

## **HOWARDS HYDROCARE LTD STANDARD CONDITIONS OF SUPPLY**

### **1. DEFINITIONS**

Except where the context otherwise requires the following expression shall have the meaning shown against them:

“Company” Howards Hydrocare Ltd and/or associated companies.

“Conditions” these standard conditions of supply.

“Contract” an agreement between the company and the customer for the supply goods.

“Customer” the purchaser of the goods.

“Deliver” Includes “procure to be delivered” and “delivery” shall be construed accordingly.

“Goods” any goods, equipment or other thing supplied (including where appropriate any part or component thereof) by the company to the customer.

“Writing” includes any communication effected by letter, telex, cable, facsimile, electronic mail or other comparable means of communication.

### **2. APPLICATION**

2.1 Any supply of goods by the company shall be subject to these conditions.

2.2 No term or condition of the customer’s standard terms of trading contained or referred to in the customer’s order acceptance or otherwise shall form part of any contract and no such term or condition shall modify or amend these conditions of any contract.

2.3 No change to any contract or any change to or waiver of these conditions shall have any legal effect, unless agreed to in writing by a director of the company, provided that the company may amend these conditions by notice in writing with regard to contracts entered into after such notice.

2.4 The headings in these conditions are for convenience only and shall not affect its interpretations.

### **3. ORDERS, QUOTATIONS AND CANCELLATION OF CONTRACT**

3.1 The customer’s order for goods shall be made or confirmed by the customer in writing but a contract shall not be made until an order is accepted by the company. The company may communicate its acceptance to the customer either in writing or by despatching (or procuring the despatch of) the goods.

3.2 a) Any offer by the company to sell goods to the customer shall be made in a writing quotation. Any quotation made by the company is given on condition that a contract not be formed until the company has received the customers written acceptance thereof.

b) The company may amend or withdraw a quotation at any time before it has received the customer’s written acceptance.

3.3 The Customer may not return any goods supplied in accordance with the contract after the contract has been made. The company may, at its absolute discretion and following the customer’s prior written request, agree to the cancellation of an order and/or to the return of any goods and it shall be a condition of the company existing its discretion that:

a) The goods to be returned form part of the company’s normal stock holding.

b) The customer shall pay the company a sum equal to the greater of 15% of the price of the goods or £15 for each item comprising the goods.

c) Any goods returned are in their original condition.

d) The customer shall, in addition, be liable for the cost of delivery or redelivery.

### **4. PRICES**

4.1 Unless otherwise agreed in writing, all prices are ex-warehouse and exclude the cost of delivery.

4.2 Except where any quotation by the Company provides that the price for goods shall be fixed for a given period, the price for Goods shall be that prevailing when they are despatched.

4.3 The Company reserves the right to make additional charges when there is any delay in being supplied with delivery instructions or it prior to delivery the Company incurs ant additional costs.

4.4 Unless otherwise stated in writing the price for Goods is exclusive of VAT and all other taxes, fees, dues, duties or other assessments or charges.

## **5. DELIVERY AND RISK**

5.1. Unless otherwise agreed, delivery of the Goods shall be at the Company's premises.

5.2 Time of delivery shall not be of the essence of any Contract. The Customer shall allow a reasonable endeavours to meet any stated delivery dates but accepts no liability whatsoever for any failure to do so.

5.3 If the Customer fails to take delivery of any Goods in accordance with a Contract then the Company, at its option shall:

- a) Arrange for storage at the Customer's risk and cost (including the costs of transportation): and/or
- b) At any time after the due date for delivery, terminate the Contract in accordance with clause 11.1.

5.4 Where delivery is made by instalments, if the Company fails to make delivery or makes defective delivery of any instalments then such failure or defective delivery shall not affect the obligations of the Company and of the Customer as to remaining instalments.

5.5 Except where risk in goods would pass earlier in accordance with clause 5.3 or 5.6 risk in the Goods shall pass from the Company to the Customer upon delivery.

5.6 Where the Company is unable to deliver Goods in accordance with the Contract for any reason other than the Company's default, the Company may either in its own name or as agent for the Customer, arrange for storage of the Goods. The Company shall be considered to have fulfilled the contract immediately upon delivery being made to the place of storage and ultimate delivery shall be borne by the customer.

## **6. CLAIMS**

6.1 The customer shall inspect the Goods immediately upon delivery.

6.2 a) The customer shall give written notice to the Company and any carrier within three days of delivery, of any failure of the Goods to comply with the Contract.  
b) Where the Customer has not received any Goods despatched by the Company within 14 days of having been notified of despatch.

6.3 Provided the Customer complies with clause 6.2, the Company will replace all Goods which have not been delivered and at its option, repair or replace Goods which are not in conformance with the Contract.

## **7. TITLE**

7.1 Goods supplied by the Company to the Customer will remain the Company's property until the Customer has paid:

- a) For the Goods, and
- b) All other amounts due from the Customer to the Company but unpaid at the date of delivery of the Goods.

7.2 Until payment for the Goods has been made in full, or until the Customer supplies Goods to its Customer by way of a bona fide transaction at full market value, the Company may (without prejudice to any of its other rights) recover the Goods or any part of them and at its discretion sell or dispose of the Goods and enter the Customer's premises for that purpose.

7.3 While within the Customer's control the Goods, title in which has not passed to the Customer in accordance with these conditions, shall be stored separately from other Goods and identified as belonging to the Company.

7.4 Until the Company has been paid in full for the Goods, the relationship between the Company and the Customer shall be fiduciary in relation to such Goods. If the Goods are disposed of by the Customer, the Company shall have the right to trace the proceeds of any disposition, or any insurance proceeds or other monies received by the customer in respect of such Goods.

7.5 While payment is due to the Company for any Goods which have been supplied by the Customer to a customer, if required by the Company the Customer shall assign to the Company any such claims it has against its Customer in respect of such transaction and supply the Company with all such documentation, information and assistance as the Company may require in perusing any such claim.

## **8. GUARANTEE AND LIMITATION OF LIABILITY**

8.1 The Goods are guaranteed against defects in workmanship and materials for one year from the date of delivery .The Company shall, at its option, replace or repair free of charge any Goods which in its opinion, are faulty.

8.2 The guarantee in clause 8.1 is made subject to the following conditions:

- a) The Goods must not have been neglected, modified or otherwise improperly used in any manner whatsoever;

b) The Goods must be installed by suitable qualified personnel in accordance with the Company's or manufacturer's installation instructions;

c) The Goods must have been properly maintained and serviced by suitable qualified personnel as recommended by the Company or manufacturer and only parts produced by the manufacturer of the Goods have been fitted to the Goods;

d) The guarantee does not apply to pipe work or to equipment not supplied by the Company;

e) Any equipment, part or component repaired or replaced under this guarantee will be covered for the balance period of the original guarantee;

f) Any defect shall be notified to the Company in writing as soon as possible after it becomes apparent and in any event, within the guarantee period; and

g) The Goods must have been paid for in full.

8.3 The guarantee may be transferred to a subsequent purchaser with the prior written agreement of the Company.

8.4 The guarantee does not cover any costs incidental to the replacement or repair of the Goods, including without limitation the cost to the Customer of returning Goods to the Company, the delivery to the Customer and installation of replacement Goods to the Company, the delivery to the Customer and installation of replacement Goods, or in relation to any pipework.

8.5 Except as provided in these Conditions all warranties, conditions (except as to the Company's title to sell Goods) and statements, express or implied, statutory or otherwise or contained in any literature concerning the Goods, are excluded.

8.6 Except as provided in this clause 8 the Company shall not be liable for any loss or damage whatsoever, whether in contract, tort (including negligence) or otherwise and including, without limitation, loss or damage caused by or arising out of any failure or any defect in the Goods, or for any loss or damage caused by or arising out of the use of the Goods.

8.7 The Company shall not in any event be liable or responsible for any indirect, incidental or consequential loss or damage including loss of use, revenue, goodwill, or profit, however caused.

8.8 The limitations and exclusions contained in clauses 8.6 and 8.7 shall apply to:

a) Death and/or personal injury caused by negligence; and/or

b) Damage caused by any defect in the Goods (and "damage" and "defect" shall have the same meaning as in the Consumer Protection Act 1987)

## **9. PRICE**

9.1 Unless otherwise agreed in writing by the Company, all invoices shall be paid in full at the end of the month following the month invoice. All sums not paid by the due date will become liable for interest at three percent per month (calculated daily) until paid in full.

9.2 Timely payment shall be of the essence of the Contract and in the event of any failure or delay by the Customer to pay for Goods the company shall have the rights set out in clause 11.

9.3 Payment for Goods is immediately due and payable upon commencement of any event referred to in clause 11.

9.4 The Company shall have a right of set-off and the Customer hereby authorises the Company to apply any money owed by it to the Customer against any monies which may be due from the Customer to the Company.

## **10. FORCE MAJEURE**

Except with respect to the payment of money, neither party shall be liable for failure to perform its obligations under these Conditions if such failure results from circumstances beyond such parties reasonable control.

## **11. TERMINATION**

11.1 If any payment or instalments falls due and is not paid in full within 7 days, the Company may without prejudice to any rights, suspend performance of any of its obligations under the Conditions or terminate the Contract and/or any other Contract for sale of Goods by notice in writing with immediate effect.

11.2 If the Customer becomes insolvent or enters into liquidation, whether compulsory or voluntary (other than for the purposes of amalgamation or reconstruction) or compounds with its creditors generally or has a receiver, administrator, administrative receiver or liquidator appointed over all or any of its assets, or suffers execution or distress or takes or suffers any similar action in consequence of debt or becomes unable to pay its debts as they fall due or fails to perform any obligation required to be performed by it hereunder for a period of 30 days after receipt of

notice from the Company of such failure, the Company may, without prejudice to any of its rights, terminate the Contract forthwith by notice to the Customer.

**12. ASSIGNMENT**

No Contract shall be assigned or transferred in whole or in part by the Customer directly or indirectly without prior written consent of the Company.

**13. TRADEMARK AND TRADENAMES**

13.1 Nothing in these Conditions shall be deemed to confer any right upon the Customer to apply any trademark, tradenames, colour schemes or design rights owned by the Company or the Company's manufacturers or suppliers.

13.2 The only trademarks, tradenames which may be displayed in advertising Goods supplied hereunder shall be those expressly authorised by the Company or its manufacturers or suppliers and the Customer shall comply with the Company's express instructions relating to the context, scale and manner of use of such trademarks or tradenames in all such advertising.

13.3 The trademarks, tradenames, colour schemes or design rights of the Company or its manufacturers or suppliers shall not, without the Company's prior written consent be used on or in relation to any Goods supplied hereunder which the Customer in any way adds to, repacks or otherwise alters and the Customer shall remove or permanently obliterate any such trademarks, tradenames, colour schemes or designs of the Company or its manufacturers or suppliers from any Goods so added to, repacked or otherwise altered.

**14. SEVERABILITY**

If any part of these Conditions or any other term or condition of this Contract is judged by any competent court to be invalid or unenforceable, the remaining part or parts shall continue in full force and effect.

**15. FORBEARANCE**

Any neglect, forbearance or indulgence on the part of the Company relating to rights under these Conditions shall in no way be deemed a waiver, implied or otherwise, of such rights.

**16. NOTICE**

Notice will be in writing and will, for all purposes, be deemed to have been fully given and received when actually received and will be sent by registered or recorded delivery mail, postage prepaid (unless otherwise provided), properly addressed to the parties at their registered office or at such other address for either party as may be specified by such purpose, or by teletex with receipt acknowledged by answerback.

**17. GOVERNING LAW AND JURISDICTION**

The construction, validity and performance of these Conditions and any Contract shall be governed by and construed in accordance with English law and any dispute arising out of or in connection therewith shall be subject to the exclusive jurisdiction.