defective parts which under proper use, care and maintenance fail to function correctly provided that such failure:
- 8.1.1 is notified promptly to the Seller within the period specified above;
- 8.1.2 arises solely from the Seller's faulty design or use of defective materials or workmanship; and
- 8.1.3 occurs during normal use of the Supplies.
- 8.2 The Buyer shall return the defective Supplies at its own risk and expense to the Seller. Replaced defective Supplies shall become the property of the Seller and replacement Supplies shall become the property of the Buyer. Replacement Supplies will be delivered to the Buyer at the Seller's risk and expense.
- 8.3 The Seller accepts no liability in respect of defects or failures which are caused by fair wear and tear, accident, neglect, installation or servicing by a party other than a person or company approved by the Seller, use of the Supplies in combination with equipment not supplied or approved by the Seller or for a purpose for which they were not intended, abnormal environmental conditions or additions to or modifications of the Supplies carried out without the Seller's prior written consent. The Seller reserves the right to make a charge for work required for any of the reasons listed above or for the investigation of reported faults where no fault is found to exist.
- 8.4 In the case of Supplies not manufactured by the Seller, the Buyer shall be entitled to the benefit of any warranty offered by the manufacturer of such Supplies only to the extent to which the Seller is able to transfer it to the Buyer.
- 8.5 Where the Contract states that the Supplies are to comply with drawings or specifications provided by the Buyer under clause 3.1 above, the Seller will exercise all reasonable care in the interpretation of such drawings and specifications but it will not accept any liability for the accuracy and completeness thereof or for the consequences of any error or omission therein.

8.6 This warranty constitutes the sole liability of the Seller with regard to the Supplies. No other warranties, either express or implied, are made with respect to the Supplies and the Seller expressly disclaims any warranty not stated therein.

## **9 Control of Counterfeit Products**

9.1 The Seller shall ensure that counterfeit products are not delivered to the Buyer in fulfilling its obligations under the Contract.

9.2 The Seller shall as soon as practicable notify the Buyer if the Seller becomes aware or suspects that it has acquired counterfeit product.

9.3 In the event the Supplies delivered under the Contract constitute or include counterfeit products, the Seller shall, at its expense promptly replace such counterfeit products with genuine products conforming to the requirements of the Contract.

9.4 The Seller represents and warrants that only new and authentic materials are used in the Supplies and that the Supplies contain no counterfeit parts. No other material, part, or component other than a new and authentic part is to be used unless approved in advance in writing by the Buyer. To further mitigate the possibility of the inadvertent use of counterfeit parts, the Seller shall only purchase authentic parts/components directly from the Original Equipment Manufacturer ("OEM"), the Original Component Manufacturer ("OCM") or through the OEM's/OCM's authorized distribution chain. The Seller shall make available to the Buyer, upon request, OEM/OCM documentation that authenticates traceability of the components to that applicable OEM/OCM.

9.5 The Seller shall flow the requirements of this clause to its sub-contractors and Sellers at any tier for the performance of the Contract.

## **10. Tooling**

10.1 Where supply of Supplies under the Contract involves the use of pattern equipment or tooling the full cost of which is to be borne by the Buyer, such pattern equipment or tooling shall itself be treated as Supplies, subject in all respects to the provisions of the Contract. On completion or earlier termination of the Contract, the Seller will comply at the Buyer's expense with the Buyer's instructions for delivery or disposal thereof. Should the Buyer no longer require the pattern equipment or tooling, the Buyer will offer it to the Seller on fair and reasonable terms.

## **11. Liability**

11.1 Nothing in the Contract shall be effective to exclude or restrict the liability of either party for death or personal injury caused by the negligence of its employees, agents or subcontractor.

11.2 Nothing in the Contract shall be effective to exclude or restrict the liability imposed by the Consumer Protection Act 1987 for damage caused by defective products to the extent permitted by that Act.

11.3 The liability of the Seller to the Buyer for direct loss or damage to property, whether in contract, tort (including negligence and breach of statutory duty) or otherwise arising out of or in connection with the Seller's performance of or its total or partial failure to

perform its obligations under the Contract, shall, in respect of any one incident or series of incidents attributable to the same cause, be limited to the value of the contract or the sum of £50,000 (Fifty Thousand Pounds) whichever is the lesser figure.

- 11.4 The Seller shall not in any circumstances be liable in contract, tort (including negligence and breach of statutory duty) or otherwise, for loss, whether direct or indirect, of profits, business or anticipated savings or for any indirect, special or consequential loss, howsoever caused or arising.
- 11.5 Except to the extent explicitly stated elsewhere in the Contract, the Seller accepts no liability for the accuracy of any representations, statements made or advice given or for the consequences of reliance by the Buyer thereon.
- 11.6 The Buyer shall indemnify and hold the Seller harmless against any damages, charges or costs (including court costs and legal fees) arising from any actions, claims or proceedings brought by a third party alleging loss or damage arising out of the Seller's performance of or total or partial failure to perform its obligations under the Contract.

## **12. Intellectual Property Rights**

- 12.1 Unless otherwise stated in the Contract, ownership of all intellectual property arising as a result of work undertaken in pursuance hereof shall vest in the Seller who shall be entitled to apply for such protection of its rights as it sees fit, in its own name and at its own expense. The Buyer will, on request, do all things and sign all documents necessary to enable the Seller to make such applications.
- 12.2 For the avoidance of doubt, the Buyer agrees that nothing in clause 12.1 above shall be effective to transfer any proprietary right in any intellectual property developed by the Seller prior to or outside the scope of the work covered by the Contract, irrespective of whether such intellectual property is used by the Seller in the course of fulfilling its obligations under the Contract.
- 12.3 Where the Contract states that the Supplies are to comply with drawings or specifications provided by the Buyer under clause 3.1 above, the Buyer will indemnify the Seller against all damages, costs or expenses (including court costs and legal fees) incurred by the Seller in connection with any allegation of infringement of a third party's intellectual property rights arising in any way from the Seller's having followed the drawings, specifications or any other instruction provided by the Buyer.

## **13. Bankruptcy**

- 13.1 The Seller may terminate the Contract forthwith by giving notice in writing if the Buyer becomes bankrupt or insolvent or being a company, goes into liquidation (other than for the purposes of a bona fide amalgamation or reconstruction) or has a receiver, manager, administration or like person appointed under the Insolvency Act 1986 and such appointment is not discharged within 30 days of being made.
- 13.2 Exercise by the Seller of its rights under this clause shall be without prejudice to any other rights or remedies it may have and shall not affect any rights accrued or obligations arising on or before the date of termination.

**14. Force Majeure**

- 14.1 Neither party shall be liable to the other for failure to fulfil any obligation hereunder where such failure was due to fire, strikes or other industrial action or dispute, acts of government, default of suppliers or subcontractors, or any circumstances beyond the defaulting party's reasonable control.

**15 Inducements and Ethics**

- 15.1 Whether acting alone or with others, the Seller undertakes that it will not do, and warrants that prior to accepting the Order it has not done, any of the following:

15.1.1 induce an employee, agent or sub-contractor of the Buyer to make any concession to or confer any benefit on the Seller, refrain or withhold from doing any act or alter any of the requirements of the Order in return for any gift, money, benefit or other inducement; nor

15.1.2 without the prior written consent of the Buyer, pay money or give any other benefit to any third party (either directly or indirectly) in connection with the negotiation and/or issue of the Order; nor

15.1.3 encourage or facilitate an employee, agent or sub-contractor of the Buyer to commit any act of dishonesty against the Buyer which may benefit the employee, agent or sub-contractor of the Buyer or be a detriment to the Buyer, or both.

**16 Equality**

- 16.1 The Seller shall not unlawfully discriminate either directly or indirectly on the grounds of age, disability, gender (including reassignment), sex or sexual orientations, marital status (including civil partnerships), pregnancy and maternity, race, religion or belief.

- 16.2 Without prejudice to the generality of the obligations in Clause 16.1, the Seller shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010 (or any statutory modification or re-enactment thereof) or other relevant or equivalent legislation in the country where the Order is being performed.

- 16.3 The Seller agrees to take reasonable efforts to secure the observance of the provisions of this Clause by any of its employees, agents or other persons acting under its direction or control who are engaged in the performance of the Order.

- 16.4 The Seller agrees to take reasonable efforts to reflect this Clause 16 in any subcontract that it enters into to satisfy the requirements of the Order and to require its Sellers to reflect this Clause in their sub-contracts that they enter into to satisfy the requirements of the Order.

**17 Prohibition of Forced or Trafficked Labour**

- 17.1 The Seller warrants that it shall not use any forced, compulsory or trafficked labour in the provision of the Supplies.

- 17.2 The Seller shall inform the Buyer immediately if it has any reason to believe or suspect that any forced, compulsory or trafficked labour has been used in the provision of the Supplies.

17.3 The Seller agrees to incorporate the requirements of this Clause 17 into any subcontract that it enters into to satisfy the requirements of the Order and to require its Sellers to reflect this Clause 17 in their sub-contracts that they enter into to satisfy the requirements of the Order.

## **18. Notices**

18.1 All notices to be sent by one party to the other under or in connection with the Contract shall be delivered by hand or sent by registered post to the registered address of the parties as specified in the Contract, or to any other address as has been notified in accordance with this clause.

## **19. Waiver**

19.1 Failure by either party to exercise any right or remedy under the Contract shall not signify acceptance of the event giving rise to such right or remedy, nor shall it constitute a waiver of such right or remedy.

## **20. Severance**

20.1 Each paragraph and provision hereof is severable from the rest of the Contract and, if one part should be found to be invalid, illegal or void, for any reason, it shall not affect the validity or legality of any other part and the remaining parts shall continue to have full force and effect.

## **21. Entire Agreement**

21.1 The Contract is the entire agreement of the parties concerning the subject matter hereof and supersedes all prior agreements, negotiations, representations and proposals, whether written or oral.

21.2 No amendment to the Contract shall be valid unless agreed by the Seller and evidenced in writing.

21.3 In the event of conflict between any provisions contained in the Contract, it shall be resolved by applying the Contract documents in the following order of precedence (prevailing document first):

21.3.1 the Quotation

21.3.2 the Buyer's order for the Supplies

## **22. Law and Jurisdiction**

22.1 The Contract shall be governed by and construed in accordance with English Law and the parties hereby subject to the exclusive jurisdiction of the English Courts.

## **23. Quality**

23.1 The Seller is approved and certified to the requirements of AS9100, ISO9001 and ISO14001. All products and services provided will be in accordance with the company's approved scope and these Standard Conditions.

- 23.2 The Seller shall use statistically valid techniques for the purpose of supporting product acceptance.
- 23.3 Unless otherwise specified in the Order, the Seller shall retain all quality assurance records relating to the Supplies for a period of six years following the completion of the delivery of the Supplies.
- 23.4 Upon the expiry of the retention period in Clause 23.3, the Seller shall hold electronic copies of the records in its document management system unless directed otherwise by the Buyer.

#### **24. Contracts (Rights of Third Parties) Act 1999**

- 24.1 A third party who is not a party to the Contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

#### **25. Interpretation**

- 25.1 Clause headings are for convenience only and shall not affect the interpretation of the Contract.
- 25.2 Words in the singular shall include the plural and vice versa.
- 25.3 A reference to a statute, statutory provision or other legislation, whether of the UK or elsewhere, is a reference to it as it is in force for the time being, taking account of any amendment, extension or re-enactment and includes any subordinate legislation for the time being in force made under it.