

# GENERAL TERMS AND CONDITIONS

THE BUYER'S ATTENTION IS DRAWN IN PARTICULAR TO CLAUSES 3.3,3.7,6.4, 8 and 11.

## 1. INTERPRETATION

1.1 In these Conditions:

1.2 ADMIN.

1.3 A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.

1.4 The headings in these Conditions are for convenience only and shall not affect their interpretation.

1.5 Any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

1.6 A reference to writing or written includes emails but not fax.

## 2. BASIS OF THE SALE

2.1 The Seller shall sell and the Buyer shall purchase the Goods in accordance with any written quotation of the Seller which is accepted by the Buyer, or any written order of the Buyer which is accepted by the Seller, subject in either case to these Conditions, which shall govern the Contract to the exclusion of any other terms and conditions which the Buyer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing. The Buyer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Buyer that is inconsistent with these Conditions.

2.2 The Order constitutes an offer by the Buyer to purchase the Goods in accordance with these Conditions and in accordance with any terms and conditions contained in an Order. In the event of a conflict between these Conditions and any terms and conditions set out in any Order, the terms and conditions contained in the Order shall prevail.

2.3 The Order shall only be deemed to be accepted by the Seller when it issues a written acceptance of the Order, at which point the Contract shall be formed and shall come into existence.

2.4 No variation to these Conditions shall be binding unless agreed in writing between the Buyer and the Seller or the authorised representatives of the Buyer and the Seller.

2.5 The Seller's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Seller in Writing. In entering into the Contract the Buyer acknowledges that it does not rely on any such representations which are not so confirmed.

2.6 Any advice or recommendation given by the Seller or its employees or agents to the Buyer or its employees or agents as to the storage, application or use of the Goods which is not confirmed in Writing by the Seller is followed or acted upon entirely at the Buyer's own risk, and accordingly the Seller shall not be liable for any such advice or recommendation which is not so confirmed.

2.7 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.

## 3. ORDERS AND SPECIFICATIONS

3.1 The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any Order (including any applicable specification) submitted by the Buyer, and for giving the Seller any necessary information relating to the Goods within a sufficient time to enable the Seller to perform the Contract in accordance with its terms and conditions.

3.2 The quantity, quality and description of and any specification for the Goods shall be those set out in the Order. For the avoidance of doubt the price stated in the Order as accepted by the Seller shall not include the cost of offloading and positioning, salt regenerator, spares and consumables, which shall be charged separately in accordance with the Seller's published price list.

3.3 If the Goods are to be manufactured or any process is to be applied to the Goods by the Seller in accordance with a specification submitted by the Buyer, the Buyer shall be responsible for the accuracy and suitability of such specification and processes, and the Seller accepts no responsibility in relation to such specification (as far as legally permissible).

3.4 The Seller reserves the right to make any changes in the specification of the Goods which are required to conform to any applicable statutory or regulatory requirements or, where the Goods are to be supplied to the Seller's specification, which do not materially affect their quality or performance.

3.5 No Order that has been accepted by the Seller may be cancelled by the Buyer except with the agreement in Writing of the Seller and on terms that the Buyer shall indemnify the Seller in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Seller as a result of cancellation.

3.6 Any written quotations provided by the Seller to the Buyer shall only be valid for a period of 20 days from the date of its issue.

3.7 The Buyer shall indemnify the Seller 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 and other professional costs and expenses) suffered or incurred by the Seller in connection with any claim made against the Seller for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Seller's use of a specification relating to the Goods provided by the Buyer. The following shall also apply in respect of any claim:

3.7.1 The Seller is given full control of any proceedings or negotiations in connection with any such claim;

3.7.2 The Buyer shall give the Seller all reasonable assistance for the purposes of any such proceedings or negotiations;

3.7.3 Except pursuant to a final award, the Buyer shall not pay or accept any such claim, or compromise any such proceedings without the consent of the Seller (which shall not be unreasonably withheld);

3.7.4 The Buyer shall do nothing which would or might vitiate any policy of insurance or insurance cover which the Buyer may have in relation to such infringement, and this indemnity shall not apply to the extent that the Buyer recovers any sums under any such policy or cover (which the Buyer shall use its best endeavours to do);

3.7.5 The Seller shall be entitled to the benefit of and the Buyer shall accordingly account to the Seller for, all damages and costs (if any) awarded in favour of the Buyer which are payable by, or agreed with the consent of the Buyer (which consent shall not be unreasonably withheld) to be paid by, any other party in respect of any such claim;

3.7.6 Without prejudice to any duty of the Buyer at common law; and

3.7.7 The Seller shall be entitled to require the Buyer to take such steps as the Seller may reasonably require to mitigate or reduce any such loss, damages, costs or expenses for which the Seller is liable to indemnify the Buyer under this clause.

This clause 3.7 shall survive termination of the Contract.

## 4. PRICE OF THE GOODS

4.1 The price of the Goods shall be set out in the Order or, where no price has been stated, the price listed in the Seller's published price list current at the date of acceptance of the Order.

4.2 The Seller reserves the right, by giving notice to the Buyer at any time before delivery, to increase the price of the Goods to reflect any increase in the cost to the Seller that is due to any factor beyond the control of the Seller (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 are requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions.

4.3 Except as otherwise stated in the Order or in any price list of the Seller, and unless otherwise agreed in Writing between the Buyer and the Seller, the Seller gives all prices on an ex works basis and where the Seller agrees to deliver or install the Goods otherwise than at the Seller's premises, the Buyer shall be liable in addition to the price, to pay the Seller's charges for transport, packaging and insurance.

4.4 The price is exclusive of any applicable value added tax, which the Buyer shall be additionally liable to pay to the Seller at the prevailing rate.

## 5. TERMS OF PAYMENT

5.1 Precise payment terms will be set out with each Order. Subsequent variations may only be agreed in Writing by both parties.

5.2 The time of payment of the price shall be of the essence of the Contract. Receipts for payment will be issued only upon request. Any payments to be made to the Seller shall be made to the bank account nominated in writing by the Seller.

5.3 If the Buyer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to:

5.3.1 Cancel the contract, suspend any further deliveries of any Goods to the Buyer or suspend any installation works carried out in relation to the Goods;

5.3.2 Appropriate any payment made by the Buyer for supply of the Goods (or the goods supplied under any other contract between the Buyer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer); and

5.3.3 Charge the Buyer interest (both before and after any judgment) on the amount unpaid, at the rate of 4 per cent per annum above NatWest Bank plc base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Buyer shall pay the interest together with the overdue amount.

5.4 The Buyer shall pay all amounts due under the contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). The Seller may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Buyer against any amount payable by the Seller to the Buyer.

5.5 Where the Buyer delays the date of the Commissioning Visit, the Buyer shall pay to the Seller the Admin Fee.

## 6. DELIVERY

6.1 Delivery of the Goods shall be made by the Seller delivering the Goods to the address stated on the Buyer's order or such other location as the parties may agree in Writing at any time after the Order has been accepted by the Seller ("Delivery Location").

6.2 Delivery is completed on the completion of unloading of the Goods at the Delivery Location.

6.3 Any dates quoted for delivery of the Goods are approximate only and the Seller shall not be liable for any delay in delivery of the Goods however caused. Time for delivery shall not be of the essence of the Contract unless previously agreed by the Seller in writing. The Goods may be delivered by the Seller in advance of the quoted delivery date upon giving reasonable notice to the Buyer.

6.4 If the Seller fails to deliver the Goods for any reason other than a Force Majeure Event or a Buyer's failure to provide the Seller with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods and the Seller is accordingly liable to the Buyer, the Seller's liability shall be limited to the costs and expenses (provided always that such costs and expenses are reasonable) incurred by the Buyer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. The Seller shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Buyer's failure to provide the Seller with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

6.5 If the Buyer fails to take delivery of the Goods or fails to give the Seller adequate delivery instructions at the time stated for delivery (otherwise than by reason of any Force Majeure Event or by reason of the Seller's fault) then, without prejudice to any other right or remedy available to the Seller, the Seller may store the Goods until actual delivery and charge the Buyer for the reasonable costs and expenses (including insurance) of storage.

6.6 The Seller shall notify the Buyer in writing that the Seller attempted delivery. If after 10 days of such notification the Buyer fails to take physical possession of the Goods, the Seller may in its absolute discretions sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the price under the Contract or charge the Buyer for any shortfall below the price under the Contract.

6.7 Where the Buyer delays Delivery for more than 14 days after Readiness to Dispatch the Buyer shall pay to the Seller the Storage Fee.

## 7. RISK AND TITLE

7.1 Risk in the Goods shall pass to the Buyer:

7.1.1 In the case of Goods to be delivered to the Seller's premises, at the time of delivery; or

7.1.2 In the case of Goods to be delivered otherwise than at the Seller's premises, at the time of delivery or, if the Buyer wrongfully fails to take delivery of the Goods, the time when the Seller has tendered delivery of the Goods.

7.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, title in the Goods shall not pass to the Buyer until the Seller has received in cash or cleared funds payment in full of the price of the Goods and all other goods agreed to be sold by the Seller to the Buyer for which payment is then due.

7.3 Until such time as title in the Goods passes to the Buyer, the Buyer shall not remove, deface or obscure any identifying mark or packaging on or relating to the Goods, maintain the Goods in satisfactory condition, give the Seller such information relating to the Goods as the Seller may require from time to time, hold the Goods as the Seller's fiduciary agent and bailee, and shall keep the Goods separate from those of the Buyer and third parties and properly stored, protected and insured and identified as the Seller's property.

7.4 Until such time as title in the Goods passes to the Buyer (and provided the Goods are still in existence and have not been resold), the Seller shall be entitled at any time to require the Buyer to deliver up the Goods to the Seller and, if the Buyer fails to do so forthwith, to enter upon any premises of the Buyer or any third party where the Goods are stored and repossess the Goods.

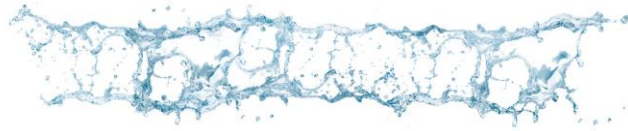
7.5 The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Seller, but if the Buyer does so all moneys owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.

## 8. WARRANTIES AND LIABILITY

8.1 Subject to the conditions set out in clause 8.2 the Seller warrants that the Goods will correspond in all material respects with their specification at the time of delivery and will be free from defects in material and workmanship for a period of 12 months from the date of commissioning or 15 months from the date of delivery, whichever is the first to expire, unless otherwise agreed in writing by the parties.

8.2 The above warranty is given by the Seller subject to the following conditions:

8.2.1 The Seller shall not be liable as far as the law permits in respect of any defect in the Goods that arise from any drawing, design or specification supplied by the Buyer to the Seller.



- 8.2.2 The Seller shall not be liable as far as the law shall permit in respect of any defect arising from fair wear and tear, wilful damage caused by the Buyer or if applicable its representatives, agents, employees or otherwise, negligence of the Buyer, abnormal working conditions, failure to follow the Seller's instructions (whether oral or in writing), misuse or alteration or repair of the Goods without the Seller's approval.
- 8.2.3 The Buyer undertakes to ensure all equipment is commissioned by the Seller, and is serviced to the Seller's recommendations by the Seller or his appointed agents, and operated to the design specification and in the recommended design and environmental conditions. Where the Seller has not carried out these works, then a parts only warranty will be provided, not including labour to effect the examination, collection, or the repair.
- 8.2.4 The Seller shall not benefit from the warranty contained in clause 8.1 (or any other warranty, condition or guarantee) if the total price for the Goods and any other costs and expenses due to the Seller has not been paid by the due date for payment.
- 8.2.5 The above warranty does not extend to parts, materials or equipment not manufactured by the Seller, in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Seller.
- 8.3 Workmanship for service work, repairs, alterations and modifications to existing equipment will be warranted for a period of 3 months from the date the works were completed. Parts used will carry the manufacturer's standard warranty, usually one year, and are subject to the exclusions in clause 8.2.
- 8.4 Subject as expressly provided in these Conditions, all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- 8.5 The Buyer warrants that it is not acquiring the Goods as consumer within the meaning of the Unfair Contract Terms Act 1977.
- 8.6 Any claim by the Buyer that is based on any defect in the quality or condition of the Goods or their failure to correspond with specification shall (whether or not delivery is refused by the Buyer) be notified to the Seller within 7 days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure. If delivery is not refused, and the Buyer does not notify the Seller accordingly, the Buyer shall not be entitled to reject the Goods and the Seller shall have no liability for such defect or failure, and the Buyer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.
- 8.7 Where any valid claim in respect of any of the Goods that is based on any defect in the quality or condition of the Goods or their failure to meet specification is notified to the Seller in accordance with these Conditions, the Seller shall be entitled to replace the Goods (or the part in question) free of charge or, at the Seller's sole discretion, refund to the Buyer the price of the Goods (or a proportionate part of the price), but the Seller shall have no further liability to the Buyer to the fullest extent permitted by law.
- 8.8 Except as provided for in the clause 8, the Seller shall have no liability to the Buyer in respect of the Goods' failure to comply with the warranty set out in clause 8.1.
- 8.9 These Conditions shall apply to any repaired or replacement Goods supplied by the Seller.
- 8.10 Nothing in these Conditions shall limit or exclude the Seller's liability for:
- 8.10.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
- 8.10.2 fraud or fraudulent misrepresentation; breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
- 8.10.3 defective products under the Consumer Protection Act 1987; or
- 8.10.4 any matter in respect of which it would be unlawful for the Seller to exclude or restrict liability.
- 8.11 Subject to clause 8.8:
- 8.11.1 The Seller shall under no circumstances whatsoever be liable to the Buyer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
- 8.11.2 The Seller's total liability to the Buyer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed 75% of the price of the Goods.
- 8.12 If the Goods require routine servicing, such servicing must be carried out by the Seller and the Buyer shall ensure that such servicing is carried out by the Seller. In the event that the Buyer receives servicing services relating to the Goods from a third party and/or parts from a third party which are not provided by the Seller, the warranty provided by clause 8 shall become void.
- 9. FORCE MAJEURE**
- 9.1 Neither party shall be in breach of this Contract nor liable for delay in performing, or failure to perform, any of its obligations under this Contract if such delay or failure result from a Force Majeure Event. If the period of delay or non-performance continues for 3 months, the party not affected may terminate this Contract by giving 2 weeks written notice to the affected party.
- 10. TERMINATION**
- 10.1 Without limiting its other rights or remedies, the Seller may terminate this Contract with immediate effect by giving written notice to the Buyer if:
- 10.1.1 the Buyer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of that party being notified in writing to do so;
- 10.1.2 the Buyer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
- 10.1.3 the Buyer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or
- 10.1.4 the Buyer's financial position deteriorates to such an extent that in the Seller's opinion the Buyer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 10.2 Without limiting its other rights or remedies, the Seller may suspend provision of the Goods under the Contract or any other contract between the Buyer and the Seller if the Buyer becomes subject to any of the events listed in clause 10.1.1 to clause 10.1.4 or the Seller reasonably believes that the Buyer is about to become subject to any of them, or if the Buyer fails to pay any amount due under this Contract on the due date for payment.
- 10.3 Without limiting its other rights or remedies, the Seller may terminate the Contract with immediate effect by giving written notice to the Buyer if the Buyer fails to pay any amount due under the Contract on the due date for payment.
- 10.4 On termination of the Contract for any reason the Buyer shall immediately pay to the Seller all of the Seller's outstanding unpaid invoices and interest.
- Termination of the Contract shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of this Contract that existed at or before the date of termination.
- 10.5 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.
- 11. INTELLECTUAL PROPERTY**
- 11.1 The Goods are sold and/or supplied subject to the rights of any person whether in respect of any patent, trade mark, registered design, copyright, confidential disclosure or otherwise howsoever to prevent or restrict the sale or use of the Goods in any part of the world; the Buyer will in this respect accept such title to the Goods as the Seller may have.
- 11.2 Without prejudice to any other clause contained in these Conditions and in addition to any other rights and remedies available to the Seller under the Contract, under the law or otherwise, where the Goods have been manufactured according to designs or configurations all processes specified or supplied by the Buyer, the Buyer represents and warrants to the Seller that the Goods so designed or configured and processes so used do not infringe the rights of any person whether in respect of any patent, trade mark, registered design, copyright, confidential disclosure or otherwise howsoever to prevent or restrict the sale or use of the Goods or materials or the use of such processes in any part of the world. The Buyer shall indemnify the Seller against all actions, suits, claims, demands, losses, charges, costs and expenses which the Seller may suffer or incur in connection with any claim by any third party alleging facts which, if established, would indicate a breach of the representations and warranties contained in this paragraph.
- 11.3 Unless otherwise agreed the Seller retains the copyright in all designs, sketches, illustrations, drawings model software and offers supplied by the Seller as well as (in so far as not supplied by the Buyer in accordance with clause 11.2 above) all other rights to any patent, trademark, industrial design or design right in connection with the Goods. The Buyer shall not copy any designs, sketches, illustrations, drawings, models, software and offers supplied by the Seller to any third party or use them for any purpose other than in connection with the Goods unless the agreement in Writing of the Seller has first been obtained.
- 12. GENERAL**
- 12.1 The Seller may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract. The Buyer may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of the Seller.
- 12.2 Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, Buyers, clients or Sellers of the other party or of any member of the group to which the other party belongs, except as permitted by clause 12.3. For the purposes of this clause and clause 12.3 (inclusive), group means, in relation to a party, that party, any subsidiary or holding company from time to time of that party, and any subsidiary from time to time of a holding company of that party.
- 12.3 Each party may disclose the other party's confidential information to its employees, officers, representatives 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 this agreement. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with clause 12.2 and as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 12.4 No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this agreement.
- 12.5 This Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 12.6 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.
- 12.7 No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 12.8 If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
- 12.9 Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service, commercial courier, or email.
- 12.10 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 12.9; if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the third day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by email, one day after transmission. The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.
- 12.11 No one other than a party to this Contract and their permitted assignees shall have any right to enforce any of its terms.
- 12.12 The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the law of England and Wales.
- 12.13 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Contract or its subject matter or formation.