

# FLUID TRANSFER INTERNATIONAL LIMITED

## TERMS AND CONDITIONS FOR THE SALE OF GOODS

These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

### 1. GENERAL

- 1.1 In these conditions "the Company" shall mean Fluid Transfer International Limited (Registration Number 3658293) of Nailsworth Mills Estate, Avening Road, Nailsworth, Gloucestershire. GL6 OBS, and "the Customer" shall mean the person, persons, firm or Company entering into contract with the Company for the supply of goods and materials and "the contracted goods" shall mean the goods materials, equipment and services supplied by the Company, pursuant to any contract between the Company and the customer.
- 1.2 All quotations, tenders, offers and acceptances submitted or made by the Company are subject to the terms and conditions contained herein. In entering into contract with the Company, the Customer shall be deemed to have read, understood and accepted the same and to have agreed to be bound thereby to the exclusion of any representations or statements made prior to contract, any terms of any prior contract or dealing between the parties, and of all other terms and conditions contained in or annexed to the buyers written order or (insofar as the same can lawfully be excluded) implied by law.
- 1.3 All descriptions, illustrative matter, specifications in the Company's leaflets, price lists and/or other advertising media do not form part of the contract. No design, drawing or specification shall be regarded as incorporated into the contract unless expressly referred to in or annexed to the contract.
- 1.4 Any clerical errors or omissions in any quotation, tender or other contractual document submitted or entered into by or on behalf of the Company shall be rectified by the Company on discovery and immediately notified to the Customer. Such errors or omissions shall not be binding on the Company and the rectification thereof shall not invalidate any contract.
- 1.5 If one or more of these Conditions shall prove to be invalid or unenforceable, the remainder shall continue to be of effect. Waiver by the Company of any default on the part of the Customer shall not be deemed to be a waiver of any subsequent default nor shall it prejudice any legal remedy of the Company hereunder.
- 1.6 This contract shall in all respects be construed and take effect according to the laws of England and Wales.
- 1.7 Any dispute arising out of this contract, including the construction or interpretation of these terms and conditions shall by agreement of the parties be settled by a single arbitrator appointed by agreement or in default of agreement by the President of the Law Society of England and Wales. The arbitration shall be subject to and in accordance with the Arbitration Act 1996 or any statutory modification or re-enactment thereof or substitution therefore for the time being in force.
- 1.8 The Customer hereby undertakes that he has complied with every applicable statute, order in Council, government regulation or direction, by law or other lawful requirement or instruction of any local or other lawful authority that he has lawfully obtained all necessary licence, permits or authorities that may be required in connection with the installation of the contract goods supplied by the Company.
- 1.9 Any notice, request or demand to be given hereunder shall be given in writing by First Class prepaid Letter Post sent to the last known address of the party to be notified, and shall be deemed to have been received by the party in the next available postal delivery following the day on which it was posted.

### 2. BASIS OF TENDER

- 2.1 Any tender or quotation submitted by the company will remain open for acceptance by the Company for a period of thirty days, unless otherwise stated in writing. The Company however reserves the right to vary, alter or withdraw any such tender or quotation by written notice to the Customer at any time before acceptance for any reason.
- 2.2 All contract prices are subject to any Value Added Tax (VAT) payable by the Company in respect of the contract goods. The nett amount of any such tax shall be recoverable from the Customer by the Company pursuant to statute.

### 3. VARIATION OF CONTRACT

- 3.1 Save as provided elsewhere in these Conditions, no variation of contract or any of the terms or specifications thereof including any of these conditions shall be binding on the Company unless expressly agreed by the Company in writing and signed by a Director. No salesman, employee, agent or representative of the Company is authorised to vary, alter, modify or waive any of these conditions or any other terms of contract between the Company and the Customer.
- 3.2 If, through no fault of the Company, any equipment or materials specified in any quotation, tender or other contractual document submitted or entered into by or on behalf of the Company prove to be unavailable, the Company shall be entitled to substitute other equipment or materials which in the opinion of the Company are equally suitable and such substitution shall not invalidate any contract between the Company and the Customer.

### 4. TERMINATION OF CONTRACT

- 4.1 The Company reserves the right to cancel forthwith any uncompleted order or to suspend delivery if the Customer fails to observe his part of any term of this or any Contract with the Company, or if the Company in good faith and on reasonable grounds suspects that the customer may do so. In such circumstances the full price of goods already delivered together with any sum due or payable on account shall immediately become due and payable without prejudice to any other contractual or statutory remedy which the Company may have against the Customer at law and the Company shall be under no obligation to complete the installation.

### 5. OPERATING INSTRUCTIONS

- 5.1 The Customer hereby undertakes to provide the Company with adequate and sufficient information regarding the atmospheric and environmental conditions (including heat, humidity, terrain, altitude, fumes and dust) in which the contract goods supplied by the Company are intended to operate and the purpose and frequency of intended use. No liability can be accepted by the Company in respect of any failure or malfunction of any such goods and equipment, or any loss or damage resulting therefrom, caused directly or indirectly by any such matters of which the Company had no notice prior to entry into contract.

### 6. DELIVERY

- 6.1 Delivery shall mean the arrival of the contract goods on the site designated by the Customer or in the event of an agreed ex-works delivery, on loading of the contract goods for transportation or, in the event of sales of goods for destinations not within England, Scotland or Wales, on deposit of the contract goods at the UK port from which the goods are intended to be shipped.

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- 6.2 Notwithstanding any specifically agreed delivery date under clause 6.3 hereof, the Company shall not be liable for loss or damage arising from delays in delivery resulting from any Act of God, government orders, strikes, war, delay in delivery of materials and proprietary components or any circumstances beyond the Company's control and none of these events shall entitle the Customer to cancel the contract.
- 6.3 Where delivery is delayed upon the Customer's request or due to lack of delivery instructions or the Customer's delayed payment of his account, the Company shall have the right to charge storage costs which the Customer shall pay at the rate of 1% of invoice value for each completed month or part thereof by which delivery is delayed beyond the stated delivery date.
- 6.4 The Company may make, and the Customer shall accept, delivery by installment when required by the Company. Each instalment shall constitute a separate Contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.
- 6.5 Unless otherwise agreed in writing, all risk in connection with the goods shall pass to the Customer on delivery of the contract goods to the Customer.
- 6.6 Save in the circumstances referred to in Clause 9.1 (ii) hereof, goods delivered by the Company shall not be returned by the Customer unless the prior written consent of the Company, signed by a Director, is first obtained. No claim shall be entertained nor any credit given in respect of any goods returned without such consent whether or not such goods are taken into possession by the Company.
- 6.7 Should delivery be frustrated by any refusal on the part of the Customer to accept the contract goods for whatever reason, unless the Customer shall have given the Company reasonable written notice of the Customer's wish to postpone delivery, then the Company shall be entitled to an indemnity from the Customer in respect of all costs and expenses on the abortive deliveries.
- 7. PAYMENT**
- 7.1 Unless otherwise agreed by a Director of the Company in writing, any order of less than GBP500.00 in value must be paid under proforma invoice terms, i.e. Cash with Order.
- 7.2 Unless otherwise agreed by a Director of the Company in writing, payment of the full invoice price must be made by the Customer within thirty days of invoice date of the goods. The said period of thirty days or such other period as may be agreed between the Company and the Customer is hereafter referred to as 'the credit period'.
- 7.3 Where goods are delivered by instalments, payments shall be made by the Customer for each instalment within thirty days of invoice date of the same.
- 7.4 Should any sums payable by the Customer to the Company pursuant to Clauses 7.1 and 7.2 hereof remain unpaid after the expiry of the period stated herein for payment, interest at the rate of one and one half per cent (1.5%) per calendar month or part thereof shall at the Company's option be payable by the Customer on any outstanding sums until payment in full has been made.
- 7.5 All costs incurred by the Company in collecting overdue accounts, including all legal expenses, shall be borne by the Customer.
- 7.6 The Company reserves the right to offset payments made by the Customer against any outstanding amounts due to the Company, regardless of the purpose of the payment specified by the Customer.
- 8. RESERVATION OF TITLE**
- 8.1 Neither legal nor equitable ownership of the contract goods shall pass to the Customer until such time as the Customer has paid to the Company the full contract price and until such time, the Customer acknowledges that he is in possession of the contract goods solely as bailee of the Company and undertakes to store the same on his premises separately from his own goods or those of any other person and in a manner which makes them readily identifiable as the goods of the Company, maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery.
- 8.2 The Customer's right to possession of the said goods and materials shall cease after expiry of the credit period if he commits an available act of bankruptcy or (being a Company) does anything or fails to do anything which would entitle a Receiver to take possession of any assets or which would entitle any person to present a petition for winding up. The Company may for the purpose of recovery of its goods enter upon any premises where they are stored or where they are reasonably thought to be stored and may repossess the same.
- 8.3 Subject to these conditions, the Customer is licensed by the Company to agree to sell all or any part of the contract goods and prior to payment to the Company of the contract price, provided that the Customer shall enter into any such agreement expressly as agents and bailees for the Company whether the Customer sells on his own account or not, and that the entire proceeds of any such sale shall be held in trust for the Customer if he fails to recover the proceeds of any such sale within a reasonable period of completion thereof, he will within seven days if called upon by the Company to do so assign to the Company all rights of recovery in respect of such proceeds.
- 8.4 The Customer hereby acknowledges and undertakes to the Company that he is not insolvent and has not committed any act of bankruptcy or (being a Limited Company) knows of no circumstances which would entitle any debenture holder or secured creditor to appoint a Receiver to petition for winding up of the Company or exercise any other rights over or against the Customer's assets.
- 9. WARRANTY**
- 9.1 The Company hereby undertakes to repair or if necessary replace free of charge any materials or work found to be defective if the defect is due to faulty manufacture or bad workmanship, provided that:
  - (i) The Company receives written notice of any defect within one calendar month of such date on which such defect could with reasonable diligence on the part of the Customer have been detected and within twelve months of delivery in any event.

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- (ii) All defective goods and materials are, wherever possible, returned to the Company's premises for the purpose of repair.
  - (iii) If the replacement of any defective component part or assembly forming part of the contract goods proves impossible owing to unavailability, the Company shall sufficiently discharge its said undertaking in and by supplying a part or assembly of equivalent suitability and specification for the purpose of such repair.
- 9.2 The Company shall not be liable in respect of:
- (i) Any defect caused by overloading, abuse, tampering, neglect or accident or any use other than that for which the goods were designed.
  - (ii) Any defect caused by failure, malfunction or defect in any other equipment or system to which the installation may be connected or in any component part require, altered or assemble by any one other than the Company, its supplier or appointed installation or service contractor.
  - (iii) Any consequential loss or damage incurred by the Customer in respect of which adequate insurance cover could reasonably have been maintained by the Customer.
- 9.3 This Warranty is in lieu of all other Warranties expressed or implied including any implied Warranty of merchantability or fitness for a particular purpose save for such Warranties as are given expressly in writing by the Company and signed by a Director.