

## GENERAL CONDITIONS OF SALE

### 1. DEFINITIONS AND INTERPRETATION

- 1.1. In these Conditions;
- 1.1.1. "Business Day" means a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.
- 1.1.2. "Buyer" means the person or firm who purchases Goods from the Seller.
- 1.1.3. "Conditions" means the terms and conditions set out in this document.
- 1.1.4. "Confidential Information" means all information which is commercially sensitive or of a secret nature, or information which is marked confidential, or which is orally stated to be confidential, relating to any and all aspects of the business of the Seller or the Buyer. Such information may be expressed in any form (including orally), as an idea, as price lists, plans, customer lists or details, computer software, or information concerning either the Seller's or the Buyer's relationships with actual or potential customers and the needs and requirements of such persons.
- 1.1.5. "Contract" means the contract between the Seller and the Buyer for the sale and purchase of the Goods in accordance with these Conditions.
- 1.1.6. "Contract Price" means the prices specified in the Seller's Quotation, Order, order acknowledgement or other communication as agreed.
- 1.1.7. "Force Majeure Event" means an event beyond the reasonable control of the parties including but not limited to strikes, lock-outs or other industrial disputes, 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 or subcontractors.
- 1.1.8. "Goods" means the products, materials, equipment and items to be supplied by the Seller under this Contract.
- 1.1.9. "Order" means an offer by the Buyer to purchase Goods from the Seller in accordance with these Conditions.
- 1.1.10. "Quotation" means the quotation provided by the Seller to the Buyer for the Goods.
- 1.1.11. "Seller" means Hydro Bond Engineering Ltd (registration number SC132331).
- 1.1.12. "Seller Group Company" means any company, corporation or other legal entity that controls the Seller, is controlled by the Seller or is under common control with the Seller, the terms "control" and "controlled" meaning ownership of more than 50% of the voting shares in such entity or the power to control its management.

- 1.1.13. "Specification" means the Seller's specification for the Goods, including any related plans and drawings, design premise, scope of work and/or Quotation provided to the Buyer by the Seller.

### 1.2. In these Conditions, the following rules apply:

- 1.2.1. a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- 1.2.2. a reference to a party includes its personal representatives, successors or permitted assigns;
- 1.2.3. a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- 1.2.4. any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
- 1.2.5. a reference to writing or written includes faxes and e-mails.

### 2. FORMATION OF THE CONTRACT

- 2.1. The Order shall only be deemed to be accepted when the Seller issues written acceptance of the Order at which point and on which date the Contract shall come into existence (this date shall be referred to herein as the "Commencement Date").
- 2.2. The Contract constitutes the entire agreement between the parties. The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Seller which is not set out in the Contract.
- 2.3. Any samples, drawings, descriptive matter or advertising issued by the Seller and any descriptions of the Goods contained in the Seller's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. For the avoidance of any doubt, they shall not form part of the Contract or have any contractual force.
- 2.4. These Conditions apply to the Contract to the exclusion of any other terms that the Buyer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

### 3. GOODS

- 3.1. The Goods are described in the Specification.
- 3.2. To the extent that the Goods are to be manufactured in accordance with a Goods specification supplied by the

Buyer, the Buyer shall indemnify the Seller against all liabilities, costs, expenses, damages and losses suffered or incurred by the Seller in connection with any claim made against the Seller for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Seller's use of the specification provided by the Buyer and the Goods produced as a result. This clause 3.2 shall survive termination of the Contract.

3.3. The Seller reserves the right to amend the Specification if required by any applicable statutory or regulatory requirements, or otherwise arising from a change in the laws applicable to the Contract.

#### **4. DELIVERY**

4.1. Delivery of Goods shall be in accordance with the relevant INCOTERMS 2010 delivery term, as agreed by the parties as set out in the Quotation or as otherwise as agreed between the parties from time to time in writing.

4.2. The Seller shall ensure that each delivery of the Goods is accompanied by a delivery note which shows the date of the delivery, all relevant Buyer and Seller reference numbers, the type and quantity of the Goods (including the code number of the Goods, where applicable) and handling & storage instructions (upon request).

4.3. Time of delivery is not of the essence.

4.4. The Seller shall have no liability for any delay or failure to deliver the Goods to the extent that such failure is caused directly or indirectly by one of the following events:

- 4.4.1. a Force Majeure Event;
- 4.4.2. the Buyer's failure to provide the Seller with adequate delivery instructions for the Goods or any relevant instruction related to the supply of the Goods; or
- 4.4.3. the Buyer's breach of its obligations under the Contract and in such circumstances the Seller shall be entitled to an extension of the agreed delivery time until the resolution of all relevant events affecting the delivery of the Goods.

4.5. If the Buyer fails to accept or take delivery of the Goods on the date notified to it by the Seller in advance then, except where such failure or delay is caused by a Force Majeure Event or by the Seller's failure to comply with its obligations under the Contract in respect of the Goods the Seller shall store the Goods until delivery takes place, and charge the Buyer for all related costs and expenses (including insurance).

4.6. The Seller may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate delivery. Any delay in delivery or defect in an instalment shall not entitle the Buyer to cancel any other instalment.

#### **5. TITLE AND RISK**



- 5.1. The risk in the Goods shall pass to the Buyer on delivery.
- 5.2. Title in the Goods shall pass to the Buyer upon full payment of the Contract Price to the Seller.
- 5.3. Following delivery, until title to the Goods has passed to the Buyer, the Buyer shall:
  - 5.3.1. hold the Goods on trust on behalf of the Seller;
  - 5.3.2. store the Goods separately from all other goods held by the Buyer so that they remain readily identifiable as the Seller's property;
  - 5.3.3. not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
  - 5.3.4. maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on the Seller's behalf from the date of delivery; and
  - 5.3.5. give the Seller such information relating to the Goods as the Seller may require from time to time, but the Buyer may resell or use the Goods in the ordinary course of its business.
- 5.4. The Buyer's right to possession, use and resale of the Goods shall terminate immediately:
  - 5.4.1. on the Seller giving the Buyer written notice that it has any reasonable concerns regarding the financial standing of the Buyer;
  - 5.4.2. if the Buyer fails to pay any sum due to the Seller under the Contract on or before the due date;
  - 5.4.3. if the Buyer encumbers or in any way charges any of the Goods; or
  - 5.4.4. if the Contract terminates for any reason.
- 5.5. The Seller shall be entitled to recover payment for the Goods (including by way of court action) notwithstanding that ownership of any of the Goods has not passed from the Seller.
- 5.6. The Buyer grants the Seller, its agents, employees and sub-contractors an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Buyer's right to possession, use and resale has terminated, to recover them.

#### **6. CONTRACT PRICE AND PAYMENT**

- 6.1. The price of the Goods shall be the price set out in the Quotation.
- 6.2. Unless otherwise agreed in the Contract, the Buyer shall pay the Seller's invoice within thirty (30) calendar days of the date of invoice and in accordance with any payment milestones in the Quotation. Payment for the Goods shall be made by the Buyer to the Seller into a bank account designated by the Seller in writing.
- 6.3. The Seller may invoice the Buyer for the Goods on or at any time after completion of delivery unless the Quotation

provides for earlier payments to be made, in which case, such terms shall apply.

- 6.4. The Contract Price is exclusive of value added taxes, import duties, withholding taxes and all other overseas taxes.
- 6.5. If payments from Buyer are subject to withholding tax, the Contract Price shall be grossed up to ensure that the Seller receives the amount set forth in the Quotation.
- 6.6. The Seller may charge interest for late payment of invoices at the annual rate of 3% above the base lending rate of Clydesdale Bank and/or suspend all works until payment has been made in full.
- 6.7. Acceptance of any Order by the Seller may be subject to the Buyer passing a satisfactory credit check.

## **7. WARRANTY**

- 7.1. The Seller warrants that on delivery and for a period of either 18 months from the date of delivery or 12 months from the date of installation, whichever shall be the earlier, the Goods shall be free from material defects in design, material and workmanship.
- 7.2. The Seller agrees to repair or replace at the option of the Seller, within a reasonable time and at the cost of the Seller, any Goods not conforming to the above warranty, in accordance with this clause 7, when notified by the Buyer. The Buyer agrees that this will be its sole remedy under the Contract.
- 7.3. Where the Seller performs rectification work on the Goods during the warranty period set out in clause 7.1, the warranty period for the rectified Goods shall be extended for a further period of up to 12 months from the date of repair or replacement provided that the warranty period under this clause 7 shall not, at any time, exceed a total of 30 months from the date of delivery of the Goods by the Seller.
- 7.4. The cost of removal and re-installation of the Goods are not included in the Seller's warranty obligation. The Seller's warranty is based on return of goods to the premises of the Seller as stated in the Quotation and the Seller shall not be liable for any transportation costs. Where practicable, the Seller will support the warranty obligations in the field with the Seller's service technicians subject to the Buyer covering the cost of transport and accommodations offshore.
- 7.5. The Seller's warranty excludes damage to the Goods caused directly or indirectly by any act or omission of the Buyer or Buyer's agents, employees or sub-contractors including improper storage, installation or maintenance of the Goods, use of the Goods outside of the purposes in the Specification and unauthorised repairs by Buyer or third parties.

- 7.6. All warranties are as exclusively stated in this Contract and all other warranties implied by law are excluded from this Contract to the fullest extent possible.

## **8. CONFIDENTIALITY**

- 8.1. Confidential Information received from a party shall not be disclosed to any third party without the disclosing party's written consent (such consent not to be unreasonably withheld or delayed).
- 8.2. The confidentiality obligation in clause 8.1 shall not apply to Confidential Information which;
  - 8.2.1. is or becomes part of the public domain through no fault of the Buyer or Seller;
  - 8.2.2. can be shown by written documentation to have been in a party's possession prior to receipt from the other party;
  - 8.2.3. can be shown by written documentation to have been independently developed by the developing party without reference, directly or indirectly, to the information of the other party;
  - 8.2.4. can be shown by written documentation to be obtained in good faith from a third party under no obligation of confidentiality;
  - 8.2.5. is or has been approved for release by written authorization of the disclosing party; or
  - 8.2.6. is required to be produced by a court of competent jurisdiction provided, however, that upon receipt of any such order, the party ordered to produce such information shall immediately notify the other party of the order so that an appropriate protective agreement or order may be sought.
- 8.3. All Confidential Information shall remain the property of the party providing it. Each party agrees upon a written request of the other party to return all Confidential Information and copies thereof and securely destroy any notes, analyses, studies or other writings prepared by the other party containing or based on the Confidential Information and such destruction shall be certified by the receiving party.

## **9. INDEMNITIES AND LIABILITIES**

- 9.1. Nothing in these Conditions shall limit or exclude a party's liability for:
  - 9.1.1. death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
  - 9.1.2. fraud or fraudulent misrepresentation; or
  - 9.1.3. the Seller's breach of the terms implied by section 12 of the Sale of Goods Act 1994; or
  - 9.1.4. any other liability which cannot be limited or excluded by law.

- 9.2. Each party (“Indemnifying Party”) shall defend, indemnify and hold harmless the other party (“Indemnified Party”) from and against any claim concerning personal injury to or loss of life of any employee of the Indemnifying Party or any loss of or damage to any property of the Indemnifying Party (whether owned, hired, leased or provided by the Indemnifying Party), arising out of or in connection with the Contract.
- 9.3. Each party (“Indemnifying Party”) shall defend, indemnify and hold harmless the other party (“Indemnified Party”) from and against any claim concerning personal injury to or loss of life or any loss of or damage to any physical property of a third party caused by the negligence of the Indemnifying Party. For the purposes of this clause, “third party” shall mean any party which is not an employee of the Seller or Buyer.
- 9.4. Notwithstanding any other provision contained herein, the Buyer shall defend indemnify and hold harmless the Seller (and any Seller Group Company) from and against any claim of whatsoever nature arising from pollution emanating from the reservoir or from the property of the Buyer or any agents, sub-contractors, clients or other affiliates of the Buyer who receive the Goods from (or on behalf of) the Buyer, arising from or related to the performance of the Contract.
- 9.5. Neither party shall be liable to the other party for any liability for indirect or consequential loss (which terms include but shall not be limited to pure economic loss, loss of profits, loss of business, loss of production, depletion of goodwill and like loss) howsoever caused (including as a result of negligence) relating to or in connection with the performance or non-performance of the Contract whether or not foreseeable at the commencement of the Contract.
- 9.6. Subject to clause 9.1 and 9.5, the Seller’s total aggregate liability in contract, tort or otherwise arising out of or in connection with the performance of the Contract shall be limited to 100% of the Contract Price.
- 10. TERMINATION**
- 10.1. If the Buyer becomes subject to any of the events listed in clause 10.2, or the Seller reasonably believes that the Buyer is about to become subject to any of them and notifies the Buyer accordingly, then, without limiting any other right or remedy available to the Seller, the Seller may cancel or suspend all further deliveries under the Contract or under any other contract between the Buyer and the Seller without incurring any liability to the Buyer, and all outstanding sums in respect of Goods delivered to the Buyer shall become immediately due.
- 10.2. For the purposes of clause 10.1, the relevant events are:
- 10.2.1. the Buyer suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
  - 10.2.2. a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Buyer, other than for the sole purpose of a scheme for a solvent amalgamation of the Buyer with one or more other companies or the solvent reconstruction of the Buyer;
  - 10.2.3. an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Buyer;
  - 10.2.4. any event occurs, or proceeding is taken, with respect to the Buyer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in this clause 10.2;
  - 10.2.5. the Buyer suspends, threatens to suspend, ceases or threatens to cease to carry on all or substantially the whole of its business; or
  - 10.2.6. the Buyer's financial position deteriorates to such an extent that in the Seller's opinion the Buyer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 10.3. The Buyer may by written notice and with immediate effect, terminate the Contract for any of the following reasons:
- 10.3.1. incurable material breach by the Seller, or failure by the Seller to begin to rectify a default within 7 days of receipt of notice of default from the Buyer where the material breach is curable; or
  - 10.3.2. if Seller becomes bankrupt or makes a composition or arrangement with its creditors or winding up order of the Seller has been made; or
  - 10.3.3. to suit the convenience of the Buyer.
- 10.4. In the event of termination under clause 10.3.1, 10.3.2, 10.3.3 or 11.3, the Seller shall cease the manufacture of the Goods and allow the Buyer to take over any completed Goods or part thereof. The Seller shall be entitled to payment for any completed part(s) of the Goods manufactured up to the point of termination.
- 10.5. In the event of termination for convenience by Buyer under clause 10.3 where no cancellation fees are stated in the Contract, the Seller shall be entitled to payment for work performed up to the point of termination and for all reasonable non cancellable costs incurred by the Seller on

behalf of the Buyer pursuant to the performance of the Contract.

- 10.6. Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination. Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.
- 10.7. The Seller may by written notice and with immediate effect, terminate the Contract upon material breach of the Contract by the Buyer, where that breach is not rectified to the reasonable satisfaction of the Seller within 15 Business Days of receipt of written notice from the Seller setting out details of the breach and the appropriate remedy.
- 10.8. In the event of termination under Clause
- 10.9. the Seller shall be entitled to payment for work performed up to the point of delivery and for all reasonable non cancellable costs incurred by the Seller pursuant to the performance of the Contract.
- 10.10. Clauses 2, 3, 5, 7, 8, 9, 10, 11, 13, 14, and 15 shall survive the termination of the Contract and shall remain in full force and effect.

#### **11. FORCE MAJEURE**

- 11.1. Neither party shall be liable for failure to perform its obligations under the Contract by reason of any Force Majeure Event.
- 11.2. Where a Force Majeure Event occurs, the party that is or may be delayed in performing the Contract shall notify the other party without delay giving the full particulars thereof and shall use all reasonable endeavours to remedy the situation without delay.
- 11.3. Each party shall be entitled to terminate the Contract should any Force Majeure Event affect the performance of the Contract for a period of more than 60 Business Days.

#### **12. VARIATION**

- 12.1. Buyer may on notice to Seller make changes within the general scope of the Contract subject to the following process. Any such changes shall constitute a variation and Seller may request within 14 days of receipt of notice, an adjustment of the Contract Price and/or delivery date pursuant to the variation. The parties agree to negotiate in good faith any such adjustments to the Contract Price and/or delivery dates. The Seller shall proceed with the variation only upon agreement of such adjustments by the parties which shall be evidenced by a written variation order signed by both parties.
- 12.2. Seller may on notice to Buyer request changes within the general scope of the Contract if it considers that an occurrence has taken place for which it is entitled to receive a variation. Any such request shall be submitted

within 14 days of the occurrence and include details of the occurrence and any likely effect of the proposed variation on the Contract price and delivery dates. Buyer shall within a reasonable time of receipt of request, give a written notice to the Seller stating either its acceptance or rejection of the variation.

- 12.3. In the event of a disputed variation, this would be resolved in accordance with clause 16.

#### **13. INTELLECTUAL PROPERTY**

- 13.1. All intellectual property rights generated, owned or in possession by a party prior to the Contract or outside the performance of the Contract and used by a party to perform its obligations under the Contract ("Background IPR") shall belong to the party owning or introducing the same. Nothing in the Contract shall affect ownership of Background IPR.
- 13.2. Each party hereby grants a royalty free non exclusive licence to the other party to use its Background IPR for the performance of its obligations under the Contract.
- 13.3. All intellectual property rights arising from the performance of the Contract ("Foreground IPR") shall belong to the Seller. Subject to the Buyer paying all sums due under the Contract, the Seller hereby grants a royalty free, non exclusive, non transferable, worldwide licence to the Buyer to use the Foreground IPR solely in connection with its use of the Goods in the course of the Buyer's business.

#### **14. INSURANCE**

- 14.1. Seller shall arrange, maintain and supply evidence of the following insurance when requested by the Buyer;
  - 14.1.1. Public and Product Liability Insurance with a limit of Five Million Pounds (£5,000,000) per occurrence and in the aggregate for the Goods which shall include an indemnity to principal clause recognising the Buyer; and
  - 14.1.2. Employer's Liability Insurance with limit of Five Million Pounds (£5,000,000) per occurrence.
- 14.2. The Buyer shall arrange and maintain insurance of appropriate limits to fulfil its obligations under the Contract.

#### **15. GENERAL LEGAL PROVISIONS**

- 15.1. Waiver A waiver of any right or remedy under the Contract is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or

remedy shall preclude or restrict the further exercise of that or any other right or remedy.

**15.2. Severance**

15.2.1. If any court or competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part- provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.

15.2.2. If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

15.3. Assignment Neither party may at any time assign all or any of its rights or obligations under the Contract without the consent of the other party (such consent not to be unreasonably withheld or delayed).

**15.4. Notice**

15.4.1. Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post, recorded delivery, commercial courier or confirmed email.

15.4.2. A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 15.4.1; if sent by pre- paid first class post or recorded delivery, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by confirmed email, one Business Day after transmission.

15.4.3. The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

**15.5. Third Party Rights**

15.5.1. Save in respect of clause 9.4, the parties do not intend that any term of the Contract shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by any person other than the parties to it.

**16. GOVERNING LAW AND DISPUTES**

16.1. The Contract and any non-contractual obligations arising out of or in connection with it shall be governed by, and shall be construed in accordance with, Scottish law and each party irrevocably submits to the non-exclusive jurisdiction of the Scottish courts.