

SMS ENVIRONMENTAL LTD – TERMS & CONDITIONS OF SALE

1. Definitions

In these conditions, unless the context requires otherwise:

- 1.1 'Buyer' means the person who buys or agrees to buy the Goods from the Seller.
- 1.2 'Conditions' means the terms and conditions agreed in writing by the Seller.
- 1.3 'Delivery Date' means the date specified by the Seller when the Goods are to be delivered.
- 1.4 'Goods' means the articles and services which the Buyer agrees to buy from the Seller; and 'Seller' means SMS Environmental Ltd.

2. Variation

Neither the seller nor the buyer shall be bound by any variation, waiver of, or addition to these conditions except as agreed by both parties in writing and signed on their behalf.

3. Description

The description of goods and services is given by way of identification only and the use of such description shall not constitute a sale by description. Nevertheless the seller will endeavour to ensure that its goods and services shall be in accordance with the specification contained in the seller's most recent literature unless stated otherwise, except that the seller reserves the right to supply goods incorporating variations from such specifications as a result of changes in components supplied by component manufacturers, or through unavailability of the specified components or goods, or because the variations improve the goods.

4. Liability

The seller accepts liability for the quality of goods and services it supplies to the extent that:

- (i) The seller will repair or replace any goods which within 12 months of purchase are shown to have been defective in materials or workmanship at the time of delivery upon the return to the seller of the goods or their defective parts, provided that the goods have been reasonably used and treated since receipt by the buyer
- (ii) The seller is exempted from any liability for consequential losses or any damage claimed or shown to result from goods or services supplied by the seller and from any costs or reparations claimed or shown to arise from deficiencies or shortcomings in goods supplied by the seller, except as expressly covered by clause 15 below.

5. Price

All quotations and estimates issued by the seller and hence all contractual prices, are unless otherwise stated exclusive of carriage and all government taxes and levies (eg VAT) and any special packing required for safe delivery (eg overseas), and unless otherwise stated firm and valid for 60 days of quotation subject to their acceptance within 30 days of the date of quotation.

6. Value Added Tax

Unless the sale fully qualifies as an export sale, or the goods or services are otherwise exempt from Value Added Tax and the seller has been advised of this by the buyer in writing prior to invoicing, the seller will invoice and the purchaser will pay Value Added Tax on the goods and services.

7. Payment

- (i) Payment for goods and/or services supplied under the contract, less any mutually agreed retention shall be made within 30 days of date of invoice. If payment of the price or any part thereof is not made by the due date,
- (ii) The seller shall be entitled:
 - a) To charge interest on the outstanding amount at the rate of 4% p.a. above the National Westminster Bank Base Rate accruing daily
 - b) To require payment in advance of the supply of any further goods and services as long as due monies are outstanding
 - c) To refuse to supply any further goods or services whether ordered under the contract or not and without incurring any liability whatever to the buyer for non-supply or any delay in supply.
 - d) To terminate the contract.

8. Delivery

Where the seller is contracted to deliver goods, delivery will be made by any method of transportation at the seller's option and carriage will be charged to the buyer in addition to the ex-works price. Unless otherwise stated or agreed, the seller requires up to 15 working days' notice of delivery.

9. Risk and Title

The risk in goods will pass to the buyer at time of collection of goods sold "ex works" and at time of delivery of goods sold on a delivered basis. Goods will be at the buyer's risk and the buyer's responsibility from the time of such collection of delivery. In the case of receipt of damaged goods by the buyer or if there is a discrepancy between goods ordered and goods supplied. The seller will only accept liability for such damage or discrepancy if notified within 2 working days of collection or delivery of the goods.

10. Rights, Warranties and Liability

- 10.1 Subject to these Terms and Conditions and except where the Buyer is purchasing the Goods as a consumer, all warranties, conditions or other terms implied by statute or common law (save for those implied by Section 12 of the Sale of Goods Act 1979) are excluded to the fullest extent permitted by law.
- 10.2 The seller shall not be liable for any loss or damages of any nature, direct or indirect, including any loss of profits or consequential damages suffered or incurred by the Buyer for whatever reason.
- 10.3 The exclusions of liability contained within this Clause 10 shall not exclude or limit the liability of the seller:
 - a) for death of personal injury caused by the seller's negligence;
 - b) for any matter for which it would be illegal for the seller to exclude or limit its liability; and
 - c) for fraud or fraudulent misrepresentation

11. Communications

- 11.1 All notices under these Terms and Conditions shall be in writing and signed by, or on behalf of, the party giving notice (or a duly authorised officer of that party).
- 11.2 Notices shall be deemed to have been duly given:

- (a) when delivered, if delivered by courier or other messenger (including registered mail) during the normal business hours of the recipient;
 - (b) when sent, if transmitted by fax or email and a successful transmission report or return receipt is generated;
 - (c) on the fifth business day following mailing, if mailed by national ordinary mail; or
 - (d) on the tenth business day following mailing, if mailed by airmail.
- 11.3 All notices under these Terms and Conditions shall be addressed to the most recent address, email address or fax number notified to the other party.

12. Time

The seller undertake to use their best endeavours to despatch the goods in time to meet the promised delivery date, but do not guarantee to do so. Time of delivery shall not be of the essence of the contract unless expressly so stipulated in writing.

13. Property

The property in goods will not pass to the buyer until payment of the price has been made in full.

14. Force Majeure

Neither party shall be liable for any failure or delay in performing their obligations where such failure or delay results from any cause that is beyond the reasonable control of that party. Such causes include, but are not limited to: power failure, Internet Service Provider failure, industrial action, civil unrest, fire, flood, storms, earthquakes, acts of terrorism, acts of war, governmental action or any other event that is beyond the control of the party in question.

15. Site Services

Where the contract is for the sale of the seller's services at a client's site:

- i) It is required that
 - a) The systems have been accurately and adequately described to their seller at the time of quotation, including disclosure of any sensitive materials that could be adversely affected by the work.
 - b) All parts of the system which need to be accessed are readily and safely accessible to the seller's engineers.
 - c) Power points with suitable power supply are available at any point where it is required to operate electrical equipment.
 - d) All other facilities which the seller has required the buyer to provide are available and operational, eg adequate water supplies, drainage facilities, recirculating pumps.
 - e) The systems to be treated are fully ready for the treatment and in the case of new systems have been tested as sound.
 - f) Any units or equipment to be excluded from the treatment are already valved or looped off, unless it has been specifically agreed in writing that the seller will do this.
 - g) Knowledgeable and responsible guidance is available to the seller for the identification of outlets, valves, injection points etc and for the operation of pumps, fans and other system equipment when necessary.
 - h) The area is free from asbestos products.
 - i) All works to be carried out during normal working hours unless otherwise stated.
 - j) Free use of welfare facilities are available for SMS Environmental Ltd personnel.
- ii) Once the seller has received and accepted an instruction to commence work on site on a particular day
 - a) At least 2 full working days notice of cancellation of the visit must be given, otherwise the buyer will be charged and will pay the seller for one full day's work at the contract price for each man involved.
 - b) If the seller on arrival at site, has to abort the visit through no fault of the seller the visit will be similarly charged and paid for.
- iii) The seller shall be fully indemnified by the buyer against the consequences of any damage or harm caused as a result of the seller's work through causes outside the seller's control or reasonable knowledge, or by unauthorised use of the seller's materials or equipment on site.
- iv) It is the buyer's responsibility to inspect the system and be satisfied with the work done before the seller is due to leave the site.
- v) Results of microbiological analyses of samples taken more than 6 hours after completion of disinfection services by the seller are not acceptable as evidence about the effectiveness of the seller's disinfection.
- vi) Where work is prevented, protracted or delayed, or return visits to site are necessary, because the above conditions have not been met, or for any cause outside the seller's control or responsibility, then the seller may charge and the buyer will pay the seller proportionately extra for the resulting additional time and/or work expended/undertaken by the seller.

16. Order Cancellation

If the seller should accept cancellation of a firm order, the seller is entitled to charge and be paid an order cancellation fee to cover all costs incurred as a result of the order and in any case equal to at least 20% of the order value.

17. No Waiver

No waiver by the Seller of any breach of these Terms and Conditions by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.

18. Severance

In the event that one or more of these Terms and Conditions is found to be unlawful, invalid or otherwise unenforceable, that / those provisions shall be deemed severed from the remainder of these Terms and Conditions (which shall remain valid and enforceable).

19. Law and Jurisdiction

- 19.1 These Terms and Conditions (including any non-contractual matters and obligations arising therefrom or associated therewith) shall be governed by, and construed in accordance with, the laws of England and Wales.
- 19.2 Any dispute, controversy, proceedings or claim between the Seller and the Buyer relating to these Terms and Conditions (including any non-contractual matters and obligations arising therefrom or associated therewith) shall fall within the jurisdiction of the courts of England and Wales.