

CONDITIONS OF SALE

DEFINITIONS

In these conditions:-

“the Company” shall mean Culligan International (UK) Limited:

“Quotation” shall mean the Company’s offer or proposal which becomes the subject of the Order:

“Order” shall mean the order placed by or agreed by the Customer with Culligan International (UK) Limited:

“Customer” shall mean the person, firm or company who has placed the Order with the Company:

“Goods” shall mean any item, parts, material, work of the Company being the subject of the Order:

“Special Conditions” shall mean any supplementary conditions issued with the Company’s vouchers, service, inspection or maintenance products or agreed in writing between the Customer and the Company:

“Site” shall mean the place, area, building or land in which or on which the Goods are or will be installed used, provided or stored.

1. GENERAL

1.1 Any Quotation is made and any acceptance of an Order is given on the express understanding that unless agreed by the Company in writing to the contrary, the following Terms and Conditions apply to the exclusion of all others including any attached to the Customer’s Order.

1.2 No Contract shall be formed until the Order has been accepted by the Company in writing, and where required by the Company, an acceptance Letter of Credit has also been received.

1.3 The Company reserves the rights to alter the specification of the Goods to take account of the improvements in design, availability of materials or for any other reason.

All drawings and illustrations accompanying the Company’s Quotation or contained in any catalogues, price lists or advertisements are approximate only and shall not form part of any Order unless expressly agreed in writing by the Company.

1.4 All weights, measurements, powers, capacities and other particulars of Goods quoted by the Company are stated in good faith as being approximately correct and the Company shall not be liable for any deviations from them.

1.5 The Quotation is based on the information and drawings supplied to the Company at the time of the Quotation and the Goods are limited to that shown in the Quotation. Any variation or extra work accepted by the Company will result in adjustment to the price and completion date. The Customer shall inform the Company of any special requirements, environmental considerations, regulations statutory or otherwise, variations or hazards applicable to the site and/or Goods. It shall be the sole responsibility of the Customer to ensure that the Goods comply with all relevant legislation including environmental legislation. The Customer shall be responsible for any discrepancies, errors or omissions in any drawings and/or information supplied by the Customer to the Company and shall indemnify the Company against any loss caused by such discrepancies, errors or omissions.

1.6 Unless specified in the Quotation the Quotation does not include the price of any chemicals, any water or any consumable items which the Customer shall make available during installation, commissioning and/or subsequent use.

2. PRICE VARIATION AND PAYMENT

2.1 Unless otherwise specified and subject to 2.3 below, the price quoted is on the basis of delivery Ex-Works (in the case of sale to a Customer within the United Kingdom) or F.O.B. UK Port (in all other cases), is strictly Net and does not include any tax (such as VAT), duty, and/or charges, packing and delivery which will be payable by the Customer in addition to the price quoted.

2.2 Unless otherwise agreed:

(a) the Quotation is open for acceptance, unless previously withdrawn, for 30 days from the date thereof and:

(b) the price is that ruling at the date of despatch and unless agreed otherwise in writing, the Company reserves the right to vary the price of the goods in accordance with the Company’s pricing policy ruling at the date of despatch.

2.3 If any law, charge, regulation, levy or tax etc. is made on changes after the date of the Company’s Quotation which affects the Company’s performance of the Order, the price and completion date shall be varied accordingly.

2.4 Terms of payment are as stated in the Quotation or acknowledgement of Order. If not so stated, payment is due in full within 30 days of the date of the invoice following despatch of all or any part of the Order. In the case of overseas sales 100% of the price is payable on presentation of shipping documents out of an Irrevocable Letter of Order opened in the Company’s favour at the time of Order (2.2 above) and confirmed by a Bank acceptable to the Company in London unless otherwise agreed by the Company in writing.

2.5 the Company reserves the right to amend the terms of payment prior to written acknowledgement of Order by the Company.

2.6 Payments are due in Pounds Sterling at the address quoted on the invoice unless otherwise specified by the Company.

2.7 the Company reserves the right to charge interest on any overdue accounts at 3% above the National Westminster Bank UK base rates from time to time in force.

3. GUARANTEE

3.1 Subject to the provisions of this clause 3 the Company will at its option refund the price, repair or replace (or, in the case of destinations overseas, delivery F.O.B. UK Port free of charge) Goods which the Customer has demonstrated are by reason or poor materials or workmanship defective under proper use within 12 months from delivery Ex-Works (or, in the case of supply, deliver, supervision of erection and commission only contracts, within 12 months from completion of erection or 15 months from readiness to despatch, whichever is the sooner) or readiness to despatch if delivery is delayed by the Customer, except that Goods provided under a service or repair order shall be guaranteed for 3 months from completion of service or repair, such guarantee only applying to the actual work done and to new parts supplied.

3.2 As soon as the defect is discovered, written notice must be given to the Company and the Customer must return the Goods to our works, carriage paid.

3.3 No guarantee shall apply if the full price of the Goods has not been received by the Company.

3.4 The Company guarantee set out under this clause 3 shall be in lieu of any warranty, expression or condition implied by law or otherwise as to the merchantability, quality or fitness for purpose of the Goods.

3.5 Goods which are of any expendable or consumable nature are excluded from the guarantee.

3.6 Where any recommendation, or advice is given by the Company or its agents as to the mode of storing applying on using the Goods, and advice is given in good faith and the Company shall not be liable for any loss or damage suffered by reliance thereon.

3.7 Any guarantee given as to the performance of the Goods in the Quotation is based on the design parameters and water quality specified in the Quotation.

3.8 All guarantees given pursuant to this Agreement will only be operative and binding on the Company in the circumstances where (unless otherwise agreed in writing):

(a) the Goods have been supplied and put into operation by the Company;

(b) replacement parts have been supplied by the Company;

(c) the Goods are at all times operated strictly in accordance with the Company’s instructions and otherwise in accordance with good practice using commercially pure reagents;

(d) the Goods have not been modified or altered except with the Company’s written consent;

(e) water or liquid is of the same nature and analysis to that specified and the general physical conditions are maintained;

(f) the Company is given adequate time and opportunity to rectify any failure in performance of the Goods.

3.9 The Company shall be under no liability for failure to obtain any performance figures quoted unless the company shall have expressly and specifically guaranteed them as a separate obligation in writing.

3.10 In the event that liquidated damages have been agreed for default, they shall be in full satisfaction of any liability under the Order or on any other account.

3.11 If the Customer claims that the Goods do not perform as guaranteed, the Company reserves the right to send a representative to investigate the Customer’s claim. If such representative is able to achieve guaranteed performance without alteration other than routine adjustments or the fault in the Goods is bound to be due to an act or omission of the Customer, then such visits are to be at the Customer’s expense.

4. FORCE MAJEURE AND CANCELLATION

4.1 Should the execution of the Order be hindered or delayed by the Customer’s instructions or lack of instructions or by any act or omission on the Customer’s part or by any cause whatsoever beyond the Company’s reasonable control (including but not limited to strike, lockouts, fire, explosion, shortage of raw materials, delay in delivery from our suppliers, state of war whether declared or not, civil strife, sabotage, vandalism and exceptional weather conditions, government or any other regulations, rules, statutes or orders enacted after the acceptance of the Quotation) the Company at its absolute discretion shall be at liberty to cancel or suspend the Order forthwith without any liability whatsoever by the Company to the Customer.

4.2 The Company shall be entitled to suspend or cancel the order forthwith if the Customer makes default in any payment under this or any other Order or becomes bankrupt or, in the case of a limited company, goes into liquidation or becomes subject to receivership. Any such cancellation shall be without prejudice to any other rights or remedies the Company may have against the Customer. In the case of suspension clause 5.2 shall apply.

4.3 The Customer may not cancel the Order without the Company’s written consent (except for inspection Service Contracts see clause 11) which shall only be given upon the Customer undertaking to pay cancellation charges to compensate the Company for all costs and charges incurred to date and the Company loss of profits such sums being notified to the Customer by the Company in writing.

4.4 All Goods returned must be carriage paid at the Customer’s risk and other than circumstances of faulty merchandise, wrongful delivery by quantity or type, the customer shall, without prejudice to the Company’s other rights and remedies pay a minimum handling charge of 30% of invoiced value.

5. DELIVERY

5.1 Any dates quoted for delivery of the Goods are quoted Ex-Works and are to be treated as estimates only. The Company shall not be liable for failure to deliver within such time(s) unless the Company has agreed in writing to pay liquidated damages to the Customer for any delay and the Customer has suffered loss resulting from such delay. The Company’s liability shall be limited to the payment of liquidated damages in the sum agreed in writing and this shall be the Customer’s sole remedy for delay.

5.2 If the Company is prevented by the Customer’s instructions or lack of instructions, or any act or omission, on the Customer’s part from despatching or completing Goods at the date specified in the acknowledgement of Order, then the cost involved in storage, protection insurance, re-inspection, rescheduling and delivery shall be charged to the Customer, and any payment due shall be made as though the Goods had been delivered or completed in accordance with the original terms of the acknowledgement of Order.

5.3 In the event that any delayed delivery period (referred to in sub-clause 5.2 above) shall exceed 6 months then the delayed plant shall be deemed to have been delivered to the Customer and shall be at the Customer’s risk from the expiry of such 6 month period.

5.4 In the event that the Company is delayed for a period exceeding 3 months in starting any supervision of erection and/or commission in respect of any contracts for reasons outlined in sub-clause 5.2 above, the Company shall be entitled to vary the Contract price accordingly with reference to the Company’s prevailing standard daily rates.

5.5 Where the Company has arranged delivery transport, the Company will repair or replace Goods damaged or lost in transit to the place of delivery or provided always that the Customer shall advise the Company, within 48 hours of such damage or loss.

5.6 Partial deliveries or partial completion of the Order shall in no way nullify any of these terms and conditions from applying to the parties delivery or completion or to the balance of the Order.

6. PROPERTY AND RISK

6.1 The property in the Goods shall not pass to the Customer until the full price has been received by the Company.

6.2 If any part of the price shall be outstanding for more than 28 days or if the Customer goes into liquidation or is subject to receivership the Company shall be entitled to take possession of the Goods and as licensee of the Customer may enter the premises of the Customer for the purposes of such recovery.

6.3 The risk in the Goods shall pass to the Customer upon delivery or completion or erection (as the case may be) and the Customer shall insure the Goods against all usual risks until the price is paid.

7. LIMITATIONS OF LIABILITY

7.1 Notwithstanding any other provision hereof to the contrary:

(a) neither party hereto shall be liable to the other whether in contract, tort (including negligence), or howsoever, for any consequential or economic loss, including but not limited to loss of any profit, loss of any order or contract, non-operation or increase in expense of operation; and

(b) save in the case of death or personal injury caused by the Company’s negligence or default, the Company’s total aggregate liability for the Customer under or in respect of the Order whether such liability shall arise in contract, tort (including negligence) or howsoever, shall be limited to the value of the goods or services supplied.

7.2 If the Customer uses or treats the Goods in such a manner as to infringe any patent rights, design rights, trade marks or copyright, the Company shall not be responsible for such infringement and the Customer agrees to indemnify the Company from and against all liability arising therefrom.

7.3 Should the Customer issue any materials or parts for use in carrying out the Order then the Company shall not be liable for any loss or damage that may occur from such material or parts from whatever cause except by the Company’s negligence.

8. INCOTERMS

8.1 The latest edition of the Incoterms shall form part of the Order where appropriate.

9. INSTALLATION, COMMISSIONING AND SERVICE

9.1 For Orders where the Company have included for the services of an engineer to supervise erection and/or commissioning and/or carry out service the rates for those services shall be the Company’s standard rates ruling at the time of performance of the service.

9.2 For Orders where the Company has included for full erection, unless otherwise specified in the Quotation, the Customer shall provide suitable access to and possession and control the Site, proper prepared foundations ready to receive the Goods as and when delivered adequate off-loading and lifting facilities, temporary hand-railing and scaffolding, all civil engineering and building works and material of any kind, suitable storage, guarding and protection for the Goods from time of delivery, all necessary fences and barriers any and all water, electric power, communication services, lighting and heating necessary of the Site during and after installation and all necessary toilet welfare and other facilities including discharge facilities and adequate assistance. All the services included in this sub-clause shall be supplied at the Customer’s expense to enable the work to be expeditiously and continuously carried out and should additional work or expenditure be incurred due to lack of the above the Company reserves the right to increase the price.

The price (unless otherwise specified in the Quotation) does not include any Site protection. Site wiring, cabling, treatment chemicals (which the Customer shall provide in adequate quantities of commercially pure quality during start-up, during commissioning and subsequently), or any overtime work which may be necessary due to the Site conditions.

10. ORDER OF PREFERENCE

In case of any conflict between the provisions of any Special Conditions, these terms and conditions and any other documents or communication, the following order of preference shall apply first the Special Conditions secondly these terms and conditions thirdly any other documents or communications.

11. HEALTH AND SAFETY

11.1 The Customer shall ensure that where the Company carries out work on the Site or premises prescribed by the Customer, and conditions equipment or articles provided to the Company for use on the Order are in accordance with applicable Health and Safety and COSHH regulations.

12. ASSIGNMENT

12.1 The Order may not be assigned in whole or in part by either party without the prior written consent of the other party. Nothing under this condition shall prevent the Company from subcontracting or from performing its obligations through agents where this is customary.

13. CONFIDENTIALITY

13.1 The Customer shall ensure that in respect of all information or data received by the Customer relating to the subject matter of the Order or to the Company’s business or affairs, disclosed whether in writing, orally or by other means to the Customer by the Company or by any third party on the Company’s behalf remains the property of the Company and shall be treated as confidential by the Customer and will not be disclosed to any third party without the Company’s written consent. The customer shall procure that persons to whom such information is divulged by them shall themselves observe the requirements of this conditions.

14. SEVERABILITY

Each undertaking in these terms and conditions shall be considered as a separate undertaking and if one or more of the undertakings contained in these terms and conditions is found to be unenforceable or in any way an unreasonable restraint of trade, the remaining undertaking shall continue to bind the parties.

15. COPYRIGHT

The copyright subsisting or which subsequently subsists in all documents, drawings, specifications, designs, programs or any other material prepared by the Company whether readable by humans or by machines shall belong to the Company absolutely and they shall not be reproduced or disclosed or used in their original or translated form by the Customer without the Company’s written consent for any purpose other than for which they were intended.

16. GOVERNING LAW

16.1 This Order shall be governed by and construed in accordance with English Law and shall be subject to the exclusive jurisdiction of the English Courts.