

## **AQUAREAD™ LTD STANDARD TERMS & CONDITIONS OF CONTRACT**

### **1.1 Preamble**

- a) Aquaread Limited, (hereinafter referred to as "the Seller") submit all quotations and price lists and accepts all orders verbal or written subject to the following conditions of Contract which shall apply to all goods supplied or work done by the Seller, its servants, agents or sub-contractors to the exclusion of all other representations, conditions and warranties, statutory or otherwise expressed or implied.

### **1.2 Acceptance of Order**

- a) Each order received and accepted by the Seller will be deemed to form a separate contract to which these conditions of sale shall apply and any waiver or any act of non-enforcement or variation of any terms or part thereof on the part of the Seller shall not bind or prejudice the Seller in relation to the application of these conditions to any other order, instalment or delivery whenever arising.
- b) The Seller reserves the right (without prejudice to any other remedy) to cancel any uncompleted order or to suspend delivery in the event of any of the Purchaser's commitment with the Seller not being met, or if the Seller is of the opinion that such commitments will not be met by the Purchaser.

### **1.3 Delivery, Risk & Title**

- a) All delivery dates are quoted in good faith but time shall not be deemed to be of the essence. The Seller shall not be liable for any loss or damage (whether direct or consequential) whatsoever arising from late delivery of goods or materials and the Purchaser shall not be entitled to treat the contract as repudiated by reason of any such late delivery.
- b) Delivery shall be deemed to take place when the goods arrive at the Purchaser's designated delivery address and all risk in the goods shall pass to the Purchaser upon delivery, title to the goods shall pass upon payment.
- c) No liability will be accepted by the Seller in respect of damage to or shortage of goods unless a separate notice in writing is given to the carriers concerned and to the Seller, giving full details, within twenty-one days of date of invoice or delivery if earlier. The Seller shall have no liability in respect of damage or shortages caused by the acts or omissions of the Purchaser or of others or by causes beyond the Seller's control.
- d) The Seller's liability in respect of goods supplied shall be only to the Purchaser and shall be strictly limited to free replacement of goods notified as above and returned, carriage paid, to the Seller's works provided always that the Purchaser shall not be entitled to receive, from the Seller, any greater benefit under the provisions of this clause than shall be recovered by the Seller under any guarantee or warranty given to the Seller by the Manufacturers or Suppliers of the component parts of the equipment.
- e) If the Purchaser shall enter into liquidation or receivership or composition with its creditors or upon any breach of its obligations herein whether as to payment or otherwise the Seller may (without prejudice to any of its other rights and remedies) by notice in writing revoke the Purchaser's authority to sell such goods and materials as aforesaid and recover and resell any or all of such goods or materials and may enter upon the Purchaser's premises for the purpose.
- f) Nothing herein shall give the Purchaser the right to return goods to the Seller.

### **1.4 Cost Insurance and Licences**

- a) Seller will obtain and pay for all necessary export licences or clearances and the contract will not come into force unless and until the Seller has received them. Purchaser will be responsible for obtaining and payment for all insurance and import licences at the country of destination. Purchaser shall also be responsible for all other cost of sale after delivery to the Free on Board (FOB) point including without limitation, duties, taxes, freight, insurance, shipping and handling costs.
- b) Notwithstanding any or all of the foregoing, it is understood by the parties hereto that the schedule for supply of equipment and services under the contract shall be extended for the period of time required by the Seller to obtain any HMG approval and furthermore Seller shall be excused under the contract any liability whatsoever in the event that any such required licence and/or other approvals are not granted to Seller after Seller has made all reasonable effort to obtain such licences and/or other approvals.

**1.5 Price**

- a) All prices quoted are FOB at Sellers facility unless otherwise agreed upon. Any prices quoted are exclusive of, and may be adjusted for any Tax or Duty thereon and may be increased for the supply of any quantity smaller than that quoted for.

**1.6 Cancellation**

- a) Should Seller fail to deliver goods or services contracted within a reasonable time of the acknowledged delivery date, Purchaser may give 90 days written notice to Seller of his intention to cancel the undelivered portion of the order. The Purchaser shall pay Supplier in full the balance of the order price for all equipment and services delivered up to the end of the period of notice.
- b) In the event of an order being cancelled by the Purchaser for any other reason, the Purchaser shall be liable to indemnify the Seller against all losses (including loss of profit) costs and other expenses and damages (whether direct or consequential) occasioned by such cancellation.

**1.7 Use and Control of Data and Hardware**

- a) The Purchaser acknowledges that the use of Seller's equipment does not in any way indicate that any fluid under test is fit for human or animal consumption.
- b) No part of the program in the memory of the equipment may be reproduced, transmitted, transcribed, translated or altered in any way, form or by any means, without prior written permission of the Seller.
- c) Without the prior written authorisation of Seller, the Purchaser will not knowingly re-export or ship, or cause to be re-exported, exported or shipped directly, any technical data or hardware obtained from the Seller to any destination defined as prohibited or controlled under the Export of Goods (Control) Order 1994, as amended from time to time by Her Majesty's Government by way of the Dual Use and Related Goods (Export Control) Regulations.

**1.8 Payment**

- a) Unless otherwise agreed all prices are in Sterling and shall be paid in full at Sellers facility in the UK. Terms of payment are payment with order unless a credit account has been set-up in which case payment is due within 30 days of invoice from Sellers facility in the UK to the consignee as designated by the Purchaser. If shipments are made in instalments, each instalment shall be separately invoiced and paid for when due without regard to other shipments. Seller reserves the right at any time to revoke credit extended to Purchaser because of Purchaser's failure to pay for any articles when due or for any other reason deemed good and sufficient by Seller, and in such event all subsequent shipments shall be paid for on delivery. In the event Seller exercises any rights it may have to stop articles in transit because Purchaser's financial condition Seller may at its option resell such articles at public or private sale without notice to Purchaser and without affecting Seller's right to hold Purchaser's breach.
- b) For goods outside the UK, unless specifically agreed otherwise with the Seller, Purchaser will establish (i) sight draft against shipping document of (ii) irrevocable letter of credit in favour of the Seller and payable at sight. The letter of credit shall be in Sterling and permit part shipments and provide for payment against shipping documents for each consignment, and have a validity of not less than 3 months longer than the Sellers quoted delivery period from date of order.

**1.9 Warranty**

- a) Seller warrants that all of its products will at the time of delivery be free from defects in materials and workmanship and will conform to Sellers applicable specifications in force at the time of the sale. Seller's obligation herein shall be limited to, at the Sellers option, correcting, replacing or refunding the purchase price of any nonconforming product.
- b) The Purchaser acknowledges that the warranty offered by the Seller is deemed to be void if the equipment has been, in the opinion of the Seller, subjected to any abnormal or excessive use, misused in any way or if any of the equipment housings have been opened by an unauthorised person.
- c) The Seller shall not be liable for and the Purchaser shall indemnify and hold the Seller harmless against any claim by or loss or damage to any person or property directly or indirectly occasioned or arising from the use or operation or possession of any equipment or goods supplied by the Seller.
- d) The warranty will commence from the date of invoice of the goods. The general warranty and its specific terms are transferable to the end use customer, excluding the refund of purchase price and subject to the restrictions and limitations specified within these Standard Terms and Conditions of Sale and the appropriate handbook supplied with the product. All warranty claims will be reviewed in accordance with the foregoing conditions.

**1.10 Force Majeure**

- a) The Seller shall not be under any liability of whatever kind for failure to perform or delay in performance in whole or part of its obligations under the contract due to causes beyond the control either of the Seller or the Seller's suppliers, including but not limited to acts of God, acts of the Purchaser or third party, war, sabotage, insurrection, Government regulations, embargoes, strikes, labour disputes, illness, flood, fire, tempest, delay in delivery to the Seller or the Seller's suppliers or shortage of any goods or materials in any such event the Seller may without liability, cancel or vary the terms of contract including, but not limited to extending the time to perform the contract for a period of time at least equal to the time lost by reason of such event.

**1.11 Maintenance**

- a) Maintenance of the equipment inclusive of warranty action (subject to Seller's prior approval) will be carried out at the Seller's factory in the UK.

**1.12 Governing Law**

- a) This contract shall be governed by English Law and any disputes arising out of any contract made between the Seller and the Purchaser shall be heard and determined by an English Court of competent jurisdiction or, at the option of the Seller, shall be submitted to arbitration in England in accordance with and subject to the provisions of the Arbitration Act 1950 or any statutory modifications or re-enactment thereof for the time being in force.

**1.13 Brochures, Catalogues and Internet Sites**

- a) The Seller reserves the right, without notice to the Purchaser, to alter, amend, substitute or modify the specification of the equipment or software without thereby incurring any obligation or liability to the Purchaser.

**1.14 Distribution and Dealer Agreements**

- a) The Seller reserves the right to renegotiate or cancel any distributor, dealer or agency agreement set in place when no main product or system has been ordered by the Purchaser within any six month period. The Seller will give fourteen days written notice to the Purchaser of its plan to amend or cancel an agreement should this be necessary. The Seller shall not be liable against losses, costs and other expenses and damages (whether direct or consequential) occasioned by such cancellation.

**1.15 Limitations of Liability**

- a) Aquaread Ltd and its affiliates specifically disclaim liability for any and all direct, indirect, special, general, incidental, consequential, punitive or exemplary damages including, but not limited to, loss of profits or revenue or anticipated profits or revenue or expenses incurred arising out of the use or inability to use any Aquaread product, miscalibration, loss of data or product failure, even if Aquaread Ltd and/or its affiliates has been advised of the possibility of such damages or they are foreseeable or for claims by any third party.
- b) Notwithstanding the foregoing, in no event shall Aquaread Ltd and/or its affiliates aggregate liability arising under or in connection with Aquaread products, regardless of the number of events, occurrences, or claims giving rise to liability, be in excess of the price paid by the purchaser for the Aquaread product.