

1. General

These conditions ("Conditions") apply when Anhydritec Limited ("AL") agrees to sell the goods described in the customer's order ("Goods") to the customer identified in that order ("Customer"). All Goods supplied by AL are supplied on these Conditions and no variation of these Conditions shall have effect unless expressly accepted by a Director of AL in writing. If there is any inconsistency between these Conditions and any other terms and conditions subject to which an order is made or purported to be made by the Customer then these Conditions shall prevail.

2. Quotations

Any quotation issued by AL for the sale of Goods to the Customer ("Quotation") may be withdrawn at any time and unless otherwise specified shall be automatically withdrawn 30 days following the date the Quotation is issued by AL. No binding contract between AL and the Customer for the sale and purchase of the Goods ("Contract") shall be formed until AL has confirmed its acceptance of the Customer's order for the Goods in writing.

3. Orders and Cancellation

3.1 The Customer shall be responsible for ensuring the accuracy of any order it submits to AL and for giving AL such information as it reasonably requires within a sufficient time to enable AL to perform the Contract in accordance with its terms. The Customer shall be responsible for all costs (including the costs of all labour and materials used) incurred by AL as a result of any alterations to specification after submission of an order. The quantity, quality, description and any specification of the Goods shall, subject to clause 3.2 below, be as set out in the Customer's order.

3.2 AL reserves the right at any time to make changes to the specification of the Goods which are required to conform with any applicable safety or other statutory requirements.

3.3 The Customer may only cancel an order with the express written consent of AL and provided that the Customer indemnifies AL against all losses (including loss of profits), costs (including the cost of all labour and materials used), damages and expenses incurred by AL as a result of the cancellation.

4. Price

4.1 The price of the Goods shall be the price then in force at the time of delivery, regardless of any previous price quoted (the "Price"). Any quoted prices are for a specific quantity of Goods and may not apply accordingly to different quantities.

4.2 The Price is subject to increase or decrease upon notice to the Customer in the event of: any change to AL in the cost of supplying the Goods to the Customer (including without limitation, any change in the cost of raw materials, labour or supplies); any change required by the Customer to the delivery dates, quantity or specification of the Goods; or any failure by the Customer to provide AL with accurate information or instructions. The Price is fixed only where specifically stated in writing by AL and for the period stated.

4.3 Unless otherwise agreed in writing, the Price is quoted on an ex-works basis. The Customer shall pay to AL the costs specified in clauses 5, 7 and 8 of these Conditions in addition to the Price.

4.4 The Price is exclusive of Value Added Tax, which shall be paid by the Customer in addition to the Price in accordance with clause 13 of these Conditions.

5. Packaging

Where the Customer requests any special packaging specifications, the cost of such packaging shall be charged to the Customer. The Customer shall if so requested by AL return to AL any pallets, containers or other packaging associated with the Goods.

6. Accuracy and Description of Goods

6.1 Any descriptions, specifications, drawings, price lists, samples, dimensions or other information contained in advertising or other materials produced by or on behalf of AL ("Information") are approximate and are intended merely to present a general idea of the Goods. The Customer shall not be entitled to rely on the Information and the Information shall not constitute any representation by AL or form part of the Contract and shall not give rise to any independent or collateral liability upon AL.

6.2 Any advice or recommendation given by AL or any of its employees, agents or sub-contractors is for general information only and Customer shall not rely on any such advice or recommendation.

7. Delivery

7.1 Unless otherwise agreed, delivery of the Goods shall be made by the Customer (or its nominated carrier) collecting the Goods from AL's premises at any time during AL's normal business hours after AL has notified the Customer that the Goods are ready for collection or, if a specific destination is agreed by AL, by AL delivering the Goods to that place.

7.2 AL shall use all reasonable efforts to deliver the Goods by the agreed delivery date but any such delivery date is approximate only and time for delivery is not of the essence. AL shall not be liable for any losses including loss of profit, costs, charges, expenses or damages howsoever caused and incurred by the Customer as a consequence of late delivery. The date for delivery shall be extended for a reasonable period if there is any delay in delivery due to any Event of Force Majeure (as defined in clause 14 of these Conditions).

7.3 If the Goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure by AL to deliver any individual instalment shall not entitle the Customer to cancel the entire Contract or treat it as cancelled.

7.4 If the Customer fails to take delivery of the Goods, AL shall be entitled to: (a) store the Goods until the Customer takes delivery of them and to charge the Customer for all reasonable costs of such storage (including insurance during storage); or (b) sell the Goods at the best price reasonably obtainable and to charge the Customer any shortfall between the Price and the amount received by AL upon sale.

7.5 Where AL agrees to deliver the Goods otherwise than at its premises, the delivery price shall be as specified in the Quotation. Where no delivery price is quoted by AL, the delivery price shall be as stated in AL's current price list from time to time provided that such price list only applies to deliveries to mainland Great Britain destinations. Section 32(2) of the Sale of Goods Act 1979 shall not apply. AL is not required to give the Customer the notice specified in section 32(3) of the Act.

7.6 AL reserves the right to increase the delivery price if at any time the cost to AL of delivering the Goods increases for any reason, including, without limitation: any increase in the cost of fuel, road tax, tolls or similar or increase in the haulage costs of the appointed carrier; any closure, partial closure or other factor which renders any applicable road unsuitable for transporting the Goods; any change in the quantity or specification of the Goods, the proposed delivery date or address for delivery; or any failure by the Customer to provide AL with accurate delivery information.

7.7 AL shall not be liable to the Customer for any failure to deliver or any delay in delivering Goods to any site where access cannot be obtained in AL's own vehicles.

8. Loading and Unloading

Unless otherwise agreed, the Customer is responsible for loading and unloading the Goods save where AL agrees to deliver the Goods to the delivery address in which case the Customer is only responsible for unloading the Goods at the delivery address. Delay by the Customer in loading or unloading (as applicable) may involve AL levying additional charges on the Customer.

9. Passing of Risk

Risk of loss of or damage to the Goods shall pass to the Customer:

(a) in the case of delivery by AL to the Customer's premises, when the Customer breaks or unloads the whole or any part of the consignment of Goods; or (b) in the case of collection of the Goods from AL's premises by the Customer or its nominated carrier when AL notifies the Customer that the Goods are ready for collection; (c) if, on the Customer's instructions, AL unloads the Goods at the delivery address, when the Goods have been unloaded at that site.

10. Warranties

10.1 AL warrants that it has exercised reasonable skill and care in the design and manufacture of the Goods but no representation or warranty is given by AL as to the suitability or fitness of the Goods for any or any particular purpose whether made known to AL or not and the Customer shall satisfy itself in this respect.

10.2 Any claim relating to the quality, quantity or non-receipt of Goods must be made in writing to AL within seven days of delivery or in the case of defect which was not apparent on reasonable inspection, within 7 days of discovery of the defect. In the absence of receipt of such notice, and save as provided for below, the Customer shall not be entitled to reject the Goods and AL shall be discharged from all liability or responsibility to the Customer whatsoever in respect of the quality or quantity of Goods ordered by the Customer. Subject to clause 11.2, where it can be shown to the reasonable satisfaction of AL that the Goods are defective, AL shall at its sole discretion either replace the defective Goods in question or refund the Price paid by the Customer in respect of the defective Goods and AL shall have no further liability to the Customer in respect of those defective Goods.

10.3 AL shall be under no liability to the Customer in respect of any defect in the Goods: (a) arising as a result of any drawing, design or specification supplied by the Customer; or (b) arising as a result of any fair wear and tear, or any repair, alteration, abnormal use, misuse, neglect, willful damage, or any failure by the Customer to follow AL's instructions in relation to the use or installation of the Goods; or (c) arising in any parts, materials or equipment which form part of the Goods and which are not manufactured by AL and in such circumstances the Customer shall only be entitled to rely on any guarantee given by the manufacturer for the benefit of the Customer in relation to such parts, materials or equipment; or (d) if AL has not been given a reasonable opportunity to inspect the Goods following discovery of the defect; or (e) if the total price of the Goods has not been paid by the due date for payment.

10.4 Save as herein specially provided and save to the extent that the same cannot by law be excluded, all conditions, warranties or representations, whether express or implied, statutory or otherwise in relation to the Goods are hereby excluded.

11. Limitation of Liability

11.1 AL shall hold the Customer and third parties harmless from the direct damages suffered as a result of the infringement by AL of its contractual obligations, due to defects in the Goods or due to acts or omissions of its employees, subcontractors and other individuals for whom it is legally liable, up to a maximum aggregate liability cap or amount payable for all claims of any kind of 400,000 GBP. AL shall not be liable for any kind of indirect, consequential, incidental, punitive, special or exemplary damage or loss suffered by the Customer or third parties, including but not limited to loss of production, income, revenue or profit (lucrum cessans), loss of performance or availability, costs of replacements with substitute goods, waiting costs, costs of labour, investment or capital, and any other financial costs, third party claims, etc.

11.2 AL shall have no liability to the Customer whether in contract, tort (including negligence) or otherwise except to the extent expressly set out in these Conditions.

11.3 In the event that the Customer or any third party alters or modifies the Goods without AL's prior written consent and any claims are asserted against AL by reason of such alteration or modification, the Customer shall indemnify AL against any resulting damages, liabilities, expenses and costs suffered or incurred by AL.

12. Orders in Excess of Requirements

Where the quantity of Goods required by the Customer is estimated by AL on the Customer's instructions, AL accepts no responsibility or liability for the sufficiency or otherwise of the quantity of Goods delivered to the Customer. If, in such circumstances, the Goods delivered are in excess of the Customer's requirements the Customer shall not have the right to reject the whole or part of the delivery of such Goods and the Customer shall pay the Price in full for the Goods delivered.

13. Payment

13.1 AL shall be entitled to invoice the Customer for the Price and any costs payable under clauses 5, 7 and 8 of these Conditions on or at any time after delivery. The Customer shall pay the Price within 30 days of delivery together with any value added tax payable by the Customer in respect of the Goods. Time for payment of the Price shall be of the essence of the Contract. All payments shall be made in full without deduction in respect of any set-off or counterclaim.

13.2 AL shall at any time and without notice be entitled to appropriate any payment made by the Customer in respect of any Goods in settlement of such invoices as AL may in its absolute discretion think fit notwithstanding any purported appropriation by the Customer.

13.3 In the case of non-payment of AL's invoice when due, AL shall have the right without notice to: (a) suspend and/or cancel the delivery of any Goods ordered by the Customer in whole or part; and/or (b) terminate the Contract; and/or (c) charge the Customer interest (both before and after any judgement) on the amount unpaid, at a rate of 8 percent over the base lending rate of Barclays Bank Plc for the time being from the due date for payment until the date of actual payment by the Customer.

14. Retention of Title

14.1 Notwithstanding delivery, or the passing of risk in and to the Goods, title to the Goods shall not pass to the Customer until the Price for the Goods is received by AL in full in either cash or cleared funds, together with all other costs and expenses due from the Customer in accordance with these Conditions and any other monies owed by the Customer for any other reason.

14.2 Until such time as title to the Goods passes to the Customer the Customer shall hold the Goods as AL's fiduciary agent and bailee and shall: (a) keep the Goods marked and stored separately from other goods so as to be identifiable as the property of AL; (b) keep the Goods properly stored, protected and insured to their full market value; (c) give to AL such information relating to the Goods as AL may from time to time require; and (d) deliver the Goods up to AL upon demand and if the Customer fails to do so, the AL shall be entitled to enter upon the Customer's premises or any other premises where the Goods are stored in order to retake possession of the Goods. This entitlement shall continue to subsist following termination of the Contract for any reason and is without prejudice to any accrued rights of AL.

14.3 Until title in the Goods has passed to the Customer the Customer shall not be entitled to pledge, create a lien over or charge in any way whatsoever the Goods and if the Customer does so, all monies owing to AL shall immediately become due and payable.

14.4 The Customer may (unless AL revokes permission) in the ordinary course of its business resell the Goods at the full market price even though title has not passed provided the Customer holds in a fiduciary capacity on trust for AL from the proceeds of such resale a sum equal to the Price of the Goods under the Contract ("AL's Proceeds") and keeps AL's Proceeds separate from any monies of the Customer and third parties in a separate bank account clearly denoted as an account containing monies deposited for the benefit of AL and in the case of tangible proceeds, properly stored, protected and insured.

14.5 The Customer shall include a provision equivalent to this clause 14 in its own terms and conditions for the sale of the Goods, with references to "AL" replaced by references to the Customer and references to "the Customer" by references to its own customer.

14.6 The provisions of this clause 14 shall be without prejudice to the obligation of the Customer to purchase the Goods.

15. Force Majeure

AL shall not be liable whether in contract, tort (including negligence) or otherwise to the Customer or be deemed to be in breach of the Contract by reason of any delay in performing or any failure to perform any of its obligations in relation to the Goods if the failure was due to any cause beyond AL's reasonable control (an "Event of Force Majeure"). Where AL is affected by an Event of Force Majeure, it shall be entitled at its option either to cancel the Contract or to extend the time of its performance by a period equivalent to that during which its performance has been prevented by the Event of Force Majeure.

16. Insolvency of the Customer

16.1 If: (a) the Customer makes any voluntary arrangement with its creditors or becomes subject to an administration order or becomes bankrupt or goes into liquidation; or (b) an encumbrancer takes possession of the whole or any part of the Customer's property or assets; or (c) the Customer ceases or threatens to cease to trade; then, without prejudice to any other right or remedy available to AL, AL shall be entitled without notice to suspend or cancel the Contract or the delivery of the whole or any part of the Customer's order for Goods and if any Goods have been delivered but not paid for, the Price in respect of those Goods, shall become immediately due and payable.

17. General

17.1 Any notice given by either party shall be in writing and delivered to the other party at its registered office, principal place of business or such other address as has been notified to the party giving the notice. A notice shall be deemed to have been served at the time of delivery if delivered personally, 48 hours after posting for a UK address and 96 hours after posting for an overseas address.

17.2 If any provision of these Conditions is found by any court to be invalid or selling unenforceable in whole or part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected.

17.3 AL may, in whole or part, release, compound, compromise, waive or postpone, in its absolute discretion, any liability owed to it or right granted to it under these Conditions without in any way prejudicing or affecting its rights in respect of any other right or liability.

17.4 No term of these Conditions or a Contract shall be enforceable pursuant to the Contracts (Rights of Third Parties Act) 1999 by any person not a party to them.

17.5 No right or interest arising out of any Contract may be assigned by the Customer without AL's prior written consent (which it may withhold at its absolute discretion).

17.6 A reference to a statutory provision includes a reference to the statutory provision as modified or re-enacted or both from time to time and any subordinate legislation made under the statutory provision.

18. Law

These Conditions and the Contract shall be governed by English law and both parties shall submit to the exclusive jurisdiction of the English Courts. The Goods shall not be required to comply with any provisions of any other law.