

**BUSINESS TO BUSINESS – TERMS AND CONDITIONS FOR SALE OF GOODS**

**1. Definition and Interpretation**

**1.1 Definition**

|                            |   |
|----------------------------|---|
| <b>Elexion</b>             | Elexion Water Treatment Ltd registered in England and Wales with company number 12495687  |
| <b>Customer</b>            | the person or firm who purchases the Goods and/or Services from Elexion.  |
| <b>Business Day</b>        | a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business;                   |
| <b>Conditions</b>          | the terms and conditions of sale as set out in this document and any special terms and conditions agreed in writing by Elexion. |
| <b>Contract</b>            | the contract between Elexion and the Customer for the supply of Goods and/or Services in accordance with these Conditions;      |
| <b>Goods</b>               | the items which the Customer agrees to buy from Elexion as set out in the Schedule.   |
| <b>Price</b>               | the price for the Goods, excluding VAT and any carriage, packaging and insurance costs.   |
| <b>Delivery Location</b>   | has the meaning given in clause 7.2;  |
| <b>Contract</b>            | the contract between Elexion and the Customer for the supply of Goods in accordance with these Conditions;                      |
| <b>Force Majeure Event</b> | has the meaning set out in clause 11.   |

**1.2 Interpretation**

A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

A reference to a **party** includes its successors and permitted assigns.

A reference to a **statute** or **statutory** provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.

Any words following the terms **including**, **include**, **in particular**, **for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

A reference to **writing** or **written** includes fax, email and text.

## **2. Conditions**

- 2.1 These Conditions shall form the basis of the contract between Elexion and the Customer in relation to the sale of Goods, to the exclusion of all other terms and conditions including the Customer's standard conditions of purchase or any other conditions which the Customer may purport to apply under any purchase order or confirmation of order or any other document.
- 2.2 All orders for Goods shall be deemed to be an offer by the Customer to purchase Goods from Elexion pursuant to these Conditions.
- 2.3 Acceptance of delivery of the Goods shall be deemed to be conclusive evidence of the Customer's acceptance of these Conditions.
- 2.4 These Conditions may not be varied except by the written agreement of a director of Elexion.
- 2.5 These Conditions represent the whole of the agreement between Elexion and the Customer. They supersede any other conditions previously issued.
- 2.6 Any quotation given by Elexion shall not constitute an offer, and is only valid, unless otherwise stated, for a period of 30 days from its date of issue.

## **3. Price**

The Price shall be the amount quoted on Elexion's confirmation of order or written quotation and unless specified, inclusive of all costs and charges of packaging, and transport of the Goods within the United Kingdom.

## **4. Payment and Interest**

- 4.1 The Customer shall pay each invoice submitted by Elexion:
  - 4.1.1 By the due date as specified within the invoice; and
  - 4.1.2 in full and in cleared funds by means nominated in writing by Elexion, and time for payment shall be of the essence of the Contract.
- 4.2 Interest on overdue invoices shall accrue from the date when payment becomes due calculated daily until the date of payment at the rate of 10% per annum above the Bank of England base rate from time to time in force. Such interest shall accrue after as well as before any judgment.
- 4.3 The Customer shall pay all accounts in full and not exercise any rights of set-off or counter-claim against invoices submitted by Elexion.
- 4.4 Customers granted with a credit account may have their account facilities suspended or removed completely if the agreed payment terms of the account are not adhered to.

## **5. Goods**

- 5.1 The Goods are described in the Schedule.
- 5.2 Elexion reserves the right to amend or change the specification of the Goods if required by any applicable statutory or regulatory requirements.

## **6. Guarantees**

- 6.1 Elexion guarantees that for a period of 12 months commencing on the date of delivery of the Goods, the Goods shall:
- 6.1.1 conform with their description;
  - 6.1.2 be of satisfactory quality with the meaning of the Sale of Goods Act 1979; and
  - 6.1.3 be fit for any purpose held out by Elexion.

## **7. Delivery of the Goods**

- 7.1 Elexion shall ensure that each delivery of the Goods is accompanied by a delivery note which shows any relevant Customer and Supplier reference numbers, the type and quantity of the Goods including the code number of the Goods (where applicable) and any special storage instructions.
- 7.2 Elexion shall deliver the Goods to the location set out in the Order or such other location as the parties may agree (Delivery Location) at any time after Elexion notifies the Customer that the Goods are ready.
- 7.3 Delivery of the Goods shall be completed on the completion of unloading of the Goods.
- 7.4 Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. Elexion shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide Elexion with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 7.5 If Elexion fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. Elexion shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide Elexion with adequate delivery instructions for the Goods or any relevant instruction related to the supply of the Goods.
- 7.6 If the Customer fails to accept delivery of the Goods within three Business Days of Elexion notifying the Customer that the Goods are ready, then except where such failure or delay is caused by a Force Majeure Event or by Elexion's failure to comply with its obligations under the Contract in respect of the Goods:
- 7.6.1 Delivery of the Goods shall be deemed to have been completed at 9.00 am on the 3rd Business Day following the day on which Elexion notified the Customer that the Goods were ready; and
  - 7.6.2 Elexion shall store the Goods until delivery takes place and charge the Customer for all related costs and expenses (including insurance).
- 7.8 If ten Business Days after Elexion notified the Customer that the Goods were ready for delivery the Customer has not accepted delivery of them, Elexion may resell or otherwise dispose of part or all of the Goods.
- 7.9 Elexion may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.
- 7.10 Delivery of goods will be made to the entrance of the address where the delivery has been agreed and unless otherwise agreed.

**8. Acceptance of the Goods**

- 8.1 The Customer shall be deemed to have accepted the Goods 1 day after delivery to the Customer.
- 8.2 The customer shall inspect the goods on delivery and shall within 48 hours or receipt, notify Elexion in writing of any errors in quantity or other failure to comply with the quotation and / or acknowledgement given. If the customer fails to comply with these provisions, the goods shall be conclusively presumed to be supplied in accordance with the contract and the customer shall be deemed to have accepted the goods.
- 8.3 Where the Customer has accepted, or has been deemed to have accepted, the Goods the Customer shall not be entitled to reject Goods which are not in accordance with the contract.

**9. Title and risk**

- 9.1 Risk shall pass on delivery of the Goods to the Customer's address.
- 9.2 Notwithstanding the earlier passing of risk, title in the Goods shall remain with Elexion and shall not pass to the Customer until the amount due under the invoice for them (including interest and costs) has been paid in full.
- 9.3 Until title passes the Customer shall hold the Goods as bailee for Elexion and may be required to store or mark them so that they can at all times be identified as the property of Elexion.
- 9.4 Elexion may at any time before title passes and without any liability to the Customer:
- 9.4.1 repossess and dismantle and use or sell all or any of the Goods and by doing so terminate the Customer's right to use, sell or otherwise deal in them; and
- 9.4.2 for that purpose (or determining what if any Goods are held by the Customer and inspecting them) enter any premises of or occupied by the Customer.

**10. Carriage of Goods**

Carriage will be chargeable on all sales under £250, the rate will be available on request

**11. Force Majeure**

- 11.1 For the purposes of this Contract, Force Majeure Event means an event beyond the reasonable control of Elexion including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of Elexion or any other party), failure of a utility service or transport network, act of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm, earthquake, epidemic or similar events, or default of suppliers or subcontractors.
- 11.2 Elexion shall not be liable to the Customer because of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.
- 11.3 If the Force Majeure Event prevents Elexion from providing any of the Goods for more than [insert number] weeks, Elexion shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Customer.

**12. Limitation of Liability: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE**

- 12.1 Nothing in these Conditions shall limit or exclude Elexion's liability for:
- 12.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
  - 12.1.2 fraud or fraudulent misrepresentation;
  - 12.1.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession); or
  - 12.1.4 defective products under the Consumer Protection Act 1987.
- 12.2 Subject to clause 12.1:
- 12.2.1 Elexion shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
  - 12.2.2 Elexion's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed £(amount).
- 12.3 After the Warranty Period, the terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.
- 12.3 This clause 12 shall survive termination of the Contract.

**13. Termination**

- 13.1 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:
- 13.1.1 the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business;
  - 13.1.2 the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business.
- 13.2 Without affecting any other right or remedy available to it, Elexion may terminate the Contract with immediate effect by giving written notice to the Customer if:
- 13.2.1 it would be unsafe or unlawful to Supply the Goods or Services, or;
  - 13.2.2 the Customer fails to pay any amount due under the Contract on the due date for payment. Without affecting any other right or remedy available to it, Elexion may suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Customer and Elexion if the Customer fails to pay any amount due under the Contract on the due date for payment, the Customer becomes subject to any of the events listed in clause 11.1.1 or clause 11.1.2 or Elexion reasonably believes that the Customer is about to become subject to any of them.

### **13. Consequences of termination**

#### 13.1 On termination of the Contract:

13.1.1 the Customer shall immediately pay to Elexion all of Elexion' outstanding unpaid invoices and interest and, in respect of Services and Goods supplied but for which no invoice has been submitted, Elexion shall submit an invoice, which shall be payable by the Customer immediately on receipt;

13.1.2 the Customer shall return all of Elexion Equipment or Goods which have not been fully paid for. If the Customer fails to do so, then Elexion may enter the Customer's premises or where applicable the Installation Premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract.

13.2 Termination of the Contract shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.

13.3 Any provision of the Contract that expressly or by implication is intended to have effect after termination shall continue in full force and effect.

### **14. General**

#### 14.1 Notices.

14.1.1 Any notice or other communication given to a party under or in connection with this Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) 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 or sent by prepaid first-class post or other next working day delivery service, or by commercial courier, fax [or e-mail].

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

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

14.3 No partnership or agency. Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, nor constitute either party the agent of another party for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.

14.4 Third parties. A person who is not a party to the Contract shall not have any rights to enforce its terms.

14.5 This Contract contains the entire agreement and understanding of the parties relating to the subject matter of this Contract and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between the parties, whether written or oral.

14.6 Variation. Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions shall be effective unless it is agreed in writing and signed by Elexion.

- 14.7 Governing law. This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.
- 14.8 Jurisdiction. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).