

**Hydratight Limited Hydratight Operations Limited**  
**GENERAL TERMS AND CONDITIONS**  
**SALE OF PLANT**

**1 DEFINITIONS & INTERPRETATIONS**

1.1 In these terms the following words shall have the following meanings:-

1.1.1 "Company" means either:-

(a) Hydratight Operations Limited whose registered office is at 5 Coopies Field, Coopies Lane, Morpeth, Northumberland, NE61 6JT, England or any other nominated and identified corporate body; or

(b) Hydratight Limited, whose registered office is at Bentley Road South, Darlaston, West Midlands, WS10 8LQ, England or any other nominated and identified corporate body.

1.1.2 "Contract" means these terms and the Quotation together with any and all documentation relating to the agreement between the Company and the Customer;

1.1.3 "Customer" means the person, firm or corporate entity who has acquired Plant as hereinafter described on agreed terms and conditions from the Company;

1.1.4 "Plant" means and shall include any and all plant, machinery, tools or equipment supplied by the Company to the Customer; and

1.1.5 "Quotation" means the specification sheet to which these terms are attached, together with any and all documentation relating to the agreement between the Company and the Customer.

1.2 Reference to the singular shall include the plural, the masculine shall include the feminine, the whole shall include the part, the personal shall include the corporate and in all cases vice versa, as if they were set out separately and traversed seriatim.

**2 BASIS OF SALE**

2.1 Any orders sent to the Company by the Customer shall be accepted entirely at the discretion of the Company, and, if accepted will only be accepted on these terms which shall govern the Contract to the exclusion of any other terms subject to which any order purported to be sent or confirmed by the Customer and by means only of the Company's standard order acknowledgement form and in the absence of any documents acceptance is deemed to have been on delivery in accordance with Clause 6.

2.2 Each order which is so accepted shall constitute a separate legally binding Contract between the Company and the Customer.

2.3 No addition, alteration or substitution of these terms will bind the Company or form any part of any Contract unless they are expressly accepted in writing by a person authorised to sign on the Company's behalf.

2.4 The Customer shall at its own expense supply the Company with all necessary data or other information relating to the Contract, within sufficient time to enable the Company to provide the Plant in accordance with the Contract. The Customer shall ensure the accuracy of all such information provided.

2.5 The Company's employees or agents are not authorised to make any representation with regard to the subject matter of the Contract. In entering into the

Contract the Customer acknowledges that if it relies on any representation, advice or recommendation given by the Company, its employees or agents to the Customer, its employees or agents as to the use of the Plant it does so entirely at the Customer's own risk.

**3 OPERATING INSTRUCTIONS**

3.1 The Company shall undertake to supply with the Plant adequate information as to their design and conditions of and instruction for operation for compliance with its obligations under Section 6 (1) (c) of the Health and Safety at Work Act 1974.

3.2 The Customer undertakes that all necessary steps will be taken to ensure that the Plant will be safe and without risk to health when properly used in accordance with Clause 6 (8) of the Health and Safety at Work Act 1974.

3.3 The Plant is sold on the basis of only being used for its designated function within the limits of design and all information as detailed in the operating instruction supplied.

**4 SPECIFICATION**

4.1 The Customer shall be responsible to the Company for ensuring the accuracy of the terms of any order submitted by the Customer and for checking and ensuring the accuracy of any order acknowledgement form.

4.2 The quantity, quality, description of, and any specification for the Plant shall be as expressly set out in the Company's Quotation, additional documentation and order acknowledgement form and no other specification, content of any descriptive material, correspondence or statement, promotion or sales literature shall form part of or be incorporated by reference into the Contract.

4.3 The Company reserves the right to make changes in the specification of the Plant which are required to conform with any applicable statutory or regulatory requirement which do not materially affect quality or performance.

4.4 The Plant is sold in accordance with the Company's current product specification and any advance sample shall be regarded only as an average representation of the specification concerned.

4.5 As work to improve the quality and performance of the Plant and the economics of manufacture is continuously in progress, the Company reserves the right to alter the Plant without notice. Such alteration shall not be deemed to change the description of the Plant ordered provided that the characteristics of the Plant supplied conform to the Company's current product specification.

**5 PRICE AND PAYMENT**

5.1 The price for the Plant shall be the Company's price as set out in the Quotation together with any and all documentation relating to the Contract. All prices quoted are valid for thirty (30) days from the date of the Quotation only or until earlier acceptance by the Customer, after which they may be altered by the Company without giving notice to the Customer.

5.2 The Company reserves the right by giving notice in writing to the Customer at any time before delivery to increase the price of the Plant to reflect any increase

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in cost to the Company which is beyond the control of the Company (such as, without limitation, any foreign exchange fluctuations, currency regulation, alteration of duties, significant increase in the cost of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Plant which is requested by the Customer, or which is due to any failure by the Customer to give the Company adequate information or instructions.

5.3 All prices are given by the Company on an ex-works basis, and where the Company agrees to deliver the Plant otherwise than at the Company's premises the Customer shall be liable to pay the Company's charges for transport, packaging and insurance.

5.4 The price is exclusive of any applicable Value Added Tax and any other tax or duty, which the Customer shall pay to the Company in addition at the applicable rate from time to time.

5.5 The Company shall use its reasonable endeavours to comply with any specific invoicing requirements of a Customer, but failure to comply shall not invalidate the invoice rendered. Any such requests must be communicated to the Company by the Customer before the Plant is despatched.

5.6 The Customer shall pay the price for the Plant within thirty (30) days of the date of the Company's invoice or within such credit terms as are agreed between the Company and the Customer in writing and the Company shall be entitled to recover the price notwithstanding that delivery may not have taken place and notwithstanding that property in the Plant has not passed to the Customer.

5.7 The Company shall be entitled to invoice the Customer for the price of the Plant at any time after formation of the Contract or following delivery of the Plant unless the Customer wrongfully fails to take delivery of the Plant in which event the Company shall be entitled to invoice the Customer for the full amount at any time after the Company has notified the Customer that the Plant is ready for collection or (as the case be) the Company has tendered delivery of the Plant.

5.8 All payments due hereunder (if not made by BACS or EFT) shall be made to the Company at its address stated herein or at such other address as the Company may from time to time communicate to the Customer. Any payments sent by post shall be so sent at the risk of the Customer.

5.9 Time shall be of the essence in respect of the payment of all sums due hereunder and the Customer shall be deemed to have repudiated this Contract if any payments shall remain unpaid for more than fourteen (14) days after becoming overdue.

5.10 If the Customer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to:

5.10.1 cancel the Contract and suspend any further deliveries to the Customer;

5.10.2 appropriate any payment made by the Customer to such Plant supplied under any Contracts made between the Customer and the Company as the

Company may think fit notwithstanding any purported appropriation by the Customer; and

5.10.3 claim interest and/or compensation for reasonable debt recovery costs under the Late Payment of Commercial Debts (Interest) Act 1998 as amended and supplemented by the Late Payment of Commercial Debts regulations 2002.

## **6 DELIVERY**

6.1 Delivery of the Plant shall be made by the Customer collecting the Plant from the Company's premises, or, if some other place for delivery is agreed by the Company, by the Company delivering the Plant to that other place or when the Company has notified the Customer that the Plant is ready for collection.

6.2 The Company will prepare a delivery and acceptance form for each item of Plant which will specify the precise details of the Plant. At the time of delivery or collection of the Plant the said form will be signed by the Customer or by a person authorised on its behalf, which signature shall constitute the Customer's acceptance of the Plant.

6.3 The Company will use reasonable endeavours to have each item of Plant available for delivery or collection on the date requested by the Customer. However, time for delivery shall not be of the essence of the Contract and any date quoted for delivery of the Plant is approximate only and the Company shall not be liable for any delay in delivery howsoever caused.

6.4 Where the Plant is to be delivered in instalments, each delivery shall constitute a separate contract and failure by the Company to deliver any one or more of the instalments in accordance with these terms or any claim by the Customer in respect of any one or more instalments shall not entitle the Customer to treat the Contract as a whole as repudiated.

6.5 If the Customer fails to take delivery of the Plant or fails to give the Company adequate instructions for delivery then without prejudice to any other right or remedy available to the Company, the Company may:

6.5.1 store the Plant until actual delivery and charge the Customer for reasonable costs (including insurance) for storage; or

6.5.2 sell the Plant at the best price readily obtainable and after deducting all reasonable storage and selling expenses charge the Customer for any shortfall below the Contract price.

6.6 All containers and other articles enclosing or supporting the Plant (postal packaging always excepted) shall remain the Company's property and shall be returned to the Company in their original state and condition within such time as the Company may consider reasonable, failing which the Customer shall be liable to the Company for their re-instatement value. The Company may at its option pre-charge the Customer the whole or part of the value of such articles and refund such sum or any appropriate part thereof on their return as aforesaid.

## **7 RISK AND PROPERTY**

7.1 Risk of damage to or loss of the Plant shall pass to the Customer upon delivery.

7.2 Notwithstanding delivery and the passing of risk in the Plant, or any other provision of these Conditions, the

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- property in the Plant shall not pass to the Customer, until the Company has received in cash or cleared funds payment in full for the price of the Plant and all other Plant agreed to be sold by the Company to the Customer for which payment is then due.
- 7.3 Until such time as property in the Plant passes to the Customer:
- 7.3.1 the Customer shall hold the Plant as the Company's fiduciary agent and bailee, and shall keep the Plant separate from those of the Customer and third parties and properly stored, protected and insured and identified as the Company's property. The Customer shall undertake for the Company's interest in the Plant to be endorsed on the insurance policy if so requested and should any insurance claim for the Plant be made, the Company is to be immediately notified and the Customer shall not settle any claim without the written permission of the Company. The Customer will appoint the Company as its agent and authorise the insurance company to pay any settlement of claims on the Plant direct to the Company;
- 7.3.2 the Customer shall be entitled to resell or use the Plant, but shall account to the Company for the proceeds of sale or otherwise of the Plant, whether tangible or intangible, including insurance proceeds, and shall keep all such proceeds separate from any moneys or property of the Customer and third parties and, in the case of tangible proceeds, properly stored, protected and insured;
- 7.3.3 the Company shall be entitled at any time to require the Customer to deliver up the Plant to the Company and, if the Customer fails to do so forthwith, to enter upon any premises of the Customer or any third party where the Plant is stored and repossess the Plant; and
- 7.3.4 the Customer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Plant which remains the property of the Company, but if the Customer does so all moneys owing by the Customer to the Company shall (without prejudice to any other right or remedy of the Company) forthwith become due and payable.
- 7.4 Even though title in the Plant has not passed to the Customer, the Company shall be entitled to sue for the price of the Plant once payment has become due.
- 8 WARRANTY AND TITLE**
- 8.1 The Company warrants that except in relation to intellectual property rights of third parties it has good title to the Plant and, subject to these terms and conditions will transfer such title as it may have in the Plant to the Customer.
- 8.2 The Company warrants that (subject to the conditions set out below) the Plant will correspond with the agreed specification at the time of delivery and will be free from defects in material and workmanship for a period of twelve (12) months from the date of delivery.
- 8.3 The Company shall be under no liability:
- 8.3.1 in respect of any defect in the Plant arising from any drawing, design or specification supplied by the Customer;
- 8.3.2 in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Company's instructions (whether oral or written), misuse or alteration or repair of the Plant without the Company's approval;
- 8.3.3 if the total price for the Plant has not been paid by the due date for payment; or
- 8.3.4 in respect of parts and materials not manufactured by the Company, in respect of which the Customer shall only be entitled to the benefit of any warranty or guarantee which is given by the manufacturer to the Company.
- 8.4 Subject as expressly provided in these terms, all warranties, conditions or other terms applied by statute or common law are excluded to the fullest extent permitted by law.
- 8.5 Any claim by the Customer based on any defect in the quality or condition of the Plant or their failure to correspond with the agreed specification shall be notified to the Company within seven (7) days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after the discovery of the defect or failure. If delivery is not refused, and the Customer does not notify the Company accordingly, the Customer shall not be entitled to reject the Plant and the Company shall have no liability for such defect or failure and the Customer shall be bound to pay the Contract price as if the Plant had been delivered in accordance with the Contract.
- 8.6 Where any valid claim in respect of the Plant (which is based on any defect in the quality or condition of the Plant or its failure to meet the agreed specification) is notified to the Company in accordance with these terms, the Company shall be entitled to repair or replace the Plant (or the part) in question free of charge or, at the Company's sole discretion, refund to the Customer the price of the Plant but the Company shall have no further liability to the Customer.
- 9 USE OF THE PLANT**
- 9.1 The Customer may use the Plant for the purposes of its business. The Plant is not to be used and the Customer will not permit it to be used, for any purposes for which it is not expressly designed.
- 9.2 The Customer agrees that it will not:
- 9.2.1 effect any mechanical or other modification, make any alterations or additions, or fit any equipment or other accessories to the Plant;
- 9.2.2 remove or interfere with any identification marks fixed to the Plant nor attempt or purport to do so nor permit the same;
- 9.2.3 deface the paintwork or exterior of the Plant nor add or erect any painting, sign writing, lettering or advertising to or on the Plant.
- 10 LIABILITY**
- 10.1 Except in respect of death or personal injury caused by the Company's negligence, the Company shall not be liable to the Customer by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the

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- Contract, for any indirect, special, consequential loss or damage (whether for loss of profit, goodwill or turnover or otherwise), costs, expenses, revenue anticipated savings or other claims for compensation whatsoever (whether caused by the negligence of the Company, its employees, agents or otherwise) which arise out of or in connection with the supply of the Plant or their use by the Customer, and the entire liability of the Company under or in connection with the Contract shall not exceed the price of the Plant or two hundred and fifty thousand pounds (£250,000.00) (whichever is the lower) save as otherwise expressly provided in these terms.
- 10.2 The Company shall not be liable for any delay or non performance of its obligations which is caused wholly or partly by reason of an act of God, delay in transportation, labour disputes, fire, flood, war, accident, government action, inability to obtain adequate labour, materials, manufacturing facilities, or energy or any other cause beyond the Company's control or that of its servants or agents, and if the delay or failure has continued for a period of three months then either party may terminate the Contract without prejudice to any rights which may have accrued prior to such termination.
- 10.3 The Company shall have no liability to the Customer for any loss, damage, cost, expense or other claims for compensation arising from any information, documents, materials or instructions supplied by the Customer which are incomplete, incorrect, inaccurate, illegible out of sequence or in the wrong form, arising from their late arrival or non-arrival or any other fault of the Customer.
- 11 INTELLECTUAL PROPERTY AND INDEMNITY**
- 11.1 The Company warrants that it is not aware of any actual or alleged infringements of intellectual property rights of third parties which relate to the Plant other than those (if any) which the Company has disclosed to the Customer prior to the acceptance of the Customer's order.
- 11.2 The Company shall have no liability to the Customer (save as set out below) in the event that the Plant infringes any intellectual property rights of a third party (including without limitation by reason of its possession, sale or use, whether alone or in association or in combination with any other plant) and the Company gives no warranty that the Plant will not infringe as aforesaid and all conditions, warranties or stipulations whatsoever relating to such infringement or alleged infringement, whether express or implied by statute, common law or otherwise are hereby excluded.
- 11.3 If any claim is made against the Customer that the Plant infringe or their use or resale infringes the patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person, then unless the claim arises from the use of any drawing, design or specification supplied by the Customer, the Company shall indemnify the Customer against all loss, damages, costs and expenses awarded against or incurred by the Customer in connection with the claim, or paid or agreed to be paid by the Customer in settlement of the claim, provided that:-
- 11.3.1 the Customer notifies the Company as soon as reasonably possible in writing of any action actual or threatened against it;
- 11.3.2 the Company is given full control of any proceedings or negotiations in connection with any such claim;
- 11.3.3 the Customer gives the Company all reasonable assistance for the purposes of any such proceedings or negotiations and makes no admission of liability;
- 11.3.4 except pursuant to a final award, the Customer does not pay or accept any such claim, or compromise any such proceedings and makes no admission of liability without the consent of the Company (which shall not be unreasonably withheld);
- 11.3.5 the Customer does nothing which would or might vitiate any policy of insurance or insurance cover which the Customer may have in relation to such infringement, and this indemnity shall not apply to the extent that the Customer recovers any sums under any such policy or cover (which the Customer shall use its best endeavours to do);
- 11.3.6 the Company shall be entitled to the benefit of, and the Customer shall accordingly account to the Company for, all damages and costs (if any) awarded in favour of the Customer which are payable to, or agreed with the consent of, the Customer (which consent shall not be unreasonably withheld) by any other party in respect of any such claim; and
- 11.3.7 without prejudice to any duty of the Customer at common law, the Company shall be entitled to require the Customer to take such steps as the Company may reasonably require to mitigate or reduce any loss, damages, costs or expenses for which the Company is liable to indemnify the Customer under this Clause.
- 11.4 The foregoing provisions shall not apply to any infringement caused by the use of the Plant in a manner or for a purpose which shall have been prohibited by the Company nor to any infringement which is due to the use of the Plant in association or in combination with any other product.
- 11.5 The Customer warrants that any drawing, design, instruction or specification given to the Company by or on its behalf shall not infringe any intellectual property rights of any third party.
- 12 CONFIDENTIALITY**
- 12.1 Both the Company and the Customer shall keep confidential and shall not without the prior consent in writing of the other disclose to any third party any technical or commercial information which it has acquired from the other as a result of discussions, negotiations or other communications between them relating to the Plant.
- 12.2 All copyright, design right, know-how created by or used by the Company in relation to the Contract shall remain vested and belong absolutely to the Company. The Customer shall have a licence to use the same only for the purpose of using the Plant. Any drawings, designs and/or proposals submitted by the Company for approval shall remain the property of the Company and shall be treated by the Customer as strictly confidential and shall not be divulged to third parties without the Company's prior written consent.
- 13 EXPORT**
- 13.1 Where the Plant is supplied for export from the United Kingdom, the provisions of this Clause shall (subject

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to any special terms agreed in writing between the Customer and the Company) apply notwithstanding any other provisions of these terms.

- 13.2 The Customer shall be responsible for complying with any legislation or regulations governing the importation of the Plant into the country of destination and for the payment of any duties on them.
- 13.3 Unless otherwise agreed in writing between the Customer and the Company the Plant shall be delivered ex-works.
- 13.4 The Company shall be responsible for arranging for testing and inspection of the Plant at the Company's premises before shipment. The Company shall have no liability for any claim in respect of any damage caused during transit.
- 13.5 Payment of all amounts due to the Company shall be made by irrevocable letter of credit opened by the Customer in favour of the Company and confirmed by a bank in the United Kingdom acceptable to the Company unless otherwise agreed in writing between the Company and the Customer.
- 13.6 The price payable by the Customer to the Company under these terms and conditions must be paid in the currency specified in the Company's invoice to the Customer.

**14 CANCELLATION AND TERMINATION**

- 14.1 The Customer shall not without the prior written consent of the Company be entitled to cancel the Contract and if the Customer purports to do so it shall indemnify the Company for all losses, costs and expenses incurred by the Company in relation to the Contract.
- 14.2 If the Customer shall fail to pay any sum payable under this Contract (or under any other agreement between the Company, any subsidiary of the Company, any holding company of the Company, or any subsidiary and the Customer) within fourteen (14) days of its becoming due (whether demanded or not) or shall commit a breach of the other terms and conditions (whether expressed or implied) of this Contract or of the terms and conditions of any such agreement (as aforesaid) shall do or allow to be done any act or thing which in the opinion of the Company may jeopardise the Company's rights in the Plant or any part thereof, then in each and every such case the Customer shall be deemed to have repudiated this Contract and the Company may thereupon or at any time within three (3) months thereafter by notice in writing to the Customer for all purposes forthwith terminate the Contract.
- 14.3 If any of the following events shall occur namely:
- 14.3.1 if any distress execution or other legal process shall be levied on or against the Plant thereof or against any premises where the same may be or against any of the Customer's goods or other property or the Customer shall permit any judgement against it to remain unsatisfied for seven (7) days; or
- 14.3.2 if the Customer shall then turn to any liquidation and shall call any meeting of the creditors or shall have a receiver or receiver manager or any of its undertaking assets appointed shall suffer the appointment of the presentation of a petition for the appointment of an administrator under the provisions of Part 2 of the

Insolvency Act 1986, or shall be deemed by virtue of Section 123 of the Insolvency Act 1986 to be unable to pay its debts;

- 14.3.2 any event occurs or proceeding is taken with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in Clauses 14.3.1 or 14.3.2.
- Then in each and every such case the sale constituted by this Contract shall without notice terminate and no payments subsequently accepted by the Company without knowledge of such termination shall in any way prejudice or affect the operation of this Clause.
- 14.4 The Customer shall upon any termination under this Clause 14 pay to the Company:
- 14.4.1 all sums accrued due and unpaid at the date of termination;
- 14.4.2 the cost of all repairs required as at the date of termination (other than those for which the Company has assumed responsibility under Clause 8.6 above); and
- 14.4.3 any other sums which are or become due to the Company or to which the Company is entitled by way of damages.

The termination of the Contract shall not affect any rights of the Company or liabilities of the Customer subsisting at the date of termination. If the Plant has been delivered in whole or in part but not paid for the price of the Plant shall become immediately due and payable.

**15 ANTI-BRIBERY**

- 15.1 The Customer confirms that it has received, read and understood the Company's Anti-Bribery Policy ("the Policy") and agrees that it shall conduct itself strictly in accordance with the Policy, and shall not by its acts or omissions breach that Policy.
- 15.2 The Customer will allow such access as the Company may from time to time require to its personnel, premises, documents and records so that the Company may monitor the Customer's compliance with the Policy.
- 15.3 The Customer will not by its acts or omissions commit any breach of any provision of the Bribery Act 2010, ("the Act") or commit any offence thereunder, or do or omit to do any act or thing whereby the Company (or any of its officers, employees or agents) may be in breach of the Act or commit any offence thereunder.

**16 GENERAL CONDITIONS**

- 16.1 Any notice required or permitted to be given by either party to the other under these terms shall be given in writing and addressed to the other party at its registered office, principal place of business or at such other address that may be notified to the other party from time to time.
- 16.2 No waiver by the Company of any breach of the Contract by the Customer shall be considered as a waiver and any subsequent breach of the same or any other provision.

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- 16.3 The Company is a member of a group of companies and accordingly the Company may perform any of its obligations or exercise any of its rights hereunder by itself or through any other member of its group.
- 16.4 The Company shall be entitled to subcontract the whole or any part of its obligations under the Contract to any third party which it may in its absolute discretion determine but any subcontract shall not relieve the Company of its obligations hereunder.
- 16.5 If any provision of these terms is held by any competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions of these terms and the remainder of the provisions in question shall not be affected.
- 16.6 A person who is not party to this Contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or enjoy the benefit of any term of this Contract.
- 16.7 The Contract shall be governed by and construed in accordance with the laws of England and Wales and the parties hereby submit to the non-exclusive jurisdiction of the English courts.