

# WATERFRONT FLUID CONTROLS LIMITED

## TERMS AND CONDITIONS FOR THE PROVISION OF PRODUCTS AND SERVICES

### 1 INTRODUCTION

Waterfront Fluid Controls Limited, (registered number SC305356) and having its registered office at 4<sup>th</sup> Floor, 176 Bath Street, Glasgow (the "Company") shall supply the Goods and/or Services to the Customer and the Customer hereby agrees to purchase such Goods and/or Services (as appropriate) in accordance with these Conditions.

### 2 DEFINITIONS

2.1 In these Conditions, the following words shall have the following meanings:

"**Acknowledgement**" means the written acknowledgement issued by the Company in response to a Purchase Order;

"**Business Days**" means any day from Monday to Friday inclusive (excluding all public, statutory and bank holidays);

"**Charges**" means the charges for the Goods and/or Services specified in the Contract;

"**Commencement Date**" means the date of commencement of the Contract as specified in the Contract or as otherwise agreed between the parties;

"**Company IP**" means any and all IPR belonging to the Company in the Goods and/or Services which exist at the Commencement Date or which are created, developed or otherwise discovered by the Company as a result of performing the Services,;

"**Completion Date**" means the date when all Goods have been delivered and/or the Services are completed;

"**Conditions**" means these terms and conditions;

"**Confidential Information**" means, in relation to either party, information of a confidential or proprietary nature (whether in oral, written or electronic form) belonging or relating to that party, its business affairs finances, activities and IPR;

"**Contract**" means the agreement concluded between the Company and the Customer incorporating these Conditions, the Quotation, the Purchase Order and the Acknowledgement together with any agreed Specification;

"**Customer**" means the company, partnership, business or individual who/which purchases the Goods and/or the Services from the Company;

"**Customer IP**" means any and all IPR owned by the Customer which the Company may reasonably require to perform the Services;

"**Deliverables**" means those deliverables created, developed or otherwise resulting from the provision of the Services including, without limitation, those more particularly described in the Contract;

"**Delivery Point**" means the place where delivery of the Goods and/or Services is to take place as specified in the Contract;

"**Goods**" means any goods agreed in the Contract to be supplied to the Customer by the Company (including any part or parts of them);

"**IPR**" means all patents, trade marks, registered designs (and any applications for any of the foregoing), copyright (including rights in software), semi-conductor topography rights, database rights, unregistered design rights, rights in and to trade names, business names, domain names, product names and logos, databases, inventions, discoveries, know-how and any other intellectual or industrial property rights in each and every part of the

world together with all applications, renewals, revisions and extensions;

"**Purchase Order**" means the purchase order form completed by the Customer and submitted to the Company which requires to be signed by an authorised signatory of the Customer and subsequently accepted by the Acknowledgement from the Company;

"**Quotation**" means the quotation detailing the price and nature of the Company's goods and/or services and issued by the Company in response to a query from the Purchaser;

"**Services**" means the services to be supplied by the Company to the Customer under the Contract, as described in the Contract; and

"**Specification**" means the specification for the Goods and/or Services as detailed in the Contract or as are otherwise agreed between the parties in writing.

2.2 Clause headings are for ease of reference only and shall not affect the construction or interpretation of any clause.

2.3 Words importing the singular shall include the plural and vice versa and words denoting any gender shall include all genders.

2.4 Reference to statutes, any statutory instrument, regulation, or order shall be construed as a reference to such statute, statutory instrument, regulation, or order as amended or re-enacted from time to time.

2.5 References to "Goods and/or Services" shall be construed as appropriate in accordance with each Contract and to the extent that any Contract includes Goods and Services, such references shall mean "Goods and Services".

### 3 APPLICATION OF CONDITIONS

3.1 Unless otherwise agreed in writing by the Company, these Conditions are the only conditions upon which the Company is prepared to supply the Goods and/or Services to the Customer. These Conditions together with the relevant Contract shall constitute the whole agreement between the Company and the Customer and shall govern the Contract to the entire exclusion of all other terms or conditions (including the Customer's terms and conditions or those implied by trade, custom or practice).

3.2 No terms or conditions endorsed on, delivered with or contained in any Purchase Order or other document submitted to the Company by or on behalf of the Customer shall form part of the Contract.

3.3 Each Purchase Order shall be deemed to be an offer by the Customer to purchase the Goods and /or Services subject to these Conditions.

3.4 No Purchase Order shall be deemed to be valid unless it incorporates all information provided in the Quotation.

3.5 No Purchase Order shall be deemed to be accepted by the Company until the Acknowledgement is issued by the Company or (if earlier) the Company delivers the Goods and/or the Services to the Customer. If there is any conflict between the terms of the Purchase Order and the Acknowledgement, the Acknowledgement shall prevail.

3.6 Each Quotation is valid for a period of 30 days only from its date of issue and provided the Company has not previously withdrawn it and is valid only in respect of the specification supplied with the Quotation.

3.7 The Contract supersedes all prior agreements and arrangements of whatever nature and sets out the entire agreement and understanding between the parties relating to its subject matter.

3.8 Without prejudice to clause 3.7, if the Company is providing the Goods and/or the Services as a sub-contractor

of the Customer, no form of sub-contract conditions (including any retentions of payment) shall apply to the Company unless such conditions are in writing and signed by authorised representatives of both parties.

3.9 The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in the Contract. Nothing in this clause shall exclude or limit the Company's liability for fraudulent misrepresentation.

#### **4 SERVICES**

4.1 Subject to the payment of the Charges, the Company will use its reasonable endeavours to provide the Services to the Customer from the Commencement Date, in accordance with the Contract.

4.2 The Services shall include the provision, at the request of the Customer, of two copies of a general arrangement drawing and one revision of that drawing. Any additional requirements shall constitute additional Services and shall be subject to additional charges.

4.3 The Company will provide the Services in accordance with the degree of skill and care which would be used by a properly qualified and competent person engaged in the same or similar circumstance.

#### **5 UNDERTAKINGS OF THE CUSTOMER**

The Customer undertakes to provide the Company with all such information and assistance as the Company may reasonably request or as may be reasonably necessary from time to time, in order to deliver the Goods and/or perform the Services.

#### **6 DESCRIPTION**

6.1 The quantity and description of the Goods and/or Services shall be as set out in the Contract.

6.2 All samples, drawings, descriptive matter and advertising issued by the Company and any descriptions or illustrations contained in the Company's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods and/or Services described in them. They will not form part of any Contract and sale by sample shall not apply to the Contract.

#### **7 DELIVERY**

7.1 Delivery of the Goods and/or the Services shall take place at the Delivery Point.

7.2 The Goods and/or Services shall be delivered in accordance with the timescales set out in the Acknowledgement.

7.3 Any dates specified by the Company for delivery of the Goods and/or Services are intended to be an estimate and time for delivery shall not be of the essence. If no dates are specified, delivery will take place within a reasonable time.

7.4 Subject to the other provisions of these Conditions the Company will not be held liable for any direct, indirect or consequential loss, or any costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods and/or Services (even if caused by the Company's negligence), nor shall any delay entitle the Customer to terminate or rescind the Contract unless the delay exceeds 360 days.

7.5 If for any reason (i) the Customer requests an extension to the timescale for delivery set out in the Contract; or (ii) the Customer fails to accept delivery of any of the Goods when they are ready for delivery; or (iii) the Company is unable to deliver the Goods on time because the Customer has not provided appropriate equipment, facilities, instructions, documents, licences or authorisations:

7.5.1 risk in the Goods shall pass to the Customer on the date on which delivery would have occurred in accordance with the Contract;

7.5.2 the Goods shall be deemed to have been delivered to the Customer; and

7.5.3 the Company may store the Goods for the Customer and the Customer shall be liable for all reasonable related costs and expenses (including, without limitation, storage and insurance).

7.6 The Customer shall provide at the Delivery Point, at the Customer's expense, adequate and appropriate equipment and manual labour for off-loading the Goods.

7.7 The Company may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the Contract.

7.8 Each instalment shall be a separate Contract and no cancellation or termination of any one Contract relating to an instalment shall entitle the Customer to repudiate or cancel any other contract or instalment.

#### **8 NON-DELIVERY**

8.1 The quantity and description of any consignment of Goods as recorded by the Company upon despatch from the Company's place of business shall be conclusive evidence of the quantity and description received by the Customer on delivery unless the Customer can provide conclusive evidence proving the contrary.

8.2 Any liability of the Company for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods.

#### **9 RISK/TITLE**

9.1 The Goods are at the risk of the Customer from the time of delivery.

9.2 Ownership of the Goods shall not pass to the Customer until the Company has received in full (in cash or cleared funds) all sums due to it in respect of:

9.2.1 the Goods; and

9.2.2 all other sums which are or which become due to the Company from the Customer on any account.

9.3 Until ownership of the Goods passes to the Customer, the Customer shall:

9.3.1 store the Goods (at no cost to the Company) separately from all other goods of the Customer or any third party in such a way that they remain readily identifiable as the Company's property;

9.3.2 not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and

9.3.3 maintain the Goods in satisfactory condition and keep them insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company. On request, the Customer shall produce the policy of insurance to the Company.

9.4 The Customer's right of possession of the Goods shall terminate immediately in the event that the circumstances set out in clause 15.2.2 apply to the Customer.

9.5 The Company shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Company.

9.6 The Customer grants the Company, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are being stored in order to inspect them, or, where the Customer's rights to possession has terminated, to recover them.

## 10 PRICE AND PAYMENT

- 10.1 In consideration for the Goods and/or the Services, the Customer agrees to pay the Company the Charges within 30 days of the date of the Company's invoice and in accordance with the payment terms set out in the Contract.
- 10.2 All prices are shown exclusive of value added tax or any other sales taxes ("VAT") which (if applicable) will be payable by the Customer at the relevant rate.
- 10.3 All prices are shown exclusive of carriage/delivery charges unless carriage charges are specifically included in the Contract. Any carriage/delivery charges specified in the Contract shall not include any charges in relation to demurrage, import duties, customs clearance, storage, craneage, off-loading, documentation, local taxes, or any charges required to comply with local legislation.
- 10.4 No payment will be deemed to have been received until the Company has received cleared funds.
- 10.5 Late payment will incur interest at the rate of 3% per annum above the base rate of Lloyds TSB Bank plc from time to time until payment is made.
- 10.6 The Company may suspend the delivery of Goods in respect of any Contract with the Customer and /or the provision of the Services in respect of any Contract with the Customer until all outstanding payments of Charges are made in full.

## 11 INTELLECTUAL PROPERTY

- 11.1 The Customer hereby grants to the Company at no cost to the Company whatsoever, a non-exclusive, royalty free licence to use, exploit and otherwise deal with the Customer IP, as the Company may reasonably require in order to perform the Services. The Customer undertakes to indemnify the Company from all costs, actions or liabilities whatsoever that may arise from the Company's use of the Customer IP in the performance of the Services.
- 11.2 The Company IP is and shall remain the exclusive property of the Company.
- 11.3 For the avoidance of doubt all IPR relating to any Deliverables created, developed invented or otherwise resulting from the provision of the Services (including documents, methods of operation, and any systems, procedures or products developed or created as a result of the Contract) shall belong to and upon its creation vest in the Company and shall become part of the Company IP.
- 11.4 Subject to the Customer paying all Charges for the Services, the Company agrees to grant to the Customer a non-exclusive, non-transferable licence to use, exploit or otherwise deal with the Company IP, for its own business use and purpose and for no other purpose whatsoever.
- 11.5 Each party will notify the other immediately if it or its employees become aware that a third party is infringing any IPR of either party or if any claim, demand or action is threatened or commenced against the Customer or the Company in relation to any alleged infringement of a third party's IPR. Both parties will give the other all such reasonable assistance in relation to any possible infringement action.

## 12 CONFIDENTIALITY

- 12.1 The parties agree and undertake that they shall keep secret and confidential at all times both during and after the Contract, any and all Confidential Information belonging to the other party which comes in to their possession at any time either before, during or after the period of the Contract.
- 12.2 Neither party shall, (except for the performance of its obligations hereunder) use, copy, disclose or divulge such

Confidential Information to any third party except with the express written consent of the other. For the avoidance of doubt, any such permitted disclosure shall not affect the ownership of such Confidential Information.

- 12.3 Each party undertakes to disclose the other party's Confidential Information only to those of its officers, employees, agents and contractors to whom, and to the extent to which, such disclosure is necessary for the purposes contemplated under the Contract and to procure that such parties are made aware of and agree in writing to observe the obligations in this clause 12.
- 12.4 The provisions of this clause 12 shall not apply to information which:
- 12.4.1 is or comes into the public domain through no fault of the recipient, its officers, employees, agents or contractors;
- 12.4.2 is lawfully received by the recipient from a third party free of any obligation of confidence at the time of its disclosure;
- 12.4.3 is independently developed by the recipient, its officers, employees, agents or contractors;
- 12.4.4 is already in the possession of the recipient prior to such disclosure as evidenced by the recipient's prior written records;
- 12.4.5 is required by law, by court or governmental order to be disclosed provided, however, that the recipient will promptly notify the provider of such requirements and shall take reasonable steps to coordinate with the provider in contesting or limiting such requirement or in protecting the provider's rights prior to disclosure.

The burden of proving that any of the foregoing exceptions applies shall be upon the recipient.

- 12.5 Each party shall give notice to the other of any unauthorised misuse, disclosure, theft or other loss of the other party's Confidential Information immediately upon becoming aware of the same.
- 12.6 The obligations under this clause 12 shall survive the variation, expiry or termination of the Contract.

## 13 WARRANTY

- 13.1 Subject to clause 14, the Company shall at the Company's discretion either repair or replace any Goods and/or Deliverables which are (i) found to be defective; and (ii) such defects that may arise within the [12] month period following delivery of such Goods and/or Deliverables to the Customer.
- 13.2 The warranty in clause 13.1 shall only apply where:-
- 13.2.1 the Company is satisfied that such defect has arisen from the Company's defective materials or workmanship; and
- 13.2.2 such Goods and/or Deliverables have been used (i) only for the purpose set out in the Contract; and (ii) in accordance with the Company's instructions; and (iii) in accordance with the operating and maintenance manuals available on the Company's website as amended and updated from time to time; and
- 13.2.3 neither the Customer nor any third party has attempted to repair such Goods and/or Deliverables without the consent of an authorised representative of the Company.
- 13.3 Except as expressly stated in these Conditions all other warranties and conditions whether express or implied by statute, common law or otherwise (including but not limited to satisfactory quality, title, and fitness for purpose) are hereby excluded to the fullest extent permitted by law.

13.4 All information given by the Company relating to characteristics or fitness for purpose or performance of the Goods and/or the Deliverables is indicative only and no warranty may be implied from that information.

13.5 This clause 13 shall survive the termination of any Contract.

#### **14 LIMITATION OF LIABILITY**

14.1 Neither party excludes or limits liability to the other party for death or personal injury caused by any negligent act or omission, wilful misconduct or breach of duty of such party.

14.2 The Company does not accept liability for:

14.2.1 indirect, special or consequential loss or damage,

14.2.2 loss of business profits, salary, business revenue, goodwill, or anticipated savings, or

14.2.3 loss which could have been avoided by the Customer through reasonable conduct or by the Customer taking reasonable precautions.

14.3 Subject to clauses 14.1 and 14.2, the Company's liability under any Contract shall in no event exceed the Charges then paid by the Customer to the Company in relation to the Goods and/or Services provided under that Contract.

#### **15 TERM AND TERMINATION**

15.1 The Contract shall commence on the Commencement Date and shall, subject as otherwise provided, continue until the Completion Date, unless otherwise terminated in accordance with this clause 15.

15.2 The Contract may be terminated by either party by written notice with immediate effect if any of the following has occurred and is continuing:-

15.2.1 either party commits a material breach that it fails to remedy within thirty (30) days of being requested to do so by the other party; or

15.2.2 either party ceases to carry on its activities, becomes unable to pay its debts when they fall due, becomes or is deemed insolvent, has a receiver, manager, administrator, administrative receiver or similar officer appointed in respect of the whole or any part of its assets or business, makes any composition or arrangement with its creditors, takes or suffers any similar action in consequence of debt, an order or resolution is made for its dissolution or liquidation (other than for the purpose of solvent amalgamation or reconstruction) or enters into liquidation whether compulsorily or voluntarily or shall suffer any analogous event under any jurisdiction which it is subject to.

15.3 The Company may terminate the Contract with immediate written notice if the Customer fails to pay the Charges timeously in accordance with clause 10.

15.4 Notwithstanding termination of the Contract for any reason, the Customer will continue to be liable for that proportion of the Charges attributable to Goods delivered and/or those Services provided up until the date of termination.

#### **16 ASSIGNATION**

16.1 The Company may at any time assign, charge or otherwise transfer the Contract or any of its rights or obligations under it without the prior consent of the Customer.

16.2 The Customer shall not, and shall not purport to, assign, charge or otherwise transfer the Contract or any rights or obligations under it without the Company's prior written consent. Any such consent shall not excuse the Customer from performance of any obligations on its part to be performed.

#### **17 NO PARTNERSHIP OR AGENCY**

Nothing in the Contract is intended to, or shall operate to, create a partnership between the parties, or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right of power).

#### **18 FORCE MAJEURE**

The Company shall have no liability to the Customer under the Contract if it is prevented from or delayed in performing its obligations under the Contract or from carrying on its business by acts, events, omissions or accidents beyond its reasonable control.

#### **19 VARIATION**

Any variation to the Contract and to these Conditions shall only be effective if in writing and signed by authorised representatives of both parties.

#### **20 SEVERABILITY**

If and in so far as any part or provision of these Conditions is void or unenforceable it shall be deemed not to be or never to have been or formed a part of the Contract and the remaining provisions of the Contract shall continue in full force and effect.

#### **21 WAIVER**

The failure of either party to exercise or enforce any right conferred on that party by the Contract shall not be deemed to be a waiver of any such right or operate to bar the exercise or enforcement thereof at any time or times thereafter.

#### **22 THIRD PARTY RIGHTS**

Save to the extent expressly set out in the Contract, the Contract is not intended to nor shall it create any rights, entitlement, claims or benefits enforceable by any person that is not a party to it.

#### **23 GOVERNING LAW**

The Contract shall be governed by and construed in accordance with Scots law and the parties hereby submit to the non-exclusive jurisdiction of the Scottish courts.