

TERMS AND CONDITIONS OF SALE AND SERVICE OF EXSEL PUMPS LIMITED (Company Number 03317718, hereinafter referred to as the "Company")

1 DEFINITIONS

1.1 In these Terms and Conditions, the following words and expressions shall have the following meanings: -

1.2 "Buyer" means the company, firm, government body, corporation or person named in the Buyer's Purchaser Order or the Contract who purchases the Goods or Services from the Company;

1.3 "Buyer's Purchase Order" means any order for Goods or Services by the Buyer in accordance with Clause 2.1;

1.4 "Contract" means any contract between the Company and the Buyer for the sale and purchase of the Goods or provision of the Services incorporating these Terms and Conditions;

1.5 "Goods" means any goods to be supplied to the Buyer by the Company;

1.6 "Price" means the price of the Goods and Services to be paid by the Buyer as determined in accordance with Clause 6;

1.7 "Services" means any services agreed in the Contract to be supplied to the Buyer.

1.8 "Terms and Conditions" means the terms and conditions in this document and as updated from time to time;

1.9 Save to the extent that the context or the express provisions of these Terms and Conditions require otherwise, in these Terms and Conditions: -

(a) words importing the singular shall include the plural and vice versa

(b) references to any statute or statutory provision (including any subordinate legislation) include any statute or statutory provision which amends, extends, consolidates or replaces the same, and shall include any orders, regulations, instruments or other subordinate legislation made under the relevant statute;

(c) any phrase introduced by the words "including", "include", "in particular" or any cognate expression shall be construed as illustrative only and shall not be construed as limiting the generality of any preceding words; and

(d) the words "other" and "otherwise" shall not be construed *ejusdem generis* with any foregoing words where a wider construction is possible.

1.10 The headings to Clauses are inserted for convenience only and shall not affect the interpretation or construction of these Terms and Conditions.

2 ORDERING GOODS

2.1 The Buyer's Purchase Order shall specify in detail the nature of the Goods or Services required with reference to the Company's price list or quotation at the time the Buyer's Purchase Order is made.

2.2 Any Buyer's Purchase Order for Goods or Services sent to the Company shall be deemed to be an offer and shall only be accepted by means of the Company's acknowledgement and shall be deemed to be subject to these Terms and Conditions to the exclusion of all other terms and conditions.

2.3 Each order for Goods or Services accepted by the Company shall be deemed to be an individual legally binding contract between the Company and the Buyer governed by these Terms and Conditions.

3 ACCEPTANCE OF QUOTATIONS

Unless previously withdrawn all quotations are open for acceptance within 30 days only from the date thereof and, where qualified, are subject to confirmation by the Company at the time of acceptance by the Buyer. The acceptance of the Company's quotation must be accompanied by sufficient information to enable the Company to proceed with the order forthwith and effect delivery of service in due course.

4 DESCRIPTION

All descriptive specifications, drawings and particulars of weights and dimensions submitted with the Company's quotations are approximate only and the descriptions and illustrations contained in the Company's catalogue, price lists and other advertising matter are intended merely to present a general idea of the goods described therein and none of these shall form part of the Contract. The Company reserves the right to modify without notice the designs and specification for the materials used in its product and substitute reasonably equivalent manufactured items.

5 ORDERS

The Company reserves the right to accept or refuse orders and also to cancel or suspend delivery of any incomplete orders.

6 PRICE

6.1 The Price shall be the Price specified in the Contract subject to adjustment to the prices ruling on the date the Goods are despatched or Services performed.

6.2 The Price and all prices quoted are strictly net. In addition to the Price the Buyer shall pay (i) delivery and freight charges (including the cost of packing cases), (ii) insurance, (iii) Value Added Tax where applicable at the appropriate rate prevailing at the time payment is due, (iv) the cost to the Company of carrying out any special test examination or inspection requested by the Buyer; (v) the cost of installing the Goods, or making available the Services; and (vi) all customs and import duties and other taxes and tariffs imposed up to and including the actual date of delivery or performance.

7 DELIVERY

Delivery shall be made to the location specified in the Buyer's Purchase Order. The Company attach great importance to meeting quoted delivery dates and times for service but under no circumstances will either accept liability or be held to be liable for any failure to meet delivery dates and service times no matter what the reason for the said failure. Any time quoted for despatch is the date from receipt by the Company of the Buyer's Purchase Order and of all necessary information and drawings to enable it to put the work in hand. Claims with regard to non-delivery, damage, errors in despatch or non-conformity with order must be made in writing to our registered office within seven days of the date of delivery (or stated delivery date) or of the company's invoice whichever is earlier, or such shorter period as may be specified by the carriers. The Buyer shall also be responsible for giving the carriers any requisite notice of any claims with regard to damage in transit. The Company reserves the right to make additional charges (including a storage charge) where it is prevented by the buyer from making delivery or effecting installation, erection, commissioning or service or where delivery is suspended pending payment.

8 ERECTION AND/OR INSTALLATION AND/OR COMMISSIONING

The Company has no responsibility for and accepts no liability for installing, erecting, commissioning or servicing the equipment unless otherwise stated in its quotation that has been accepted without qualification. In the event of such installation, commissioning, erecting or servicing being provided by the Company the Buyer shall ensure that a clear and suitable site is available ready for the installation, commissioning, erecting and/or servicing of the equipment and that the site is readily accessible to normal transport. The Buyer will also ensure that the premises and/or site complies in all aspects with the statutory requirements for the installation and functioning of equipment and for the provision of the Services. Except where otherwise specified the Company does not supply labour or materials for any builder's work, foundations, structural alterations, plumbing or electrical work.

9 INITIAL PERIOD SERVICE

Where the Goods are sold and/or installed or erected on the basis of service being given during a stated period the Company will provide such service during normal working hours as shall in the opinion of the Company be necessary and the stated period shall run from the date of delivery of the Goods or from the date of completion, installation or erection if the Goods are being installed or erected by the Company.

10 GENERAL SERVICES

In the event of the Contract relating solely to Services, the Services shall be provided during normal working hours or otherwise if provided for in the quotation as shall in the opinion of the Company be necessary. Any Contract relating solely to the provision of Services may be terminated on either party giving three months' notice in writing to that effect.

11 TITLE TO GOODS

11.1 Title to all Goods remains with the Company until the Buyer has paid and the Company has received the Price in full.

11.2 The Buyer shall not seek to sell or dispose of any part of or any individual consignment of or any delivery of Goods supplied by the Company to the Buyer until the whole of the Price and all other sums due in respect thereof pursuant to any Contract between the Company and the Buyer shall have been received by the Company.

11.3 In the event that the Buyer shall seek to dispose of any such Goods before payment in full has been made by the Buyer to the Company, the Buyer undertakes to hold all proceeds of sale of such Goods

in trust for the Company and to hold such proceeds of sale in a separate account to the order of the Company.

12 INVOICING

12.1 Unless otherwise stated in the Company's quotation:

12.1.1 The Buyer may be invoiced for the Goods and/or Services upon

12.1.1.1 despatch from the Company's premises or

12.1.1.2 delivery to Buyer's premises or arrival at dock in the case of direct shipment or

12.1.1.3 the expiration of seven days from the date when notification that the Goods are ready to despatch is forwarded to the Buyer whichever event first occurs.

12.1.2 The Buyer may be invoiced for Services performed immediately such Services have been performed and shall be due for immediate payment or otherwise in accordance with the terms quoted for such Services.

12.1.3 The Buyer may be invoiced with regard to installation, erection or commissioning on completion to the Company's satisfaction.

13 PAYMENT

13.1 When installation, erection, commissioning, servicing or Services are required payment will be made thereof immediately such installation, erection, commissioning or servicing is completed to the Company's satisfaction or an invoice is presented whichever is earlier unless otherwise stated in the quotation.

13.2 Notwithstanding installation, erection or commissioning payment shall be made for the Goods in accordance with the provisions of these Terms and Conditions relating to equipment and goods. In all circumstances Goods will be paid for prior to delivery unless otherwise stated in the Company's quotation. Parts will be paid for in accordance with the terms of the invoice.

13.3 Any invoice issued by the Company is due for payment within thirty (30) days of the date of the invoice. In the event of non-payment of any invoice on the due date the Company shall have the right at its sole discretion to withhold further deliveries (and any installation, erection, commissioning or servicing arrangement) until payment is received and shall incur no liability for loss of any kind whatsoever suffered by the Buyer in respect thereof. Should the Company be prevented by the Buyer from making delivery or carrying out Services, commissioning or installation on the due date payment will fall due as if the Goods had been delivered or Services or commissioning or installation carried out on the due date. No ownership in any Goods or equipment (which term includes any part or parts thereof) shall pass until full payment has been received by the Company thereof. Time for payment shall be of the essence of the contract.

13.4 The Company shall have the right to charge interest which shall accrue on a day to day basis on all monies which at any time may be overdue for payment pursuant to the terms of the Contract at the rate of 8% per month above the base lending rate of The Royal Bank of Scotland plc from time to time.

14 BUYER'S RISK

Notwithstanding the Company's ownership, equipment shall be entirely at the Buyer's risk as from the date of delivery. When the Company is to install or erect equipment the installation or erection will be in a workmanlike manner, but the Company shall not be responsible for any damage done to property occasioned by the work of installation or erection. The Buyer shall indemnify, protect and hold harmless the Company from and against all costs, claims, damages and losses for death of or injury to any person and for loss of or damage to any property arising out of the acts or omissions of the Buyer.

15 WARRANTY

The Company gives no warranties other than those provided by the manufacturer's standard warranty the terms of which may be obtained from the manufacturer on request and no warranties are provided other than those that cannot be specifically excluded by law. When legally acceptable the manufacturer's warranty shall take precedence over the statutory warranty. The Company gives no warranties with regard to installations, erections, servicing, systems' performance or Services performed other than those that cannot be specifically excluded by law. All other warranties are excluded as far as permitted by law.

16 CONSEQUENTIAL LOSS

The Company accepts no liability for any loss of data, loss of business, loss of profits or any indirect or consequential loss, damage, claims or liability of any kind arising from any cause whatsoever whether or not such liability is due to the negligence or omission by the Company or any of its employees or others acting on its behalf.

17 LIMITATION OF LIABILITY

17.1 Subject to this clause 17, the Company's total liability to the Buyer under any contract howsoever arising shall be limited to an amount equal to the price of the Goods or Services provided.

17.2 Nothing contained in these terms and conditions shall be construed so as to exclude or limit the liability of the Company for breach of the warranty as to quiet possession, as implied by section 12 of the Sale of Goods Act 1979 nor to limit or exclude the liability of the Company for death or personal injury as a result of the Company's fraudulent misrepresentations or negligent actions, or those of its employees or agents.

18 BUYER'S INDEMNITY

Without prejudice to any other provision in the Contract, the Buyer shall be solely responsible for and shall indemnify the Company in respect of all actions, claims, proceedings, costs, loss and damage which the Company may sustain, suffer or incur as a result of or in connection with any breach of the Contract, negligence or misuse or mishandling of the Goods by the Buyer or its officers, employees, agents or contractors.

19 INTELLECTUAL PROPERTY RIGHTS

In the event of any claim made or action being brought against the Buyer in respect of infringement of patents by the use, manufacture or sale of the Goods supplied by the Company to the Buyer hereunder the Buyer shall make no admissions in respect thereof but shall notify the Company and the Company shall be at liberty with the Buyer's assistance, if required, but at the Company's expense to conduct all negotiations for settlement of the same or any litigation that may arise therefrom, subject to such notification and provided that no such goods or any part thereof shall be used for any purpose other than that for which they were supplied to the Buyer the Company will indemnify the Buyer in respect of any such claim or action always provided that notice of any such claim has been given in writing to the Company by the Buyer within seven days of the receipt thereof by the Buyer.

20 STATUTORY REQUIREMENTS

The Company shall be responsible for complying with and giving all notices required by any Acts of Parliament or any order made under an Act of Parliament or any regulation or byelaw of any local authority or any statutory undertaking which has any jurisdiction with regard to the manufacture of the equipment and/or installation, commissioning or servicing of which it is aware. The Buyer shall pay and indemnify the Company against any liability in respect of any fees or charges legally demandable under any Act of Parliament, any instrument, rule or order made under any Act of Parliament or any regulation or byelaw of any local authority or any statutory undertaking. It shall be the Buyer's responsibility to bring to the notice of the Company all such statutes, instruments, rules, orders or byelaws at the date prior to the date of quotation.

21 FRUSTRATION OF ORDER

The Company shall incur no liability to the extent to which the fulfilment of any obligations or any part thereof is prevented, frustrated or impeded as a consequence of conforming with any rules or regulations whether Parliamentary, parochial or by any other authority or by any cause beyond the Company's control. The Company shall also be entitled to cancel the Contract without liability in the event of any necessary licence or consents not being forthcoming.

22 ALTERATION OF CONTRACT

Any provisions or conditions contained in a Buyer's order or correspondence which conflict with or are in addition to these conditions shall be excluded unless otherwise expressly agreed by the Company in writing. The placing of an order by the Buyer with the Company shall be deemed to be an acceptance of these conditions by the Buyer without modification. No part of any order may be assigned or sub let without the Company's written permission. The Company however may assign or sub-let the contract in whole or in part at its sole discretion.

23 TERMINATION

23.1 The Company may terminate any Contract forthwith by notice in writing to the Buyer if the Buyer: -

23.2 is unable to pay its debts or enters into liquidation (other than for the purpose of effecting a reconstruction or amalgamation) whether compulsorily or voluntarily or compounds with or convenes

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- a meeting of its creditors or has a receiver appointed of all or any part of its assets or takes or suffers any similar action in consequence of a debt or ceases for any reason to carry on business.
- 23.3 fails to pay in accordance with these Terms and Conditions, without prejudice to the Company's right to receive interest for non-payment.
- 24 CONSEQUENCES OF TERMINATION
- 24.1 Upon termination of the Contract by the Buyer prior to payment of the Price in full, the Company shall be entitled to payment from the Buyer for early termination as stated in the quotation.
- 24.2 Upon the termination or expiry of any Contract howsoever arising, other than under 24.1 herein, the Company shall be entitled to invoice the Buyer for Services performed or Goods delivered (or Goods procured by the Company if termination is prior to delivery) under that Contract up until the date of termination and the Buyer shall pay such invoice in accordance with these Terms and Conditions.
- 25 NOTICES
- Any notice to be given under, or in connection with these Terms and Conditions shall be in writing and signed by or on behalf of the party giving it and shall be served by delivering it personally or sending it by pre-paid recorded delivery or registered post to the registered office or principal place of business of the party (marked for the attention of the Managing Director), (or as otherwise notified by that party hereunder).
- 26 WAIVER
- No failure by any party in exercising any right, power or privilege under these Terms and Conditions shall operate as a waiver nor shall any single or partial exercise preclude any further exercise of any right, power or privilege under these Terms and Conditions or otherwise. If any provision of these Terms and Conditions shall be found by any court of competent jurisdiction to be invalid or unenforceable in whole or in part, such invalidity or unenforceability shall not affect the other part of that provision or the other provisions of these terms and conditions which shall remain in full force and effect.
- 27 LEGAL CONSTRUCTION
- The Contract shall in all respects be construed and operated in accordance with the law of England and the parties hereto submit to the non-exclusive jurisdiction of the English Courts.