

ET ENVIRONMENTAL LIMITED

TERMS AND CONDITIONS OF SALE (UK) ("Terms")

1. DEFINITIONS OF TERMS

In these Terms

"The Company" shall mean ET Environmental Limited, and includes any of its subsidiary or associated companies whom the Buyer enters into any contract hereunder.

"Goods" shall mean the items supplied under the contract of sale and shall include all units, parts, accessories, repairs and services.

"Buyer" shall mean the person, firm or company with whom the contract is made or from whom an order is received by the Company.

"Delivery" shall mean when the goods arrive by carrier at the Buyer's premises in the U.K. or such other premises specified by the Buyer, and agreed by the Company or when the goods arrive at a place in the U.K. where they are to be transferred to the Buyer's carrier, or when the goods are put into storage at the request of the Buyer and goods are deemed to have been delivered whether or not they have been signed for by the Buyer or the Buyer's agent.

2. APPLICATION OF TERMS AND CONDITIONS

(1) These Terms shall apply to all contracts of sale by the Company whether such contracts are concluded orally or in writing and shall take precedence over any and all other terms and conditions of sale previously issued by the Company and shall apply to the exclusion of all and any conditions of the Buyer. Company employees do not have the authority to vary these terms unless such variations are in writing and signed by a Director of the Company.

(2) These Terms shall apply to all orders subsequently placed by or on behalf of the Buyer with the Company (and any associated or other subsidiary company) and the remedies available to the Company (and any associated or other subsidiary company for breach or non-observance of these Terms by the Buyer shall be available to the Company in the event of the Buyer breaching any terms and conditions under any contracts between the Buyer and the Company in force at the date of acceptance of the order to which these Terms apply.

(3) The placing of an order based on a quotation or tender supplied by the Company is an acceptance of these Terms notwithstanding that the Buyer may, for admission purposes issue their own standard form of purchase order in which is set out other terms and/or conditions. The Buyer accepts that, under no circumstances, shall such a purchase order serve to incorporate any other terms and conditions into this or any other contract with the Company.

(4) The Company is not obliged to accept any order from the Buyer, and a written acknowledgement of any Order shall where practicable be given by the Company. Such written notification or the acceptance by the Buyer of the Goods (whichever is the earlier) shall constitute acceptance by the Buyer of these Terms to the exclusion of all others.

(5) Notwithstanding sub-clause (3) above, quotations and tenders by the Company are deemed to be invitations to treat and shall not be offers in law and no contract shall come into existence between the Buyer and the Company until the Buyer is in receipt of the Company's order acknowledgement or accepts delivery of the Goods.

(6) If any provision of these Terms is held by any court to be invalid or unenforceable in whole or in part the validity of the other provisions of these Terms and the remainder of the provision in question shall not be affected.

3. BREACH BY THE BUYER

If the Buyer breaches any of these Terms and fails to remedy such breach within 14 days when requested to do so by the Company, the Company reserves the right to stop any work in progress, to stop or recall deliveries, to recover any goods already delivered and to terminate the contract without prejudice to any of the Company's other rights and remedies under this contract.

4. PRICES

(1) The price of the Goods will unless otherwise agreed in writing by the Company be the price originally quoted plus the cost of any subsequent variations.

(2) The Company reserves the unilateral right to increase its prices in its absolute discretion if orders are received from the Buyer for quantities less than those originally quoted for or if delivery is required in smaller instalments than those originally quoted for.

(3) The Company reserves the right to increase the price of Goods if its own purchase costs or labour rates increase by more than 3% between the date of order acknowledgement and delivery of the Goods.

5. VARIATION COSTS, STORAGE CHARGES AND OTHER ADDITIONAL COSTS

(1) The Buyer agrees to pay for any extra cost or loss which is incurred by the Company as a result of:- (a) the Buyer's instructions or lack of instructions or inaccurate or inadequate instructions or drawings; or (b) the Buyer's failure to take delivery or delay in taking delivery; or (c) the Buyer's failure to comply with any contract term, or (d) any request or act or default on the part of the Buyer or the Buyer's employees servants or agents;

(2) In particular the Buyer will pay for any work carried out by the Company at his request which the Company did not originally contract to undertake.

(3) Prices quoted include packaging and all associated costs and carriage up to Delivery within the U.K.

(4) Prices are exclusive of VAT unless otherwise expressly stated.

(5) If the Buyer does not arrange for delivery or storage of the Goods within seven days of the date agreed for delivery, the Company may arrange storage at its own premises or elsewhere on behalf of the Buyer and the Buyer shall be liable in full for the costs of storage, insurance and all other associated costs.

(6) Where the Buyer requests the Company to carry out any work of maintenance, service, adjustment, repair, modification, or other similar work in connection with the Goods after delivery and such work is not provided for in the order or under the contractual warranty and the Company in its discretion undertakes the work, it shall be paid for by the Buyer at the Company's rates at the date the work is undertaken.

(7) In the event of storage for whatever reason, goods will be insured by the Company and the cost of insurance will be included in the storage charge.

6. TERMS OF PAYMENT

(1) Goods may be paid for using the Company's pro forma invoices or by arranging a credit account with the Company at the Company's discretion. The Company reserves the right to withdraw the Buyer's credit facilities at any time and for any reason.

(2) Goods purchased on credit will be invoiced following manufacture; Goods purchased on pro forma invoices will be manufactured following full payment of the invoice.

(3) Payments will be made in pounds sterling.

(4) Terms of credit payment are strictly net cash due 30 days from the date of invoice.

(5) All payments should be made in accordance with the instructions on the invoice issued by the Company.

(6) If any account of the Buyer is in arrears the Company reserves the right to suspend all or any work in progress on any order associated (directly or indirectly) with the Buyer and to withhold any further deliveries until all monies due are paid to the Company. In the event of any delay arising from any act or default by the Buyer, the Company shall be entitled to payment of such a part of the contract price as is proportionate to the Company's obligations already performed, together with any additional costs incurred by the Company but without prejudice to any other rights that the Company may have.

(7) Without prejudice to its other rights, the Company may both before and after judgement against the Buyer charge interest at 5% above the then base rate of Lloyds Bank Plc on any overdue payments for goods.

(8) The Buyer shall not be entitled to withhold payment by reason of any alleged minor defect in the Goods supplied. If the Buyer considers that the Goods are defective, the Buyer shall send full details of the complaint within five working days of discovery of the defect and the Company will investigate it and repair or replace the Goods as necessary, in accordance with clause 8 below. This undertaking by the Company in no way alters the Buyer's obligation to pay for the Goods in accordance with the Company's payment terms.

7. CANCELLATION OF ORDER

(1) Cancellation of orders and/or the return of Goods in whole or in part will not be permitted without the Company's prior consent in writing. The Company expressly reserves the right to refuse to accept any cancellation or to accept cancellation only subject to conditions stipulated by the Company. Credit notes will not be issued for Goods returned in an unsaleable condition or goods returned without the prior agreement of the Company. Cancellations will only be accepted by the Company on the understanding that all expenses will be repaid to the Company by the Buyer in full, calculation of such expenses to date from receipt of the official order.

(2) In the event that an order is cancelled with the agreement of the Company and the cancellation is of a non-standard product line, then notwithstanding any other terms agreed the Buyer will be subject to minimum charges of:

- (a) 60% of order price if cancellation is within 3 weeks of planned production date;
- (b) 80% of order price if cancellation is within 2 weeks of planned production date;
- (c) 100% of order value if cancellation is within 1 week of planned production date.

(3) In the event that an order is cancelled and the cancellation refers to a standard product line, then the Buyer will be subject to a minimum charge of 30% of the order price.

(4) Nothing in the above clauses shall prejudice any right of the Company's to claim damages not specifically set out above where the cancellation of order amounts to a wrongful repudiation of this contract.

8. WARRANTIES

(A) STANDARD WARRANTY

(1) The Company undertakes to supply a replacement of the Goods or any part of the Goods in which a defect in materials or workmanship appears within 12 months of the actual date of delivery, provided that:

- (i) the Buyer informs the Company in writing of the defect in accordance with Clause 6(8) and,
- (ii) the Buyer makes no further use of the defective Goods or part of the Goods after they are discovered to be defective and,
- (iii) there are no outstanding sums due to be paid by the Buyer to the Company under this contract and,
- (iv) the Goods or part thereof are of the Company's own manufacture and the defect develops under normal use and maintenance in accordance with clause 17 below and,
- (v) the Company is given the necessary access and facilities for inspection, investigation and testing of the Goods or part thereof and,
- (vi) the Goods or part thereof, if stored at the Buyer's site, are kept in a dry secure location and protected from the elements and damage by third parties.

(2) This warranty is limited to repair or replacement of defective parts and does not extend to other loss or damage arising from use of the Goods. In particular, it does not cover defects from improper handling, storage or installation, inadequate maintenance, incorrect operation, or modifications or repairs carried out by third parties.

(3) In the case of Goods not of the Company's own manufacture, the Company shall pass onto the Buyer the benefits obtained under any warranty given by the Company's supplier. The Company shall only be liable to the Buyer for defects in Goods or components not of the Company's manufacture to the extent of the Company's entitlement against the manufacturer or supplier of such goods or components.

(4) The Company shall not be liable for any repair or replacement costs, where repairs or replacements are covered under this warranty, but the Buyer has had such repairs or replacements carried out by third parties.

(B) EXTENDED WARRANTY

Where an extended warranty is offered and paid for the following conditions apply:

(1) At the end of the initial 12 month warranty period referred to at clause 8(A) of these Terms, the Company undertakes to supply a replacement of the goods or any part of the goods in which a defect in workmanship appears within a further 48 month period, provided that:

- (i) the goods were purchased in the UK under these Terms;
- (ii) conditions (i) to (iv) of clause 8(i) of these Terms are satisfied;
- (iii) prior to installation the Goods are stored in an environment where the temperature is between 0° and 35° Celsius and humidity is 80% or less;
- (iv) the Goods are installed in accordance with the Company's operational and maintenance instructions which are available on request from our sales office;
- (v) the Goods are not stored or used in a corrosive atmosphere;
- (vi) the Goods are maintained:
 - (a) by qualified maintenance technicians; and
 - (b) in accordance with the most recent codes of practice issued by the Building Services Research and Information Association;
- (vii) no later than 13 months from the date of supply, the Buyer submits full written details of how the Goods have been maintained during the first 12 months of use and specifies the nature of the maintenance records kept;
- (viii) the Buyer informs the Company immediately in writing of any changes to the maintenance regime; and
- (ix) the Buyer keeps full records of all the maintenance work done on the goods throughout the extended warranty period, which records are available to the Company for inspection.

(2) The extended warranty:

- (i) is limited to:
 - (a) the replacement of defective Goods or any part of the Goods and does not extend to defects which arise from fair and reasonable wear and tear or other loss or damage arising from use of the Goods; and
 - (b) defects caused by bad workmanship;
- (ii) and excludes:
 - (a) any labour costs involved in replacing or repairing the Goods or any part of the goods;
 - (b) the replacement of the whole or part of any system control unit;
 - (c) defects caused by improper handling, storage or installation, inadequate maintenance, incorrect operation or modification and repairs by third parties; and
 - (d) defects which arise from fair and reasonable wear and tear
 - (e) defects which are caused by accidents, adverse weather conditions or any other set of circumstances whatsoever which is beyond the control of the Company or the Buyer.

(3) Clause 8(A)(3) above shall apply to the extended warranty.

(4) The end user customer ("the Customer") shall have the benefit of the extended warranty and throughout this clause 8(B) the Customer should be substituted for the Buyer where appropriate.

(5) Except as expressly stated above, all other warranties, conditions and representations, express or implied, statutory or otherwise are hereby excluded to the fullest extent permitted by law and the Company shall not be liable in contract or otherwise, for any loss, damage, expense or injury of any kind whatsoever, consequential or otherwise arising out of or in connection with, the installation, use or failure of the goods or any defect in them from any other cause and whether or not due to the acts or omissions of the Company, its servants, agents or contractors.

9. INDEMNITY BY BUYER

The Buyer shall indemnify and keep the Company fully indemnified against any and all liability, loss, costs, expenses, claims or proceedings, whatsoever (including any liability of the Company to any third party) whether for loss of or damage to property or injury to or death of any person arising out of or in consequence (directly or indirectly) of the manufacture of the goods or any part of the goods or the application of any process involving the goods in compliance with any specification or any instruction given by or any design of the Buyer.

10. DESCRIPTIONS AND REPRESENTATIONS

(1) Any and all Illustrations, data, and statements (including performance figures) and descriptions given in any Company's catalogues or made by any Company representative, are provided to give the Buyer a general description of the product and do not form the basis of any contractual liability. No warranty or condition is to be implied and any warranty or condition capable of arising is excluded.

(2) Prior to the Company's formal acceptance of any order in an order acknowledgement, no written or oral communication by the Company to the Buyer, shall have any contractual effect.

(3) If the Buyer relies on any statement or representation other than in the documents enclosed with the Company's tender or quotation, the Buyer must expressly request that it be made a term of the contract.

(4) The Company pursues a policy of continuous product development and reserves the right to make changes to products without prior notice.

(5) The Company will accept no liability for any performance figures, unless they are expressly guaranteed. Where an express guarantee is given, the Company shall not be responsible for any failure to meet any performance figures, by a margin which does not materially prejudice the commercial use of the Goods. If the failure of the Goods to meet performance figures is based on the information or samples provided by or on behalf of the Buyer the Company shall not be liable.

11. DESIGN AND MATERIALS

(1) Unless otherwise expressly agreed, Goods will be supplied in accordance with the Company's standard designs and specifications in existence upon the start of the manufacture of the goods.

(2) The Company shall use its standard materials or substitute the most suitable alternatives reasonably available at the time of manufacture.

12. FREE ISSUE CONTROLS

When the Company has entered into an agreement with the Buyer to fit and wire controls and or valves supplied by the Buyer or a third party, such items and fitting, must be provided to the Company at least two weeks ahead of the agreed date for commencement of manufacture. If not, the Company reserves the right to charge the Buyer for any costs it incurs as a result.

13. TESTS

(1) All Goods manufactured by the Company are carefully inspected and subjected to the Company's standard tests. If special tests are required by the Buyer, these must be specified when the order is placed and will be subject to an additional charge and unless otherwise agreed will be carried out at the premises of the Company. If the Buyer requires any such test to be witnessed by him or by any representative of his, then the Company shall give to the Buyer reasonable notice in writing of the date and place of the test. If the Buyer or his representative fails to attend on the date and at the place notified the Buyer shall not be entitled to make any complaint about the method, nature, extent or results of the test and shall be bound by the test and shall reimburse the Company for the costs of the test.

(2) The Buyer shall be entitled to rectification of any Goods which fail such tests, but shall have no further claim against the Company by reason of such failure or consequent delay or loss.

14. MANUFACTURING AND DELIVERY TIMES

(1) Manufacturing time will run from acknowledgement of the Buyer's order and receipt of all information necessary to proceed with the uninterrupted manufacture of the goods.

(2) Delivery date is estimated from the time required for manufacture.

(3) In the case of pro forma accounts, manufacturing time will run from the date when cleared funds are available.

(4) Times given for delivery are given in good faith but are approximate and for guidance only.

(5) Time shall not be of the essence of any contract nor shall the Company be under any liability for delay in delivery.

(6) Where goods have been subject to a change in specification by the Buyer, the Company reserves the right to alter the delivery date in its absolute discretion and to deliver without prior notice.

(7) Unless special arrangements have been agreed in writing, the Company shall package the Goods for delivery in any manner that it considers to be reasonably appropriate given the nature of the Goods.

(8) If a proof of delivery is required by the Buyer, this must be requested within seven days of the date of delivery, or the date that the Buyer is invoiced for the goods, whichever is the later. If such a request is made after the expiration of the seven days, the Buyer will be subject to a charge of £10.

15. FORCE MAJEURE

Manufacture and/or deliveries may be wholly or partially suspended and the time of delivery extended accordingly, in the event of any stoppage, delay or interruption during the manufacturing and/or delivery period as a result of strikes, lockouts, trade disputes, breakdowns, accidents, adverse weather conditions, Act of God or any other cause whatsoever beyond the control of the Company or the Buyer, and the Company shall not be liable to the Buyer for any costs incurred or loss suffered.

16. DAMAGE, SHORTAGE OR LOSS

If the Buyer requests the Company to arrange packing and/or transit of Goods, the Buyer shall have no claim for damage in transit, shortages or loss of Goods unless in the case of damage or shortages, written notice is given to the Company within three days of receipt of Goods and in the case of loss of Goods, written notice is given to the Company within ten days of the date of despatch. Unloading of Goods shall be the responsibility of the Buyer and at the Buyer's risk.

17. USE OF GOODS BY THE BUYER

The Buyer undertakes to ensure that the Goods will at all times be operated, used and maintained as required by the terms of the Health and Safety at Work Act 1974 and any equivalent and additional legislation concerning health, safety or environmental considerations which shall be enacted in the United Kingdom or by the European Community and in full accordance with good engineering practice and with any operating and/or maintenance instructions relating to the Goods and issued by the Company. The Buyer agrees to indemnify the Company against any costs, damages or liabilities for which the Company may become liable as a result of any failure by the Buyer to comply with this undertaking.

18. BUYERS OBLIGATIONS

(1) It is the duty of the Buyer to ensure that any order acknowledgement and invoice correspond with the Buyer's order.

(2) The Buyer will at his own expense provide convenient access to and information about the site to which Goods are to be delivered

19. REVERSE ENGINEERING

(1) The Buyer shall have no right to copy, adapt, reverse engineer, disassemble or modify the Goods in whole or in part except:

(i) as permitted by law

(ii) to the extent that such action is legitimately required for the purpose of installing or maintaining the goods.

(2) In any sub sale of the Goods, the Buyer will insert a provision into its conditions of sale which is analogous with this clause.

20. RISK AND TITLE

(1) All risk in the Goods shall pass to the Buyer at the time when the Goods leave the premises of the Company, notwithstanding any refusal of delivery by the Buyer or, when the Goods are stored at the request of the Buyer or on the Buyer's failure to accept or arrange delivery.

(2) Title to the Goods shall only pass to the Buyer when the Buyer has paid to the Company all sums due (including any interest) from it to the Company under this contract and under all contracts between the Company and the Buyer and between the Company and any associate or subsidiary of the Buyer, or any company within the Buyer's group

(3) The Company may recover unfixed goods or materials in respect of which title has not passed to the Buyer and the Buyer hereby irrevocably licences the Company and its employees, servants and agents to enter upon any premises of the Buyer or of the Buyer's agent for the purpose either of ensuring that these Terms are being complied with, or of recovering any goods in respect of which title has not passed to the Buyer.

(4) Until title to the Goods has passed to the Buyer, it shall possess the Goods as fiduciary agent and bailee of the Company and shall insure the delivered Goods against any loss or damage with an insurance office of repute. If the Company so requires, the Buyer shall store the Goods separately from other goods and shall ensure that they are clearly identifiable as goods belonging to the Company.

(5) If the Buyer converts the Goods into other items or the Goods in any way become incorporated into or mixed with other goods, the Buyer will hold such other goods on trust for the Company as security for the payment in full of the price of the goods and all other sums due to the Company from the Buyer under the contract.

(6) If the Buyer sells the Goods before title has passed, then the Buyer shall hold in a separate account on trust for the Company all proceeds of the sale until such proceeds are paid to the Company in settlement of the sum due under this contract.

21. LIABILITIES

The Company accepts liability as provided in section 1 of the Unfair Contract Terms Act 1977, for the death of or injury to any person resulting from the negligence of the Company or the Company's employees, servants or agents and will indemnify the Buyer against such damage, provided that liability shall be limited to £1,000,000 (one million pounds). The Company shall not be liable to the Buyer in respect of any other claim howsoever arising (whether based on alleged negligence or other tort, breach of contract or breach of fiduciary duty by the Company or the Company's employees, servants or agents, or otherwise) or for any loss or damage whatsoever, including loss of profit, goodwill or reputation or any consequential loss or damage.

21.1 Subject to clause 8, the following provisions set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of:

21.1.1 any breach of these Terms; and

21.1.2 any representation, statement or tortious act or omission including negligence arising under on in connection with the Contract.

21.2 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.

21.3 Nothing in these Conditions excludes or limits the liability of the Company for death or personal injury caused by the Company's negligence or fraudulent misrepresentation.

21.4 Subject to conditions 21.2 & 21.3;

21.4.1 the Company's total liability in contract, tort (including negligence or breach of statutory duty) misrepresentation or otherwise, arising in connection with the performance or contemplated performance of this Contract shall be limited to £1,000,000 and

21.4.2 the Company shall not be liable to the Buyer for any indirect or consequential loss or damage (whether for loss of profit, loss of business, depletion of goodwill or otherwise), costs expenses or other claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

22. RETENTION OF GOODS

If (1) the Company believes that the Buyer (being an individual) is not in a position to meet his commitments to the Company, or (2) the Buyer fails to make any payment to the Company when due, or (3) the Buyer (being a limited company) enters into liquidation, whether compulsorily or voluntarily (otherwise than for the purpose of amalgamation or reconstruction); or compounds with its creditors or has a receiver or manager appointed in respect of any of its assets; or is the subject of an application for an administration order, or, any proposal under Part 1 of the Insolvency Act 1986; or, if it carries out or undergoes any analogous act or proceeding under foreign law;

Then the Company may determine the contract, and/or demand immediate payment of any sum owed whether or not due and may stop any work in progress, recall goods in transit and suspend further deliveries provided that nothing in this clause shall prejudice any other right of the Company.

23. ASSIGNMENT

(1) No contract, in any form shall be capable of assignment by the Buyer without the Company giving its express consent

(2) The Company shall be free to employ subcontractors to manufacture goods or components to be supplied under this contract.

24. INDULGENCE OR WAIVER

(1) Any indulgence, forbearance or other concession by the Company to the Buyer, shall not in any way constitute a waiver or otherwise prejudice the Company's rights under this contract.

(2) A waiver by either party of any of these Terms shall apply only to the particular instance and shall not affect the further continuance in force of such Terms in all other circumstances.

25. CONFIDENTIALITY

(1) All specifications, plans, drawings, technical knowledge and other confidential information, whether of a technical or commercial nature, which may be passed to or come into the possession of the Buyer, shall not be used by the Buyer other than for the purpose of this contract and shall not be disclosed to any other person, company or firm whatsoever except where this is directly for the purposes of this contract. Any such specifications, plans or drawings and reproductions thereof, shall be returned to the Company on demand.

(2) All drawings, specifications, descriptions and other information submitted by the Company, shall remain the property of the Company, together with the copyright therein.

26. INTELLECTUAL PROPERTY

The Buyer undertakes to indemnify the Company against all liability, damages, penalties, costs and expenses which arise as a result of work done in accordance with the Buyer's specification including in relation to the infringement of any intellectual property belonging to third parties.

27. CORRESPONDENCE

All correspondence relating to goods supplied under these terms and conditions shall be in writing and may be delivered by hand or sent by prepaid mail or recorded delivery mail or facsimile to the other party at its address shown in the quotation or such other business address and/or individual as it may have specifically notified to the sender.

28. ANTI-BRIBERY

The Buyer shall:

(a) comply with all applicable laws, regulations, codes and sanctions relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (Relevant Requirements), and not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;

(b) comply with the Company's Anti-bribery Policy available on request as updated from time to time (Relevant Policy).

(c) have and shall maintain in place throughout the term of this agreement its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements, the Relevant Policy and clause 28(a), and will enforce them where appropriate;

(d) promptly report to the Company any request or demand for any undue financial or other advantage of any kind received by the Buyer in connection with the performance of this agreement;

(e) on request certify to the Company in writing signed by an officer of the Buyer, compliance with this clause 28 by the Buyer and all persons associated with it and all other persons for whom the Buyer is responsible under clause 28. with such supporting evidence of compliance as the Company may reasonably request.

29. GOVERNING LAW

This contract shall be construed and performed in accordance with the law of England and the parties to it agree to submit to the exclusive jurisdiction of the English Courts.