

TERMS AND CONDITIONS FOR THE PURCHASE OF GOODS AND/OR SERVICES

1 INTRODUCTION

Waterfront Fluid Controls Ltd, a company incorporated under the Companies Acts with registered number SC305356 and having its registered office at 4th Floor, 176 Bath Street, Glasgow, G2 4HG (the “Company”) wishes to purchase the Goods and/or Services from the Seller and the Seller hereby agrees to provide such Goods and/or Services in accordance with these Conditions.

2 DEFINITIONS

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

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

“**Commencement Date**” means the date of commencement of the Contract as specified in the Purchase Order or otherwise agreed between the parties;

“**Company Background IP**” means any and all IPR belonging to the Company which exist at the Commencement Date and which are made available by or used by the Company in order to enable the Seller to provide the Goods and/or Services;

“**Conditions**” means these terms and conditions;

“**Confidential Information**” means all information of a confidential or proprietary nature (whether in oral, written or electronic form) belonging or relating to the Company, its business affairs, finances, activities and IPR;

“**Contract**” means the Purchase Order and the Seller’s acceptance of the Purchase Order, incorporating these Conditions;

“**Contract Price**” means the price, exclusive of value added tax (“VAT”), payable by the Company to the Seller under the Contract for the full and proper performance by the Seller of the Contract;

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

“**Goods**” means any goods agreed in the Contract to be purchased by the Company from the Seller (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 right, unregistered design right, 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 Company’s request to purchase the Goods and/or Services from the Seller, incorporating these Conditions;

“**Seller**” means the company, partnership, business or individual who/which accepts the Company’s Purchase Order and supplies the Goods and/or Services; and

“**Services**” means any services to be supplied by the Seller to the Company under the Contract, as described in the Purchase Order or as otherwise agreed between the parties in writing from time to time. Where the Services include

Deliverables, all references to Services shall be deemed to include those Deliverables.

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 Purchase Order and to the extent that any Purchase Order includes Goods and Services, such references shall mean “Goods and/or Services”.

3 APPLICATION OF TERMS

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

3.2 The Company’s Purchase Order shall be deemed to be accepted by the Seller and the Contract shall be formed once the Seller has communicated acceptance to the Company or (if earlier) the Seller delivers the Goods and/or the Services to the Company.

3.3 No terms or conditions endorsed on, delivered with or contained in, the Seller’s acceptance of the Purchase Order or other document shall form part of the Contract.

3.4 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.

4 GOODS

4.1 The quantity and description of the Goods shall be as set out in the Purchase Order.

4.2 The Goods shall be of the best available design, of the best quality, material and workmanship, be without fault and conform in all respects with the Purchase Order and any specification and/or patterns supplied or advised by the Company to the Seller.

4.3 If the results of the Company’s inspection or testing of the Goods cause the Company to be of the opinion that the Goods do not conform or in the reasonable opinion of the Company are unlikely to conform with the Purchase Order or to any specifications and/or patterns supplied or advised by the Company to the Seller, the Company shall inform the Seller and the Seller shall immediately take such action as is necessary to ensure conformity and in addition the Company shall have the right to require and witness further testing and inspection.

4.4 Notwithstanding any such inspection or testing, the Seller shall remain fully responsible for the Goods and any such inspection or testing shall not diminish or otherwise affect the Seller’s obligations under the Contract.

4.5 The Company's rights under these Conditions are in addition to the statutory conditions implied in favour of the Company by the Sale of Goods Act 1979 (as amended).

5 SERVICES

5.1 The Seller shall provide the Services with effect from the Commencement Date in accordance with any agreed specification.

5.2 The Seller will provide the Services:

- 5.2.1 with all reasonable skill and care and in accordance with best practice in the industry;
- 5.2.2 in a proper, diligent, expeditious and professional manner;
- 5.2.3 dutifully, timeously and in good faith; and
- 5.2.4 in all respects in accordance with any policies or guidance supplied by the Company that are directly related to the Services.

5.3 The Seller shall:

- 5.3.1 agree with the Company from time to time the personnel who will perform the Services;
- 5.3.2 only provide personnel who are employees of the Seller and ensure that such personnel possess the appropriate experience, skills and qualifications necessary for the Services to be performed in accordance with the Contract;
- 5.3.3 not remove or replace any of these personnel without the prior written consent of the Company (which consent shall not be unreasonably withheld); and
- 5.3.4 nominate a senior manager to have overall responsibility for (i) the Contract; and (ii) the provision of personnel, which person shall attend review meetings with the Company when reasonably required by the Company.

5.4 The Seller shall provide the Company with reasonable notice if the personnel agreed in terms of condition 5.3 are unable to provide the Services at any time. In such circumstances the Seller shall appoint a substitute subject to agreement of the Company.

5.5 The Seller shall procure that its employees and representatives:-

- 5.5.1 make themselves available, at all reasonable times and upon reasonable notice, to the Company for the purposes of consultation and advice relating to the provision of the Services; and
- 5.5.2 at the expense of the Seller, attend meetings with representatives of the Company and such other parties as may be necessary for the performance of the Services.

5.6 The Seller shall not:

- 5.6.1 in performing the Services, hold itself out or permit any person to hold itself out as being authorised to bind the Company in any way and will not do any act which might create the impression that it is so authorised;
- 5.6.2 without the prior written approval of the Company, incur any liability on behalf of the Company, nor pledge the credit of the Company in any way nor make any legally binding representations, enter into any contracts or agreements or give any warranty on behalf of the Company; or

5.6.3 engage in any conduct which, in the opinion of the Company, is prejudicial to the Company's business.

6 SELLER'S UNDERTAKINGS

6.1 The Seller warrants, undertakes and represents that:

- 6.1.1 it has full capacity and authority and all necessary licenses, permits and consents to enter into and to perform the Contract;
- 6.1.2 the provision of the Goods and/or Services will not infringe the IPR of any third party;
- 6.1.3 the Services shall be performed in compliance with and the Goods shall comply with all applicable laws, enactments, orders, regulations, codes of practice and other similar instruments; and
- 6.1.4 as at the date of the Contract there is no material outstanding litigation, arbitration or other disputed matter to which the Seller is a party which may have an adverse effect upon the fulfilment of the Seller's liabilities, responsibilities and obligations pursuant to the Contract.

6.2 The Seller shall deliver to the Company the Goods and/or shall perform the Services at the times and on the dates specified in the Purchase Order and to the satisfaction of the Company.

6.3 The time(s) and date(s) of performance of the Services and delivery of the Goods shall be of the essence of the Contract.

6.4 The Seller shall indemnify the Company in full against all claims, demands, actions, costs, expenses (including but not limited to legal costs and disbursements on a solicitor and client basis) losses and damages arising from or incurred or paid by the Company as a result of or in connection with:

- 6.4.1 breach of any warranty given by the Seller in these Conditions; or
- 6.4.2 any act or omission of the Seller or its employees, agents or sub-contractors in supplying and delivering the Goods and/or Services.
- 6.4.3 defective workmanship, quality or materials;
- 6.4.4 an infringement or alleged infringement of any IPR caused by the use, manufacture or supply of the Goods or delivery of the Services; and
- 6.4.5 any claim made against the Company in respect of any liability, loss, damage, injury, cost or expense sustained by the Company's employees or agents or by any customer or third party to the extent that such liability, loss, damage, injury, cost or expense was caused by, relates to or arises from the Goods and/or Services as a consequence of a direct or indirect breach or negligent performance or failure or delay in performance of the terms of the Contract by the Seller.

7 DELIVERY

7.1 Unless otherwise agreed in writing by the Company, the Goods shall be delivered, carriage paid, to the Company's place of business. The Seller shall off-load the Goods at its own risk as directed by the Company.

7.2 The dates for delivery of the Goods and/or Services shall be as specified in the Purchase Order. If no dates are specified, delivery will be within twenty eight (28) days of the Purchase Order. Time for delivery shall be of the essence of the Contract.

- 7.3 The Seller shall ensure that each delivery is accompanied by a delivery note which shows the Purchase Order number, date of order, number of packages and its contents and, in the case of part delivery, the outstanding balance remaining to be delivered.
- 7.4 Unless otherwise stipulated by the Company in the Purchase Order, the Company shall only accept deliveries during normal business hours and on Business Days.
- 7.5 If the Seller requires the Company to return any packaging materials to the Seller, that fact must be clearly stated on any delivery note delivered to the Company and any such packaging material will only be returned to the Seller at the cost of the Seller.
- 7.6 Where the Company agrees in writing to accept delivery by instalments, the Contract will be construed as a single contract in respect of each instalment. Nevertheless, failure by the Seller to deliver any one instalment shall entitle the Company at its option to treat the whole Contract as repudiated.
- 7.7 If the Goods are delivered to the Company in excess of the quantities ordered, the Company shall not be bound to pay for the excess and any excess will be and will remain at the Seller's risk and will be returnable at the Seller's expense.
- 7.8 Without prejudice to any other right or remedy which the Company may have, if the Goods are not delivered on the due date, and/or the Seller fails to commence the provision of or to perform the Services in accordance with the Contract, the Company reserves the right to:
- 7.8.1 be released from any obligation to accept and pay for the Goods and/or Services;
 - 7.8.2 rescind the Purchase Order or cancel the Contract in whole or in part;
 - 7.8.3 give the Seller the opportunity at the Seller's expense either to remedy any defect in the Goods or to perform replacement Services and carry out any other necessary work to ensure that the terms of the Contract are fulfilled;
 - 7.8.4 refuse to accept any subsequent delivery of the Goods or performance of the Services which the Seller attempts to make;
 - 7.8.5 carry out at the Seller's expense any work necessary to make the Goods and/or Services comply with the Contract; and/or
 - 7.8.6 recover from the Seller any expenditure reasonably incurred by the Company in obtaining the Goods and/or Services in substitution from another Seller; and
 - 7.8.7 claim damages for any additional costs, loss or expenses incurred by the Company which are in any way attributable to the Seller's failure to deliver the Goods and/or Services on the due date.

8 RISK/TITLE

The Goods and/or the Deliverables shall remain at the risk of the Seller until delivery to the Company is complete (including off-loading and stacking) when ownership of the Goods and/or Deliverables and risk in the Goods and/or Deliverables shall pass to the Company.

9 PRICE AND PAYMENT

- 9.1 The Contract Price for the Goods and/or Services shall be as stated in the Purchase Order and, unless otherwise so stated, shall be exclusive of any applicable VAT (which shall be payable by the Company subject to receipt of a valid VAT invoice) but inclusive of all other charges.

- 9.2 No increase in the Contract Price may be made (whether on account of increased material, labour or other costs, fluctuation in rates of exchange or otherwise) without the prior written consent of the Company.
- 9.3 The Company shall be entitled to any discount for prompt payment, bulk purchase or volume of purchase customarily granted by the Seller, whether or not shown on its own terms of sale.
- 9.4 Subject to the Seller performing the Services and delivering the Goods to the satisfaction of the Company, the Seller may invoice the Company after performance of the Contract to the Company's satisfaction. The Company will pay the Contract Price together with any VAT properly payable thereon to the Seller within sixty (60) days of receipt by the Company of a valid VAT invoice for sums properly due but time for payment shall not be of the essence of the Contract.
- 9.5 The Seller shall ensure that all such invoices include the Company's Purchase Order number, a description of the Goods and/or Services and the period to which it relates.
- 9.6 All expenses that may be incurred by the Seller (including travel costs) must be agreed in advance and will only be payable by the Company subject to the Seller:
- 9.6.1 obtaining the Company's prior written consent to such expenses; and
 - 9.6.2 providing receipts or other such evidence to prove such expenditure.
- 9.7 The Seller shall pay all taxes and other outgoings or expenses payable in consequence of the Contract and the Seller shall indemnify the Company in respect of any demand, costs or expense suffered by the Company, whether during the period of the Contract or following termination of the Contract (howsoever caused) or otherwise in relation to any tax or employer's National Insurance contributions or other expense payable in respect of the Seller, its employees, agents or sub-contractors or in relation to the provision of Goods and/or Services.
- 9.8 The parties will pay interest on any amount payable under the Contract not paid on the due date, for the period from that due date to the date of payment at three (3) per cent per annum above the base lending rate of the Royal Bank of Scotland plc from time to time. The parties acknowledge and agree that the amounts set out in this condition represent a substantial remedy. The Seller is not entitled to suspend delivery of the Goods and performance of the Services as a result of any sums being outstanding.
- 9.9 Payment by the Company shall be without prejudice to any claims or rights, which the Company may have against the Seller, and shall not constitute any admission by the Company as to the performance by the Seller of its obligations under the Contract.
- 9.10 Without prejudice to any other right or remedy, the Company reserves the right to set off any amount owing at any time from the Seller to the Company against any amount payable by the Company to the Seller under the Contract or any other contract between the Company and the Seller.

10 INTELLECTUAL PROPERTY

- 10.1 All right, title and interest in and to any Company Background IP shall remain the property of and vested in the Company.
- 10.2 The Company hereby grants to the Seller a non-exclusive licence to use the Company Background IP for the sole purpose of carrying out its obligations under the Contract.

- 10.3 The Seller hereby grants to the Company a non-exclusive licence to use the Seller's IPR in the Goods and/or the Deliverables for the purposes of making use of such Goods and/or Deliverables as set out in the Contract.

11 CONFIDENTIALITY

- 11.1 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.
- 11.2 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.
- 11.3 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 11.
- 11.4 The provisions of this clause 11 shall not apply to information which:
- 11.4.1 is or comes into the public domain through no fault of the recipient, its officers, employees, agents or contractors;
 - 11.4.2 is lawfully received by the recipient from a third party free of any obligation of confidence at the time of its disclosure;
 - 11.4.3 is independently developed by the recipient, its officers, employees, agents or contractors;
 - 11.4.4 is already in the possession of the recipient prior to such disclosure as evidenced by the recipient's prior written records;
 - 11.4.5 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.

- 11.5 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.
- 11.6 The obligations under this clause 11 shall survive the variation, expiry or termination of the Contract.

12 INSURANCE

The Seller shall have in place at all times during the term of the Contract and for a period of five (5) years thereafter insurance with a reputable insurance company to cover all liabilities under the Contract. Evidence of such insurance shall be made available to the Company at any time on request.

13 LIMITATION OF LIABILITY

- 13.1 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.

- 13.2 The Company does not accept liability for:

- 13.2.1 indirect, special or consequential loss or damage,
- 13.2.2 loss of business profits, salary, business revenue, goodwill, or anticipated savings, or
- 13.2.3 loss which could have been avoided by the Seller through reasonable conduct or by the Seller taking reasonable precautions.

- 13.3 Subject to clauses 13.1 and 13.2, the Company's liability under any Contract shall in no event exceed the Contract Price then paid by the Company to the Seller in relation to the Goods and/or Services purchased under that Contract.

14 TERM AND TERMINATION

- 14.1 The Company shall have the right at any time and for any reason to terminate the Contract in whole or in part by giving the Seller fourteen (14) days' written notice whereupon all work on the Contract shall be discontinued and the Company shall pay to the Seller fair and reasonable compensation for work-in-progress at the time of termination but such compensation shall not include loss of anticipated profits or any consequential loss.
- 14.2 The Contract may be terminated by either party by written notice with immediate effect if:
- 14.2.1 either party shall fail to observe or perform any of its material obligations contained in the Contract;
 - 14.2.2 either party commits a non material breach that it fails to remedy within thirty (30) days of being requested to do so by the other party; or
 - 14.2.3 either party ceases to carry on its activities, becomes unable to pay its debts when they fall due, becomes insolvent or apparently 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.

- 14.3 Upon any breach by the Seller of any of its duties or obligations under the Contract, the Company shall have the right to seek an order for specific performance or specific implement against the Seller in addition to bringing a claim for damages. The Company shall in addition have the right to seek to recover any loss and damage suffered by it in respect of the Seller's prior breach of its duties and obligations in connection with the provision of the Goods and/or Services.

- 14.4 Termination of the Contract shall be without prejudice to any rights of either party under the provisions of the Contract existing at the date the Contract is terminated (including the right of either party to recover all sums due to that party up to such date of termination).

- 14.5 The provisions of conditions 2, 5, 9, 10, 12, 13, 14, 15, 21, 22 and 23 shall survive termination of the Contract for any reason and shall remain in full force and effect.

15 ASSIGNATION

- 15.1 The Company may at any time assign, charge or otherwise transfer the Contract or any of its rights or obligations under it.
- 15.2 The Seller shall not, and shall not purport to, assign, charge, sub-contract or otherwise transfer the Contract or

any rights or obligations under it without the Company's prior written consent.

- 15.3 Notwithstanding any sub-contracting, the Seller shall remain primarily responsible for the acts and omissions of its agents or sub-contractors as though such acts or omissions were its own and the Seller shall fully indemnify the Company and keep the Company indemnified against each and every action, proceeding, liability, cost, claim, loss, expense (including reasonable legal fees and disbursements incurred on a solicitor and own client basis) and demand arising out of or in connection with any claim made against the Company by any of the Seller's agents or sub-contractors concerning any breach by the Seller of such sub-contracts.

16 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).

17 FORCE MAJEURE

The Company reserves the right to defer the date for performance of, or payment for, the Goods and/or Services, or to terminate the Contract, if it is prevented from or delayed in carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including strikes, lock-outs or other industrial disputes (whether involving the workforce of the Company or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers of sub-contractors.

18 VARIATION

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

19 SEVERABILITY

If and in so far as any part or provision of these Conditions is or becomes 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.

20 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.

21 THIRD PARTY RIGHTS

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

22 NOTICES

Any notice given under the Contract shall be in writing and may be delivered by hand or sent by first class recorded delivery post to the other party at their last known address, or such other address as may from time to time be notified in writing to the party giving such notice or other communication, by the party to whom such notice or other communication is given.

Notices shall be deemed given, in the case of notice given by recorded delivery post, two Business Days after the date of posting. Notices delivered by hand shall be deemed given at the time when left at the correct address of the recipient.

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.