

# CONDITIONS OF SALE OF GOODS AND PROVISION OF SERVICES

## 1. DEFINITIONS

In these Conditions:

- 1.1 'the Customer' and 'you' means the party who accepts the Company's written quotation or who signs and submits a written order which is accepted by the Company;
- 1.2 'the Company', 'us' and 'we' means Total Hygiene Limited;
- 1.3 'Goods' means the goods (including any instalment of the goods or any parts for them) which the Company is to supply in accordance with these Conditions;
- 1.4 'Services' means the services to be provided by the Company for the Customer/End User in accordance with these Conditions;
- 1.5 'Contract' means the contract for the sale and purchase of the Company's Goods and/or Services;
- 1.6 'End User' means the party to whom the Goods are delivered for end use by them, or who directly receives the benefit of the Services, in both cases where such party is not the Customer;
- 1.7 'Consumer' means a Customer who purchases Goods and/or Services for purposes outside his trade, business or profession;
- 1.8 the headings are for convenience only and shall not affect interpretation of these Conditions.

## 2. CONSUMERS – PLEASE READ CAREFULLY

- The provisions of this clause 2 apply where the Customer is a "Consumer", as defined above.
- 2.1 These Conditions do not affect your statutory rights.
  - 2.2 The following provisions of these Conditions will not apply to you: Clause 7.6, Clause 7.7; also, if you are an individual, Clause 6.2 and Clause 6.4
  - 2.3 The following provisions will apply to you in addition to the provisions of these Conditions which are not excluded by clause 2.2:
    - 2.3.1 If you are an individual, you have a statutory right to cancel any Contract for the supply of Goods (with or without Services) by giving written notice to the Company by hand, post, fax, or email at the address, fax number, or e-mail address shown overleaf (giving details of the Goods and their delivery) before the end of 7 working days after the day on which you receive the Goods. In this event you must make the Goods available to the Company for collection in the condition in which they were delivered to you and the Company will within 30 days of receipt of your cancellation notice refund the sum paid for the Goods by you or on your behalf.
    - 2.3.2 If you are an individual, you have a statutory right to cancel any Contract for the supply of Services (where the Contract is for supply of Services only) by giving written notice to the Company by hand, post, fax, or email at the address, fax number, or e-mail address shown overleaf before the end of 7 working days after the day on which the Contract was made, in which event the Company will refund the sum paid for the Services within 30 days of receipt of your cancellation notice. However you will not be able to cancel such Contract for Services once performance of the Services has begun with your agreement.
    - 2.3.3 If you have any complaints please contact the Company at the address overleaf.

## 3. BASIS OF SALE/SUPPLY

- 3.1 All quotations and Contracts are subject to these Conditions. Orders are accepted only upon and subject to these Conditions. Any variation of these Conditions by the Customer's order or acceptance of quotation or otherwise shall not apply unless expressly accepted by us in writing.
- 3.2 The price of the Goods and/or Services shall be the Company's quoted price, subject to these Conditions. All quotations are exclusive of VAT which shall be additionally chargeable at the applicable rate and do NOT include any discounts, monthly cash, trade or RIBA discounts unless expressly stated by the Company. The Company reserves the right to charge for any additional tax levied by Government legislation not known about at the time of the quotation, but applicable at the date of delivery.
- 3.3 Customers shall inspect thoroughly all Goods upon delivery and shall notify the Company within 48 hours of delivery of any defect or failure to conform with the contract.
- 3.4 All Customers should properly investigate and settle the method of fixing the supplied equipment with the responsible Water Undertaker and complete and submit to the appropriate party the requisite documentation for supply and installation of the Goods. No claims can be accepted in respect of any loss or damage arising out of any instructions given to the Customer by a Water Company or any other Government Department or responsible body having jurisdiction over the works.
- 3.5 The Company's employees or agents are not authorised to make any representations concerning the Goods or Services unless confirmed by the Company in writing. In entering into the Contract the Customer acknowledges that it does not rely on any such representations which are not so confirmed, but nothing in these Conditions affects the liability of either party for fraudulent misrepresentation.
- 3.6 Any advice or recommendation given by the Company or its employees or agents as to the storage, application or use of the Goods which is not confirmed in writing by the Company is followed or acted on entirely at the Customer's own risk, and accordingly the Company shall not be liable for any such advice or recommendation which is not so confirmed.
- 3.7 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 Company shall be subject to correction without any liability on the part of the Company.
- 3.8 We reserve the 'right' to refuse to do business 'without explanation'.

## 4. RETENTION OF TITLE

- 4.1 Ownership of the Goods shall only pass from this Company when payment in full has been made under the Contract. In the event of non-payment for the Goods after 28 days from the due date for payment the Company reserves the right for its servants or agents to enter onto the Customer's premises or those of any third party where the Goods are stored and to repossess the Goods at any time during normal business hours.

## 5. PRICE REVISION

- 5.1 Unless expressly stated otherwise in writing by the Company, all prices quoted are valid for 30 days only or until earlier acceptance by the Customer, after which time they may be altered by the Company without giving notice to the Customer.
- 5.2 The Company reserves the right, by giving written notice to the Customer at any time before delivery in the case of the Goods and at any time in the case of the Services, to increase the price to reflect any increase in the cost to the Company which is due to any factor beyond the control of the Company (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, transport, materials or any costs of manufacture), any change in delivery dates, quantities or specifications for the Goods and/or Services which is requested by the Customer, or any delay/increased costs to the Company caused by any instructions of the Customer or failure of the Customer to give the Company adequate information or instructions. Where the Company increases the price in accordance with this clause 5.2, if the Customer is a Consumer and an individual they may cancel the Contract by written notice to the Company if the final price is too high in relation to the price agreed when the Contract was concluded.

## 6. DELIVERIES

- 6.1 Delivery of the Goods shall be made by delivery of the Goods to the place for delivery agreed by the Company and the Customer. Delivery will be made only over good hard and practicable roads on the shortest route to the place of delivery at ground floor level only (otherwise the Company shall be entitled to make further charges to the Customer to reflect its increased costs of delivery). In all cases where Goods are to be delivered above ground level, the Customer at his own risk and cost must provide a hoist. Risk in the Goods will pass on delivery, or, if the Customer/End User wrongfully fails to take delivery of the Goods, at the time when the Company has tendered delivery of the Goods.
  - 6.2 Times for delivery quoted are approximate only and the Company shall not be liable for any delay in delivery of the Goods however caused.
  - 6.3 Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure by the Company to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Customer in respect of any one or more instalments shall not entitle the Customer to treat the Contract as a whole as repudiated.
  - 6.4 If the Company fails to deliver the Goods (or any instalment) for any reason other than any cause beyond the Company's reasonable control or the Customer's or End User's fault, and the Company is accordingly liable to the Customer, the Company's liability shall be limited to the excess (if any) of the cost to the Company (in the cheapest available market) of similar goods to replace those not delivered over the price of the Goods.
  - 6.5 If the Customer or End User fails to take delivery of the Goods or fails to give the Company adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Customer's or End User's reasonable control or by reason of the Company's fault) then, without limiting any other right or remedy available to the Company, the Company may store the Goods until actual delivery and charge the Customer for the reasonable costs (including insurance) of storage.
- ## 7. LIABILITY
- 7.1 The Company makes no warranty as to the compatibility of the Goods with any products not supplied by the Company and the Customer/End User should not use the Goods with any products not supplied by the Company without the Company's approval.
  - 7.2 In respect of the Goods the Company shall be under no liability in respect of any defect:
    - 7.2.1 arising from fair wear and tear, willful damage, negligence, abnormal working conditions, failure to follow the Company's instructions (whether oral or in writing), misuse (for example use with other products not supplied by the Company without the Company's approval) or alteration or repair of the Goods without the Company's approval;
    - 7.2.2 if the total price for the Goods has not been paid by the due date for payment.

Provided that nothing in these Conditions is intended to exclude liability for death or personal injury caused by the Company's negligence, or liability for defective products under the Consumer Protection Act 1987.

- 7.3 In respect of the Services the Supplier shall have no liability to the Customer for any loss, damage, costs, expenses or other claims for compensation arising from any information or instructions supplied by the Customer which are incomplete, incorrect, inaccurate, illegible, out of sequence or in the wrong form, or arising from their late arrival or non-arrival, or any other fault of the Customer.
- 7.4 The Company warrants that, subject to these Conditions, the Goods will correspond with their specification at the time of their delivery. In respect of parts, materials or equipment not manufactured by the Company, the Customer shall be entitled to the benefit of any warranty or guarantee which is given by the manufacturer to the Company.
- 7.5 Subject as expressly provided in these Conditions, and except where the Goods are sold to a person dealing as a Consumer, all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- 7.6 A claim by the Customer which is based on any non-conformity of the Goods with the contract shall (whether or not delivery is refused by the Customer) be notified to the Company within 48 hours of delivery of the relevant Goods or (where the non-conformity was not apparent on reasonable inspection) within a reasonable time after installation of the relevant Goods. If delivery is not refused, and the Customer does not notify the Company accordingly, the Customer shall not be entitled to reject the Goods and the Company shall have no liability for such non-conformity, and the Customer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.
- 7.7 Where a valid claim in respect of any of the Goods which is based on non-conformity of the Goods with the contract is notified to the Company in accordance with these Conditions, the Company may replace the Goods (or the part in question) free of charge or, at the Company's sole discretion, refund to the Customer the price of the Goods (or a proportionate part of the price), in which case the Company shall have no further liability to the Customer.
- 7.8 Except in respect of death or personal injury caused by the Company's negligence, or liability for defective products under the Consumer Protection Act 1987, the Company shall not be liable to the Customer by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for loss of profit or for any indirect, special or consequential loss or damage, costs, expenses or other claims for compensation whatsoever (whether caused by the negligence of the Company, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods and/or Services (including any delay in supplying or any failure to supply the Goods and/or Services in accordance with the Contract or at all) or their use or resale by the Customer, and the entire liability of the Customer under or in connection with the Contract shall not exceed the price of the Goods and/or Services, except as expressly provided in these Conditions.
- 7.9 The Company shall not be liable to the Customer for any loss or damage or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Company's obligations in relation to the Goods and/or Services, if the delay or failure was due to any cause beyond the Company's reasonable control. Without limiting the foregoing, the following shall be regarded as causes beyond the Company's reasonable control: Act of God, explosion, flood, tempest, fire or accident; war or threat of war, sabotage, insurrection, civil disturbance or requisition, or act of terrorism; acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority; import or export regulations or embargoes; strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Company or of a third party); difficulties in obtaining raw materials, labour, fuel, parts or machinery; power failure or breakdown in machinery.

## 8. PROVISION OF SERVICES

- 8.1 The Customer shall supply the Company with all necessary data or information relating to the Services, within sufficient time to enable the Company to provide the Services in accordance with the Contract.
- 8.2 The Company warrants to the Customer that the Services will be provided using reasonable care and skill and, as far as reasonably possible, in accordance with specification and at the intervals and within the times agreed between the parties.

## 9. ACCIDENTS AND INSURANCE

- 9.1 The Customer accepts full liability for and shall indemnify the Company against fire, accidents, howsoever caused resulting in injury or damage to the Company's employees, agents, sub-contractors and/or their materials whilst at the place of delivery. Any such incident shall not entitle the Customer to rescind the whole or any part of the Contract. The Customer (except where the Customer is a Consumer) shall effect appropriate insurance in respect of such injury or damage for which it is responsible under this clause. The Company shall accept liability to the Customer or End User in respect of damage to the tangible property of the Customer or End User resulting from the negligence of the Company or its employees agents or sub-contractors, subject to a limit of £1,000,000 and subject to these Conditions.

## 10. PAYMENT

- 10.1 The Customer shall pay the price of the Goods and/or Services by the due date stipulated by the Company (whether in the Company's invoice or otherwise) without any set off or deduction whatsoever (except any discount to which the Customer is entitled). Unless otherwise expressly agreed by the Company, payment shall be by proforma, cash with order or Banker's draft. The Company shall be entitled to recover the price, notwithstanding that delivery may not have taken place and the property in the Goods has not passed to the Customer. The time of payment of the price shall be of the essence of the Contract.
- 10.2 The Company may grant credit facilities where in the Company's sole determination prior trading has been established, or where prior arrangements are made and satisfactory references are provided (2 trade, 1 Banker's). Where monthly credit accounts are established, the right to demand payment at any time is reserved, whether the works are done to the satisfaction of third parties or otherwise. Customer's objections to accounts or invoices will be invalid if made after one month from the date thereof.

## 11. SPECIFICATION

- 11.1 The Company reserves the right to alter or adjust its specifications at any time where this would not materially affect the quality or performance of the Goods or the nature or quality of the Services, provided that the Company shall not do so without a valid reason in the case of a customer who is a Consumer.
- 11.2 The Company reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable statutory, safety or E.U. requirements. Due to constant revision and research no warranty is implied or given that any two units manufactured can be considered alike in any way unless from the same series of production. No 'cure' is claimed by the Company in this sale and the Company does not warrant that the Goods will meet any person's individual needs.

## 12. INSOLVENCY OF THE CUSTOMER

- 12.1 This clause 12 applies if:
  - 12.1.1 the Customer makes a voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or
  - 12.1.2 an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Customer; or
  - 12.1.3 the Customer ceases, or threatens to cease, to carry on business; or
  - 12.1.4 the Company reasonably apprehends that any of the events mentioned above is about to occur in relation to the Customer and notifies the Customer accordingly.
- 12.2 If this clause applies then, without limiting any other right or remedy available to the Company, the Company may cancel the Contract or suspend any further deliveries/performance under the Contract without any liability to the Customer, and if the Goods/Services have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

## 13. DATA PROTECTION

This clause applies if the Customer or End User is an individual:

- 13.1 The Company will take all reasonable precautions to keep the personal details of the Customer's order and payment secure, but unless the Company is negligent, the Company will not be liable for unauthorised access to such information.
  - 13.2 The Company will only use the personal information provided by the Customer or End User for the purpose of fulfilling the Customer's order and for marketing mailshots to the Customer/End User in respect of the Company's products, unless the Customer/End User agrees otherwise. The Customer/End User can correct any personal information about them, ask for personal information about them to be deleted, or opt out of receiving marketing communications from the Company by giving written notice to the Company at the address, fax number or email address shown overleaf.
- ## 14. GENERAL
- 14.1 If any provision of the Contract is held by a court or other competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of the Contract and the remainder of the provision in question shall not be affected.
  - 14.2 No term of the Contract may be enforced by a person who is not a party to it under the Contracts (Rights of Third Parties) Act 1999.
  - 14.3 The Contract shall be governed by the laws of England, and the Customer agrees to submit to the non-exclusive jurisdiction of the English courts.