

## CONDITIONS OF SALE

### IDEAL HOSE AND SAFETY LIMITED

#### 1. Definitions

"**Seller**" means Ideal Hose & Safety Limited.

"**Buyer**" means the individual firm or company purchasing or intending to purchase Goods or request Services from the Seller pursuant to the Contract.

"**Goods**" means the goods and/or materials which the Seller is to supply in accordance with the Contract.

"**Services**" means the Services which the Seller is to supply in accordance with the Contract.

"**Conditions**" means the terms and conditions of sale set out herein and includes any special terms and conditions agreed in writing between the Buyer and the Seller and in the event of conflict the special terms and conditions shall prevail over the terms and conditions set out herein.

"**Contract**" means the contract between the Seller and the Buyer for the purchase and sale of the Goods or for the supply of Services.

#### 2. Basis of the Sale

1. The Seller shall sell and the Buyer shall purchase the Goods or request the Services in accordance with any written or oral order of the Buyer which is accepted by the Seller subject in either case to these Conditions which shall govern the Contract to the exclusion of any other terms and conditions including without limitation conditions and warranties (written or oral express or implied other than terms and conditions which are by statute incapable of exclusion) even if contained in any of the Buyer's documents which purport to provide that the Buyer's own terms shall prevail.
2. All estimates and quotations remain valid for ninety days unless otherwise stated to the contrary (subject to price fluctuations). Quotations do not constitute an offer by the Seller. The Seller may at any time refuse to accept any order placed as a result of any such quotation.
3. The Buyer warrants that all information and data supplied by it or its agent or representative to the Seller shall be reasonably complete and accurate in every respect.
4. No variation to these Conditions shall be binding unless agreed in writing between authorised representatives of the Buyer and the Seller.

## **2. Prices**

**3.1** The Seller shall have the right to vary without notice the prices quoted to:

**3.1.1** conform with the Seller's price list ruling at the date of despatch; and/or

**3.1.2** reflect increases in pay or the cost of materials labour transport or conforming to statutory obligations imposed between the date of order and the date of delivery or foreign exchange fluctuation; and/or

**3.1.3** take account of implementing any requests by the Buyer for changes in delivery schedules, completion dates, quantities, qualities, designs or specifications; and/or

**3.1.4** take account of delays caused by any instruction of the Buyer or by any failure of the Buyer to give adequate information or instruction.

**3.2** All prices are subject to the addition of Value Added Tax ("VAT") at the rate applicable at the date of despatch.

**3.3** Where before delivery or the date of the invoice whichever is the earlier the Goods or Services become subject to any additional duty VAT or any other tax or surcharges in excess of the sum specified for such liabilities in the Seller's quotation or invoice the Buyer shall be charged and will pay such extra duty tax or surcharge.

## **3. Delivery & Quantity**

**4.1** If the Seller delivers the Goods to the Buyer's premises or elsewhere to the Buyer's instructions then delivery under the Contract shall be at the time and place of actual delivery at the Buyer's premises or elsewhere as the case may be. The Buyer shall be responsible for off-loading the Goods.

**4.2** Time shall not be of the essence in relation to despatch delivery or completion of the order. Any dates quoted for despatch or delivery of the Goods or completion of the order are approximate only and

the Seller shall not be liable in respect of loss suffered as a result of failure to despatch deliver or complete by the date quoted and no delay shall entitle the Buyer to cancel the order or refuse to accept delivery at any time.

**4.3** The Seller reserves the right to deliver the Goods by instalments and in such event each instalment shall be deemed to be a separate contract and the time for each delivery shall not be of the essence of the Contract provided that deliveries of further instalments may be withheld until the Goods comprised in earlier instalments have been paid for in full.

**4.4** Notwithstanding the fact that the quantity of Goods delivered shall exceed or fall short (in either case up to 5%) of the quantity agreed to be supplied such delivery shall constitute good performance of the Contract by the Seller who shall be entitled to charge for the quantity actually supplied, such variation in quantity being so slight that it would be unreasonable for the Buyer not to accept the revised quantity.

## **5. Force Majeure**

Should the Seller be delayed or prevented from meeting its obligations under the Contract as a direct or indirect result of any Force Majeure including without limitation, industrial dispute, fire, breakdown, shortage of raw materials, official acts of government or any other circumstances beyond their control, the time for delivery or performance shall be extended for a reasonable period having regard to the effect of such event and in no event shall the Seller be liable to the other for any delay or failure to meet its obligations so occurring PROVIDED THAT reasonable notice of Force Majeure has been served on the other.

## **6. Title & Risk**

1. Risk in the Goods shall pass to the Buyer on delivery.
2. Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, the property in the Goods shall not pass to the Buyer until the Seller has received in cash or cleared funds payment in full of the price of the Goods and all other goods agreed to be sold by the Seller to the Buyer for which payment is then due.
3. Until such time as the property in the Goods passes to the Buyer, the Buyer shall hold the Goods as the Seller's fiduciary agent and bailee, and shall keep the Goods separate from those of the Buyer and third parties

and properly stored, protected and insured and identified as the Seller's property, but the Buyer shall be entitled to resell or use the Goods in the ordinary course of its business.

4. Until such time as the property in the Goods passes to the Buyer (and provided the Goods are still in existence and have not been resold), the Seller shall be entitled at any time to require the Buyer to deliver up the Goods to the Seller and, if the Buyer fails to do so forthwith, to enter upon any premises of the Buyer or any third party where the Goods are stored and repossess the Goods.
5. The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Seller, but if the Buyer does so all moneys owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.

## **7. Payment**

1. The Buyer shall make full payment to the Seller of the contract price by the last working day of the month following the date of invoice and time in this respect shall be of the essence of the Contract.
2. In the event of any delay or delays in manufacture despatch delivery or otherwise which are attributable to the Buyer's actions or failure to act the Buyer shall at the discretion of the Seller either make payment to the Seller in accordance with Clause 7.1 above if the Goods or Services had been delivered or supplied at the times at which but for such delay or delays such delivery would have taken place or make a partial payment to the Seller in accordance with Clause 7.1 above based upon the proportion of the order completion at the date on which delay was notified.
3. The Seller reserves the right to charge interest on overdue accounts at the rate of four per cent per annum above the base rate quoted by HSBC Bank Plc from time to time on the daily balance from the due date until payment is made.
4. If any payment falls into arrears the Seller shall have the right to cancel or postpone performance of any Contract with the Buyer wholly or in part and to be paid immediately for part performance of such Contract and for any additional costs or expenses incurred by the Seller in connection with the Contract.
5. No claim by the Buyer under warranty or otherwise shall entitle the Buyer to any deduction retention or withholding of any part of any sums due for payment hereunder. The Buyer shall not be entitled to any set-off of obligations within or between any other Contracts with the Seller.

## **8. Storage and Carriage**

**8.1** If due to the fault of the Buyer:

**8.1.1** The Seller shall be unable to deliver the Goods; or

**8.1.2** if the Buyer being so obliged shall fail to collect the Goods from the Seller's premises;

then delivery of the Goods shall be deemed effected at the date on which delivery would have been made and the Goods shall be deemed accepted by the Buyer.

**8.2** Without prejudice to any of the Seller's other rights from time to time that the Goods should have been delivered the Seller may either:

**8.2.1** store the Goods for the Buyer at the premises of the Seller or elsewhere but without liability for any loss or damage occurring after the date when the same should have been delivered (unless caused by the Seller's negligence) for which storage the Buyer agrees to pay as an addition to the price all reasonable charges; and/or

**8.2.2** as the Buyer's agent arrange for carriage of the Goods to the Buyer together with transit insurance. Such arrangements shall be deemed to be made at the Buyer's request and pursuant to a contract separate from the Contract and the costs thereof shall be reimbursed by the Buyer to the Seller pursuant to such separate contract.

## **9. Drawings and Specifications**

**9.1** The Buyer shall indemnify the Seller in respect of any loss arising from unreasonable delay by the Buyer in furnishing adequate and suitable drawings specifications parts or materials required to enable the Seller to proceed with performance of its contractual obligations.

**9.2** Where drawings specifications parts or materials are supplied by the Buyer to the Seller then the Seller shall be entitled to rely on the accuracy and adequacy thereof.

## **10. Loss, Shortage or Damage**

1. The Seller will not be liable for:

**10.1.1** non-delivery unless such claim is received in writing by the Seller within 7 days from the date of its "Advice Note" invoice or equivalent document; or

**10.1.2** for shortage or damage unless a written claim from the Buyer is received by the Seller and any carrier within 3 days from the date of actual delivery, which period is considered reasonable to enable the Buyer to inspect the Goods.

2. The Seller's liability hereunder in respect of any shortage, loss or damage to the Goods shall be limited to the proportion of the price attributable to the Goods undelivered lost or damaged.

## **10. Warranty**

1. The Seller takes very reasonable care to maintain the quality and standard of manufacture of its Goods and supply of Services and, subject to Clause 11.3 below, warrants at its option to replace or repair or refund the price of any Goods or Services or part thereof proved to its reasonable satisfaction to be defective within 12 months of despatch by reason of faulty materials or workmanship PROVIDED ALWAYS THAT:-
  1. this guarantee shall not extend to failure by reason of defects which ought reasonably to have been discovered if inspection and or test of the Goods and Services had been practicable and had been carried out by the Buyer within 14 days of delivery but were not reported to the Seller within 48 hours of discovery.
  2. Without prejudice to clause 11.1.1 above the Buyer informs the Seller within 48 hours of discovery of the alleged defect and promptly returns the defective Goods carriage paid with a full written report on the defects unless the Seller agrees to inspect and replace or repair in situ.
  3. The Seller shall be under no liability in respect of any defect in the Goods or supply of Services arising from any drawing design or specification supplied or approved by the Buyer or caused by any parts or materials supplied or specified by the Buyer (whether or not the same are defective).

4. The Seller shall be under no liability in respect of any defect arising from fair wear and tear wilful damage negligence abnormal working conditions failure to follow instructions misuse or alteration or repair of the Goods or Services without the Seller's approval.
  5. The Buyer shall not be entitled to the foregoing guarantee in relation to any Goods or Services or parts thereof obtained by the Seller from another but the Seller shall so far as it is able to pass to the Buyer the benefit of any guarantee or warranty given to it by that other.
  6. The Buyer shall refund to the Seller the cost to the Seller of any replacement repair or re-delivery of the Goods or Services effected by the Seller where the defect is not within the scope of this guarantee.
2. Subject to and without prejudice to Clause 11.1 above, if any Goods are damaged or defective, the Buyer may not reject all of the Goods but only those which are damaged or defective.
  3. The Buyer may not reject any Goods if any damage or defect is so slight such that it would be unreasonable for the Buyer to reject them.
  4. In any event, the Buyer shall have no right to reject them later than 14 days following delivery.
  5. Except as provided above all other express conditions warranties and other liability howsoever arising under statute or at common law in respect of quality fitness condition use trade or other description specification or representation relating to the Goods or Services supplied are hereby excluded.
  6. The Seller shall not be liable for any expenditure loss (including without limitation economic indirect and consequential loss) damage or injury (except for personal injury arising out of negligence for which it must accept liability in accordance with the Unfair Contract Terms Act 1977) arising out of any use or dealing with any Goods and Services howsoever such expenditure loss damage or injury shall arise and whether from any defect in the Goods or Services or otherwise.
  7. Save only for the exception described in Clause 11.6 above the Buyer shall indemnify the Seller against all and any claims costs actions or demands whatsoever and howsoever arising made by any third party (including the Buyer's employees) whether direct or indirect relating to the Goods Services or the use thereof including without limitation those relating to the Goods Services or the use thereof arising as a result of the operation of the Consumer Protection Act 1987.

## **11. Technical Advice**

Where the Seller has no contractual obligation to install or to supervise the installation of Goods or Services the Seller may upon request and in connection with the Goods or Services provide for the Buyer's information such technical advice or assistance as it

deems necessary PROVIDED THAT and it is hereby agreed that all such technical advice or assistance is given without charge and the Seller shall be under no obligation or liability therefore, the same being expressly accepted at the Buyer's own risk.

### **13. Patents etc. Infringement**

The Seller shall (in lieu of all other liability to the Buyer for loss where patents designs trademarks and similar rights have been infringed by use or sale of the Goods) indemnify the Buyer against claims (including the costs thereof) by the owner or licensees of United Kingdom patents and registered designs published at the date hereof for infringement thereof by use or sale of the Goods PROVIDED THAT:

**13.1** the Seller shall be entitled to a release and indemnity from the Buyer in respect of infringements resulting from use or adoption by the Seller of the Buyer's parts designs or specific instructions or from use or sale in association or combination with other items where infringement would not otherwise have occurred or from use of such Goods in a manner or for a purpose or in a foreign country not specified by or disclosed to the Seller.

**13.2** if the Buyer accepts that this indemnity is conditional upon the Buyer immediately informing the Seller of any claim being made or action threatened or brought against the Buyer and on the Buyer permitting the Seller alone (and at the Seller's expense) to deal with all negotiations for a settlement of the claim and the conduct of any litigation that may ensue.

**13.3** The Buyer on its part warrants that any design or instruction furnished or given by it shall not be such as will cause the Seller to infringe any letters patent registered design trademark or copyright design right or any other intellectual property right in the execution of the Contract and the Buyer hereby agrees to indemnify the Seller against any



costs claims expenses whatsoever and howsoever arising from such infringement.

#### **14. Copyright and Confidentiality**

**14.1** The Buyer is not authorised to copy publicise or make available to any third party any drawings specifications written instructions and other technical papers supplied by the Seller in connection with its quotation or hereunder and the same shall remain its property and shall be returned on demand or on termination or completion of the Contract. The Buyer shall at all times treat such information as confidential and may only use and make available to third parties the confidential information which is given to it insofar as this is for the adjudication of the quotation performance of the Contract and the use of the Goods or the supply of Services.

**14.2** Any of the Seller's business trade secrets or confidential information which may come into the Buyer's possession must be regarded as strictly confidential even after the termination or completion of this Contract.

#### **15. Tools etc.**

**15.1** Tools, moulds, dies etc. whether charged for separately or included in the price quoted remain the property of the Seller unless otherwise agreed in writing. They will be preserved for not less than twelve (12) months after the date of the last delivery of Goods or the supply of Services made there from.

**15.2** Any unprocessed raw materials specifically purchased for the production of the Buyer's order(s) or any partly processed or unfinished parts made from such materials remaining in the possession of the Seller after termination of any Contract subject to these Conditions prior to its complete performance shall be the responsibility of the Buyer who shall pay for the same upon receipt of the Seller's invoice in respect of the same.

#### **16. Testing and Certification**

**16.1** Where the Seller is obliged by the terms of the Contract to conduct tests on the Goods then (subject to clause 16.2) such tests will be conducted in accordance with accepted practices within the industry or as determined in writing by the Seller.

**16.2** Where the Seller is obliged by the terms of the Contract to conduct a pressure test on site (whether the site be that of the Buyer or of a third party) then the Buyer shall ensure:-

**16.2.1** that the Seller has full and free access to such site at all times; and

**16.2.2** that the Seller shall have free access to power and water.

**16.3** The Seller will issue a certificate setting out the results of the test(s) carried out in accordance with clause 16.1 and 16.2 and will be accepted by the Buyer as being a true record and passing the required test(s) and the Seller shall have no liability thereafter other than as set out in clause 11.

**16.4** The Seller shall not be liable for any delay occasioned by the failure of the Buyer or any of its other contractors or any other third party to perform any of its obligations set out in this clause 16.

## **17. Liability for Accidents, Loss and Damage**

**17.1** The Seller shall indemnify the Buyer against damage or injury to its property or person or that of others to the extent directly caused by the negligence of the Seller its sub-contractors or agents while on the Buyer's premises for the purposes of the Contract but not otherwise by making good such damage to property or compensating personal injury PROVIDED ALWAYS that the Seller's total liability to the Buyer for damage to property (including damage caused by the Seller's breach of contract tort or breach of statutory duty) shall not

exceed the contract price and PROVIDED ALSO that the Seller shall not be liable to the Buyer for any loss of use production profit or contracts or save as aforesaid for any loss damage or injury of any kind whatsoever and whether caused by the Seller's breach of contract tort breach of statutory duty or otherwise.

**17.2** The Buyer shall indemnify the Seller against all losses damages injuries (including death) to any persons or loss of or damages to any property (including the Goods) which may arise out of the Buyer's or any employee's act default or negligence and against all claims demands proceedings damages costs charges and expenses whatsoever in respect thereof or in relation thereto PROVIDED THAT the Buyer shall not be liable for nor be required to indemnify the Seller against any compensation or damages for or with respect to injuries or damage to persons or property to the extent that such injuries result wholly from any act default or negligence on the part of the Seller.

### **18. Determination of Contract**

If the Buyer shall break any provision of this or any other Contract with the Seller or suffer distress or execution or commit and act of bankruptcy make arrangements with creditors or go into liquidation (except for the purposes of amalgamation or reconstruction) or have an administrator or administrative receiver or manager appointed or administration order made against it the Seller may (without prejudice to any other claim or remedy) suspend performance of or determine this or any other such Contract forthwith by written notice or suspend any further deliveries of work and shall be entitled to payment for Goods or Services already delivered or supplied and work in progress under the Contract in question.

### **19. Notices**

All notices authorisations and consents and approvals given pursuant hereto shall be in writing (which shall include confirmed facsimile transmission) in the English language to be effective and notices sent by post shall be deemed to have been given at the time when they would have been received in the ordinary course of the post and notices sent by facsimile transmission shall be deemed to have been received on the next working day following receipt.

### **20. Disputes**

**20.1** If any dispute arises between the Buyer and the Seller senior representatives of the parties shall within 30 days of a written request from either party to the other meet in a good-faith effort to resolve the dispute.

**20.2** If the dispute is not resolved at such meeting either party may propose to the other in writing that the matter be referred to a non-binding mediation.

**20.3** The parties intend to co-operate in implementing the above procedures and any ensuing mediation process. However, either party may withdraw at any time upon written notice to the other, from the negotiations and/or from the mediation and may institute court proceedings as if this Clause 20 did not form part of the Contract.

**20.4** The Buyer and the Seller agree that all negotiations held and documents written during the mediation procedure (irrespective of whether or not an agreement is reached) shall be confidential and the subject of such negotiations and documents shall not be disclosed in any subsequent court proceedings.

## **21. General**

**21.1** In these terms and conditions use of the singular shall include the plural and vice versa and use of gender shall be immaterial.

2. Clause headings are for ease of reference only and shall not affect the construction or interpretation hereof.
3. The failure of either party to this Contract to exercise or enforce any rights conferred hereunder shall not be deemed to be a waiver of any such right nor operate so as to bar the exercise or enforcement thereof at any time or times thereafter.
4. Should any part of the Conditions be found by any court or other competent authority to be void or unenforceable that part should be severed from the other parts which shall remain in full force and effect.
5. The provisions of the Contracts (Rights of Third Parties Act) 1999 shall not apply to any Contract and a person who is not a party to any Contract shall have no right under that Act to enforce any term of the Contract.

**22. Law**

The Contract shall be governed by English Law and the parties hereto hereby irrevocably submit to the jurisdiction of the English courts.