



Diaphragm Pumps Ltd

Tel +44 (0) 1782 332235

Fax +44 (0) 1782 332240

www.diaphragmpumps.co.uk

Unit 1 Willow Row, Longton Stoke On Trent ST3 2PU

1: DIAPHRAGM PUMPS (UK) LIMITED - STANDARD TERMS AND CONDITIONS OF SALE

1. DEFINITIONS AND INTERPRETATIONS

1.1. In these Conditions:

"Diaphragm Pumps" means Diaphragm Pumps Ltd and subsidiary, division or trading units of Diaphragm Pumps Ltd;

"Buyer" means the person firm or company so described in the Order;

"Conditions" means the standard terms and conditions of purchase set out in this document and (unless the context otherwise requires) includes any varied or special terms and conditions agreed in writing between Diaphragm Pumps and the Buyer;

"Contract" means the contract of the sale and supply of the Goods and/or the supply and performance of the Services subject to these Conditions;

"Goods" means the Goods (including any instalment of the Goods or any part of them) described in the Order;

"Order" means any written quotation of Diaphragm Pumps which is accepted by the Buyer, or any written order of the Buyer which is accepted by Diaphragm Pumps for the supply of Goods or performance of Services;

"Price" means the Price of the Goods and/or the charge for the Services;

"Specification" includes any plans, drawings, data, chemical formula or process or other technical requirements or information including Diaphragm Pumps's web sites relating to the Goods or Services agreed between the parties.

2. GENERAL BASIS OF SALE

2.1. These Conditions apply to all Contracts for sale of Goods by Diaphragm Pumps.

2.2. The placing of an Order by the Buyer for the Goods shall constitute acceptance of these Conditions notwithstanding any other terms and conditions subject to which any quotation by Diaphragm Pumps is accepted or purported to be accepted or any such order is made or purported to be made by the Buyer.

2.3. No Order submitted by the Buyer shall be deemed to be accepted by Diaphragm Pumps unless and until confirmed in writing by Diaphragm Pumps's authorised representative.

2.4. No variation to these Conditions shall be binding unless agreed in writing between the authorised representatives of the Buyer and Diaphragm Pumps.

2.5. The Buyer acknowledges that all advice, instructions or recommendations of Diaphragm Pumps rely and are dependent upon all the information and technical background given to Diaphragm Pumps by the Buyer.

2.6. Where the Buyer does not specify a particular process, Diaphragm Pumps will not be liable for any defect or failure of the process or entitle the Buyer to withhold payment if Diaphragm Pumps have dispensed with such inspection on request of the Buyer for whatever reason.

3. ORDERS AND SPECIFICATIONS

3.1. The Buyer shall be responsible to Diaphragm Pumps for ensuring the accuracy of the terms of any Order (including any applicable Specification) submitted by the Buyer, and for giving Diaphragm Pumps any necessary information relating to the Goods pursuant to clause 2.5 or otherwise within a sufficient time to enable Diaphragm Pumps to perform the Contract in accordance with its terms.

3.2. The quantity, quality, description, functionality, facilities, functions, capacity and description of the Goods shall, subject as provided in these Conditions, be as specified in the Order and any applicable Specification as set out either in Diaphragm Pumps's quotation or in the web sites of Diaphragm Pumps or any documents referred to in the Order. In the event of conflict, preference will be given to Diaphragm Pumps's web sites.

3.3. All drawings, illustrations or any product literature or other publications of Diaphragm Pumps must be regarded as approximations only.

3.4. Any Specification supplied by Diaphragm Pumps to the Buyer in connection with the Contract, together with all intellectual property rights in the Specification, shall be the exclusive property of Diaphragm Pumps. The Buyer shall not disclose to any third party or use any such Specification except to the extent that it is or becomes public knowledge through no fault of the Buyer, or as required for the purpose of the Contract. Upon request of Diaphragm Pumps the Buyer will return to Diaphragm Pumps any documents (or other media) in or upon which any part of the Specification has been supplied by Diaphragm Pumps and shall not retain copies thereof.

3.5. If the Goods are to be manufactured or any process is to be applied to the Goods by Diaphragm Pumps in accordance with a Specification submitted by the Buyer, the Buyer shall indemnify Diaphragm Pumps against all loss, damages, costs and expenses awarded against or incurred by Diaphragm Pumps in connection with any claim for infringement of any intellectual property rights of any other person which results from Diaphragm Pumps's use of the Specification so submitted by the Buyer.



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3.6. Diaphragm Pumps reserves the right to make any changes in the Specification of the Goods which are required to conform with any statutory or other regulatory requirements applicable to the Goods.

3.7. No Order which has been accepted by Diaphragm Pumps may be cancelled by the Buyer except with the agreement in writing of Diaphragm Pumps and on terms that the Buyer shall indemnify Diaphragm Pumps in full against all loss, costs, damages, charges and expenses incurred by Diaphragm Pumps as a result of cancellation.

3.8. No order which has been accepted by Diaphragm Pumps may be changed or altered by the Buyer except with the agreement in writing of Diaphragm Pumps and payment by the Buyer of a 10% surcharge (calculated as 10% of the Price) to Diaphragm Pumps.

4. PRICE OF THE GOODS

4.1. The Price shall be Diaphragm Pumps's quoted price. The Price quoted is valid for 30 days only, after which time they may be altered by Diaphragm Pumps without giving notice to the Buyer.

4.2. Diaphragm Pumps reserves the right, by giving notice to the Buyer at any time before delivery, to increase the Price to reflect any increase in the cost to Diaphragm Pumps which is due to any factor beyond the control of Diaphragm Pumps, any change in delivery dates, quantities or the Specifications which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give Diaphragm Pumps adequate or accurate information or instructions.

4.3. Except as otherwise stated under the terms of the Order and unless otherwise agreed in writing between the Buyer and Diaphragm Pumps, the Price is given by Diaphragm Pumps on an FCA basis, and where Diaphragm Pumps agrees to deliver the Goods otherwise than at Diaphragm Pumps's premises, the Buyer shall be liable to pay Diaphragm Pumps's charges for transport, packaging and insurance.

4.4. The Price is exclusive of any applicable value added tax, which the Buyer shall be additionally liable to pay to Diaphragm Pumps.

5. TERMS OF PAYMENT

5.1. Subject to any special terms agreed in writing between the Buyer and Diaphragm Pumps, Diaphragm Pumps shall be entitled to invoice the Buyer for the Price on or at any time after delivery of the Goods or the Buyer wrongfully fails to take delivery of the Goods, in which event Diaphragm Pumps shall be entitled to invoice the Buyer for the Price at any time after Diaphragm Pumps has notified the Buyer that the Goods are ready for collection or (as the case may be) Diaphragm Pumps's has tendered delivery of the Goods.

5.2. The Buyer shall pay the Price within 30 days of the date of Diaphragm Pumps's invoice unless otherwise notified by Diaphragm Pumps to the Buyer in writing, and Diaphragm Pumps shall be entitled to recover the Price, notwithstanding that delivery may not have taken place and the property in the Goods has not passed to the Buyer. The time of payment of the Price shall be of the essence of the Contract. Receipts for payment will be issued only upon request.

5.3. If the Buyer fails to make any payment on the due date then, without prejudice to any other right or remedy available to Diaphragm Pumps, Diaphragm Pumps shall be entitled to:

5.3.1. cancel the Contract or suspend any further deliveries to the Buyer;

5.3.2. appropriate any payment made by the Buyer to such of the Goods (or goods and/or services supplied under any other contract between the Buyer and Diaphragm Pumps) as Diaphragm Pumps may think fit (notwithstanding any purported appropriation by the Buyer); and

5.3.3. charge the Buyer interest (both before and after any judgment) on the amount unpaid, at the rate of 4 per cent per annum above National Westminster Bank Plc base rate from time to time, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest) before and after judgment.

6. DELIVERY

6.1. Delivery of the Goods shall be made to some place agreed by Diaphragm Pumps, by Diaphragm Pumps delivering the Goods to that place.

6.2. In the case of sales made F.C.A, F.A.S. or F.O.B. UK mainland unless otherwise agreed the Buyer shall upon request by Diaphragm Pumps nominate a carrier or vessel willing to receive the Goods within 30 days from the date of Diaphragm Pumps's request.

6.3. Any dates quoted for delivery of the Goods are approximate only and Diaphragm Pumps shall not be liable for any early or late delivery of the Goods however caused.

6.4. Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure by Diaphragm Pumps to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.

6.5. If Diaphragm Pumps fails to deliver the Goods (or any instalment), Diaphragm Pumps's liability shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest available market) of similar goods to replace those not delivered over the Price of the Goods.

6.6. If the Buyer fails to take delivery of the Goods or fails to give Diaphragm Pumps adequate delivery instructions at the time stated for delivery (otherwise than by reason of any Force Majeure or by reason of Diaphragm Pumps's fault) then, without prejudice to any other right or remedy available to Diaphragm Pumps, Diaphragm Pumps may:

6.6.1. store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or

6.6.2. sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the Price or charge the Buyer for any shortfall below the Price under the Contract.

6.7. Any charges quoted for delivery of the Goods including transport, packaging and insurance are approximate only and Diaphragm Pumps shall not be liable for any changes to the charges quoted however caused.

7. RISK AND PROPERTY

7.1. Risk of damage to or loss of the Goods shall pass to the Buyer:

7.1.1. in the case of Goods to be delivered at Diaphragm Pumps's premises, at the time when Diaphragm Pumps notifies the Buyer that the Goods are available for collection; or

7.1.2. in the case of Goods to be delivered otherwise than at Diaphragm Pumps's premises, at the time of delivery or, if the Buyer wrongfully fails to take delivery of the Goods, the time when Diaphragm Pumps has tendered delivery of the Goods.

7.2. The property in the Goods shall not pass to the Buyer until Diaphragm Pumps has received in cash or cleared funds payment in full of the Price and all other goods agreed to be sold by Diaphragm Pumps to the Buyer for which payment is then due.

7.3. Until such time as the property in the Goods passes to the Buyer, the Buyer shall hold the Goods as Diaphragm Pumps'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 Diaphragm Pumps's property, but shall be entitled to resell or use the Goods in the ordinary course of its business.

7.4. 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), Diaphragm Pumps shall be entitled at any time to require the Buyer to deliver up the Goods to Diaphragm Pumps 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.

8. BUYERS OBLIGATIONS

The Buyer shall be responsible at its own expense for:

8.1. the availability and supply of adequate supplies of water, electricity, steam and lighting and other necessary utilities;

8.2. the operation of its own plant and machinery.

8.3. the availability and supply of adequate temperature and humidity control at the premises where the Goods are to be used;

8.4. inform Diaphragm Pumps within five days in writing of any material changes in the site design, materials of construction, operating conditions and uses or requirement of, or in respect to, the system(s) which are used together with or to which the Goods are applied;

8.5. the provision of all such notices as may be required in accordance with the relevant local authority requirements in connection with the disposal of effluent or waste occasioned by use of the Goods;

8.6. indemnifying Diaphragm Pumps (and its employees and/or agents) in respect of any claims which may be made against Diaphragm Pumps (or its employees and/or agents) as a result of the disposal of such effluent or waste occasioned by the use of the Goods.

9. WARRANTIES

9.1. Subject to the conditions set out in clauses 8, 9 and 10 Diaphragm Pumps warrants that the Goods will correspond with the Specification at the time of delivery and will be free from defects in material and workmanship for a period of 12 months from the date of their initial use or 12 months from delivery, whichever is the first to expire or such other period specified in the Order or subsequently agreed between the parties in writing.

9.2. The above warranty is given by Diaphragm Pumps subject to the following conditions:

9.2.1. Diaphragm Pumps shall be under no liability in respect of any defect in the Goods arising from any drawing, design or specification supplied by the Buyer;

9.2.2. Diaphragm Pumps shall be under no liability in respect of any defect arising from fair wear and tear, willful damage, negligence, abnormal working conditions, failure to follow Diaphragm Pumps's instructions (whether oral or in writing), misuse or alteration or repair of the Goods without Diaphragm Pumps's approval;

9.2.3. Diaphragm Pumps shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total Price has not been paid by the due date for payment;

9.2.4. the above warranty does not extend to parts, materials or equipment not manufactured by Diaphragm Pumps, in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to Diaphragm Pumps.

9.3. Diaphragm Pumps will not be liable for any loss whether direct or indirect or consequential or loss of profit or any damage as a result of:

9.3.1. any inaccurate or insufficient information or technical background given to Diaphragm Pumps;

9.3.2. any failure to comply strictly with the instructions, advice or recommendations given to the Buyer by Diaphragm Pumps;

9.3.3. any use or application of the Goods for any purpose other than those detailed in the Specification or advised by Diaphragm Pumps; or

9.3.4. any breach of the obligations set out in clause 8;

9.3.5. any failure to comply with any applicable legislation or any guidelines issued by the Health and Safety Executive or other appropriate regulatory authority current at the time of use of the Goods by the Buyer or any of its employees, agents or sub-contractors.

9.4. Any parameters given in respect of the performance of the Goods are based on the design parameters set out in the Specification and Diaphragm Pumps will not be liable for any failure of the Goods to achieve these parameters unless the operating conditions for the Goods are the same as set out in the Specification.

9.5. It is understood that Diaphragm Pumps is not an insurer and insurance (if any) shall be obtained by the Buyer, and that amounts payable to Diaphragm Pumps under the Contract are based upon the value the Goods to be provided hereunder and the scope of Diaphragm Pumps's liability as set forth herein.

9.6. Subject as expressly provided in these Conditions, and except where the Goods are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977), all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

9.7. Where the Goods are sold under a consumer transaction (as defined by the Consumer Transactions (Restrictions on Statements) Order 1976) the statutory rights of the Buyer are not affected by these Conditions.

9.8. Any claim by the Buyer which is based on any defect in the quantity, quality or condition of the Goods or their failure to correspond with the Specification shall be notified to Diaphragm Pumps within 7 days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure. If delivery is not refused, and the Buyer does not notify Diaphragm Pumps accordingly, the Buyer shall not be entitled to reject the Goods and Diaphragm Pumps shall have no liability for such defect or failure.

9.9. Where any valid claim in respect of any of the Goods which is based on any defect in the quality or condition of the Goods or their failure to meet the Specification is notified to Diaphragm Pumps in accordance with these Conditions, and provided the Goods are returned to Diaphragm Pumps's premises carriage paid Diaphragm Pumps will at its option either replace the Goods (or the part in question) free of charge or refund to the Buyer the Price of the Goods (or a proportionate part of the price), but Diaphragm Pumps shall have no further liability to the Buyer.

9.10. Except in respect of death or personal injury caused by Diaphragm Pumps's negligence, Diaphragm Pumps shall not be liable to the Buyer 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 Contract, for any indirect, special or consequential loss or damage (whether for loss of profit or otherwise), costs, expenses or other claims for compensation whatsoever (whether caused by the negligence of Diaphragm Pumps, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods or their use or resale by the Buyer and the entire liability of Diaphragm Pumps under or in connection with the Contract shall not exceed the Price, except as expressly provided in these Conditions.

10. INTELLECTUAL PROPERTY INDEMNITY

10.1. If any claim is made against the Buyer that the Goods infringe or that their use or resale infringes any intellectual property rights of any other person, then unless the claim arises from the use of any drawing, design or specification supplied by the Buyer, Diaphragm Pumps shall reimburse the Buyer against all reasonable loss and damages awarded against or incurred by the Buyer in connection with the claim, provided that Diaphragm Pumps is given full control of any proceedings or negotiations in connection with any such claim and the Buyer shall give all assistance to Diaphragm Pumps's as it may require and take such steps as Diaphragm Pumps may reasonably require to mitigate or reduce any such loss, damages, costs or expenses for which Diaphragm Pumps is liable to indemnify the Buyer under this clause.

11. BUYERS INDEMNITY

11.1. The Buyer shall indemnify Diaphragm Pumps and keep it indemnified for the duration of the Contract against all injury (including death) to any persons and any loss and/or damage as a result of any act, default or negligence by the Buyer and its employees or agents (other than Diaphragm Pumps or its sub-contractors) and against all claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect thereof or in relation thereto.

12. INSOLVENCY OF BUYER

12.1. If the Buyer makes any voluntary arrangement with its creditors or becomes bankrupt or becomes subject to an administration order or goes into liquidation or Diaphragm Pumps reasonably apprehends that any of the events mentioned above is about to occur then Diaphragm Pumps shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Buyer, and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

13. GENERAL

13.1. Diaphragm Pumps shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of Diaphragm Pumps's obligations in relation to the Goods, if the delay or failure was due to any cause beyond Diaphragm Pumps's reasonable control.

13.2. Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to that party as its registered office or principle place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.

13.3. No waiver by Diaphragm Pumps of any breach of the Contract by Diaphragm Pumps shall be considered as a waiver of any subsequent breach of the same or any other provision.

13.4. If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby.

13.5. The Contract and its performance shall be governed by the laws of England, and Diaphragm Pumps agrees to submit to the non-exclusive jurisdiction of the English court.

2: DIAPHRAGM PUMPS LIMITED - STANDARD TERMS AND CONDITIONS OF SALE EXPORT

1. DEFINITIONS AND INTERPRETATIONS

1.1 In these Conditions:

"Diaphragm Pumps" means Diaphragm Pumps Ltd and subsidiary, division or trading units of Diaphragm Pumps Ltd;

"Buyer" means the person firm or company so described in the Order;

"Conditions" means the standard terms and conditions of purchase set out in this document and (unless the context otherwise requires) includes any varied or special terms and conditions agreed in writing between Diaphragm Pumps and the Buyer;

"Contract" means the contract of the sale and supply of the Goods and/or the supply and performance of the Services subject to these Conditions;

"Goods" means the Goods (including any instalment of the Goods or any part of them) described in the Order;

"Incoterms" means the international rules for the interpretation of trade terms of the International Chamber of Commerce as in force at the date when the Contract is made (currently Incoterms 2010). Unless the context otherwise requires, any term or expression which is defined in or given a particular meaning by the provisions of Incoterms shall have the same meaning in these Conditions, but if there is any conflict between the provisions of Incoterms and these Conditions, the latter shall prevail.

"FCA" means FCA Diaphragm Pumps Limited, Unit 1 Willow Row, Longton. Stoke On Trent ST32PU UK

"Order" means any written quotation of Diaphragm Pumps which is accepted by the Buyer, or any written order of the Buyer which is accepted by Diaphragm Pumps for the supply of Goods or performance of Services;

"Price" means the Price of the Goods and/or the charge for the Services;

"Services" means the services (if any) described in the Order;

"Specification" includes any plans, drawings, data, chemical formula or process or other technical requirements or information including Equipment Manufacturers' Chemical Specification Manuals relating to the Goods or Services agreed between the parties.

2. GENERAL BASIS OF SALE

- 2.1. These Conditions apply to all Contracts for sale of Goods and/or performance of Services by Diaphragm Pumps.
- 2.2. The placing of an Order by the Buyer for the Goods and/or Services shall constitute acceptance of these Conditions notwithstanding any other terms and conditions subject to which any quotation by Diaphragm Pumps is accepted or purported to be accepted or any such order is made or purported to be made by the Buyer.
- 2.3. No Order submitted by the Buyer shall be deemed to be accepted by Diaphragm Pumps unless and until confirmed in writing by Diaphragm Pumps's authorised representative.
- 2.4. No variation to these Conditions shall be binding unless agreed in writing between the authorised representatives of the Buyer and Diaphragm Pumps.
- 2.5. The Buyer acknowledges that all advice, instructions or recommendations of Diaphragm Pumps rely and are dependent upon all the information and technical background given to Diaphragm Pumps by the Buyer.

3. ORDERS AND SPECIFICATIONS

3. Where the Buyer does not specify a particular process, Diaphragm Pumps will not be liable for any defect or failure of the process or entitle the Buyer to withhold payment.
- 3.1. The Buyer shall be responsible to Diaphragm Pumps for ensuring the accuracy of the terms of any Order (including any applicable Specification) submitted by the Buyer, and for giving Diaphragm Pumps any necessary information relating to the Goods and/or Services pursuant to clause 2.5 or otherwise within a sufficient time to enable Diaphragm Pumps to perform the Contract in accordance with its terms.
- 3.2. The quantity, quality, description, functionality, facilities, functions, capacity and description of the Goods and/or Services shall, subject as provided in these Conditions, be as specified in the Order and any applicable Specification as set out either in Diaphragm Pumps's web sites or any documents referred to in the Order. In the event of conflict, preference will be given to Diaphragm Pumps's web sites.
- 3.3. All drawings, illustrations or any product literature or other publications of Diaphragm Pumps must be regarded as approximations only.
- 3.4. Any Specification supplied by Diaphragm Pumps to the Buyer in connection with the Contract, together with all intellectual property rights in the Specification, shall be the exclusive property of Diaphragm Pumps. The Buyer shall not disclose to any third party or use any such Specification except to the extent that it is or becomes public knowledge through no fault of the Buyer, or as required for the purpose of the Contract. Upon request of Diaphragm Pumps the Buyer will return to Diaphragm Pumps any documents (or other media) in or upon which any part of the Specification has been supplied by Diaphragm Pumps and shall not retain copies thereof.
- 3.5. If the Goods are to be manufactured or any process is to be applied to the Goods by Diaphragm Pumps in accordance with a Specification submitted by the Buyer, the Buyer shall indemnify Diaphragm Pumps against all loss, damages, costs and expenses awarded against or incurred by Diaphragm Pumps in connection with any claim for infringement of any intellectual property rights of any other person which results from Diaphragm Pumps's use of the Specification so submitted by the Buyer.
- 3.6. Diaphragm Pumps reserves the right to make any changes in the Specification of the Goods and/or Services which are required to conform with any statutory or other regulatory requirements applicable to the Goods and/or Services.
- 3.7. Diaphragm Pumps will provide the Services at the Buyer's premises and where the Buyer has contracted with Diaphragm Pumps to provide the Services at the premises of a third party all references to the Buyer's premises in the Contract shall be deemed to be references to the premises where the Services are to be provided.
- 3.8. No Order which has been accepted by Diaphragm Pumps may be cancelled by the Buyer except with the agreement in writing of Diaphragm Pumps and on terms that the Buyer shall indemnify Diaphragm Pumps in full against all loss, costs, damages, charges and expenses incurred by Diaphragm Pumps as a result of cancellation.
- 3.9. No order which has been accepted by Diaphragm Pumps may be changed or altered by the Buyer except with the agreement in writing of Diaphragm Pumps and payment by the Buyer of a 10% surcharge (calculated as 10% of the Price) to Diaphragm Pumps.

4. PRICE OF THE GOODS

- 4.1. The Price shall be Diaphragm Pumps's quoted price. The Price quoted is valid for 30 days only, after which time they may be altered by Diaphragm Pumps without giving notice to the Buyer.
- 4.2. Diaphragm Pumps reserves the right, by giving notice to the Buyer at any time before delivery, to increase the Price to reflect any increase in the cost to Diaphragm Pumps which is due to any factor beyond the control of Diaphragm Pumps, any change in delivery dates, quantities or the Specifications which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give Diaphragm Pumps adequate or accurate information or instructions.

4.3. Except as otherwise stated under the terms of the Order and unless otherwise agreed in writing between the Buyer and Diaphragm Pumps, the Price is given by Diaphragm Pumps on an ex works basis, and where Diaphragm Pumps agrees to deliver the Goods otherwise than at Diaphragm Pumps's premises, the Buyer shall be liable to pay Diaphragm Pumps's charges for transport, packaging and insurance.

4.4. The Buyer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and for the payment of any duties on them.

4.5. The Price is exclusive of any applicable value added tax, which the Buyer shall be additionally liable to pay to Diaphragm Pumps.

5. TERMS OF PAYMENT

5.1. Unless otherwise stipulated in writing by Diaphragm Pumps, payment shall be made prior to delivery of the Goods pursuant to Clause 6 by payment into such Diaphragm Pumps bank account as Diaphragm Pumps may notify to the Buyer in writing.

6. DELIVERY

6.1. Unless otherwise agreed in writing between the Buyer and Diaphragm Pumps, the Goods shall be delivered FCA and Diaphragm Pumps shall be under no obligation to give notice under section 32(3) of the Sale of Goods Act 1979. 6.2. In the case of sales made F.C.A., F.A.S., or F.O.B. UK mainland unless otherwise agreed the Buyer shall upon request by Diaphragm Pumps nominate a carrier or vessel willing to receive the Goods within 30 days from the date of Diaphragm Pumps's request.

6.3. Unless otherwise agreed in writing in the case of sales made by other than the methods in 6.1. Diaphragm Pumps will effect marine insurance for the Goods on the terms of the current London Institute Cargo Clauses (All Risks) and may, but is not obliged to, effect war risks insurance.

6.4. The Buyer shall be responsible for arranging for testing and inspection of the Goods at Diaphragm Pumps's premises before shipment. Diaphragm Pumps shall have no liability for any claim in respect of any defect in the Goods which would be apparent on inspection and which is made after shipment, or in respect of any damage during transit.

6.5. Any dates quoted for delivery of the Goods are approximate only and Diaphragm Pumps shall not be liable for any early or late delivery of the Goods however caused.

6.6. Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure by Diaphragm Pumps to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.

6.7. If Diaphragm Pumps fails to deliver the Goods (or any instalment) Diaphragm Pumps's liability shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest available market) of similar goods to replace those not delivered over the Price of the Goods.

6.8. If the Buyer fails to take delivery of the Goods or fails to give Diaphragm Pumps adequate delivery instructions at the time stated for delivery (otherwise than by reason of any Force Majeure or by reason of Diaphragm Pumps's fault) then, without prejudice to any other right or remedy available to Diaphragm Pumps, Diaphragm Pumps may:

6.8.1. store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or

6.8.2. sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the Price or charge the Buyer for any shortfall below the Price under the Contract.

6.9. Any charges quoted for delivery of the Goods including transport, packaging and insurance are approximate only and Diaphragm Pumps shall not be liable for any changes to the charges quoted however caused.

7. RISK AND PROPERTY

7.1. Risk of damage to or loss of the Goods shall pass to the Buyer:

7.1.1. in the case of Goods to be delivered at Diaphragm Pumps's premises, at the time when Diaphragm Pumps notifies the Buyer that the Goods are available for collection; or

7.1.2. in the case of Goods to be delivered otherwise than at Diaphragm Pumps's premises, at the time of delivery or, if the Buyer wrongfully fails to take delivery of the Goods, the time when Diaphragm Pumps has tendered delivery of the Goods.

7.2. The property in the Goods shall not pass to the Buyer until Diaphragm Pumps has received in cash or cleared funds payment in full of the Price and all other goods agreed to be sold by Diaphragm Pumps to the Buyer for which payment is then due.

7.3. Until such time as the property in the Goods passes to the Buyer, the Buyer shall hold the Goods as Diaphragm Pumps'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 Diaphragm Pumps's property, but shall be entitled to resell or use the Goods in the ordinary course of its business.

7.4. 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), Diaphragm Pumps shall be entitled at any time to require the Buyer to deliver up the Goods to Diaphragm Pumps 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.

8. BUYERS OBLIGATIONS

The Buyer shall be responsible at its own expense for:

- 8.1. the availability and supply of adequate supplies of water, electricity, steam and lighting and other necessary utilities;
- 8.2. the operation of its own plant and machinery;
- 8.3. the availability and supply of adequate temperature and humidity control at the premises where the Goods are to be used;
- 8.4. inform Diaphragm Pumps within five days in writing of any material changes in the site design, materials of construction, operating conditions and users or requirements of, or in respect to, the system(s) which are used together with or to which the Goods are applied or which are the subject of the Services provided;
- 8.5. the provision of adequate and safe unrestricted access to all parts of the Buyer's premises which shall be necessary in order to permit Diaphragm Pumps to provide the Services;
- 8.6. providing facilities for storing, lifting or otherwise transporting Diaphragm Pumps's equipment and materials on the Customer's premises;
- 8.7. providing adequate washing and sanitary facilities for Diaphragm Pumps's staff;
- 8.8. the disposal of all waste or effluent occasioned by the Services in a manner permissible by the relevant local authority requirements;
- 8.9. the giving of all such notices as may be required in accordance with the relevant local authority requirements in connection with the disposal of effluent or waste occasioned by the Services;
- 8.10. indemnifying Diaphragm Pumps (and its employees and agents) in respect of any claims which may be made against Diaphragm Pumps (or its employees and/or agents) as a result of the disposal of such effluent or waste occasioned by the Services by the means provided by the Customer.

9. WARRANTIES

9.1. Subject to the conditions set out below in clauses 8, 9 and 10 Diaphragm Pumps warrants that the Goods will correspond with the Specification at the time of delivery and will be free from defects in material and workmanship for a period of 12 months from the date of their initial use or 12 months from delivery, whichever is the first to expire or such other period specified in the Order or subsequently agreed between the parties in writing.

9.2. The above warranty is given by Diaphragm Pumps subject to the following conditions: 9.2.1. Diaphragm Pumps shall be under no liability in respect of any defect in the Goods arising from any drawing, design or specification supplied by the Buyer;

9.2.2. Diaphragm Pumps 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 Diaphragm Pumps's instructions (whether oral or in writing), misuse or alteration or repair of the Goods without Diaphragm Pumps's approval;

9.2.3. Diaphragm Pumps shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total Price has not been paid by the due date for payment;

9.2.4. the above warranty does not extend to parts, materials or equipment not manufactured by Diaphragm Pumps, in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to Diaphragm Pumps.

9.3. Diaphragm Pumps will not be liable for any loss whether direct or indirect or consequential or loss of profit or any damage as a result of:

- 9.3.1. any inaccurate or insufficient information or technical background given to Diaphragm Pumps;
- 9.3.2. any failure to comply strictly with the instructions, advice or recommendations given to the Buyer by Diaphragm Pumps's;
- 9.3.3. any use or application of the Goods for any purpose other than those detailed in the Specification or advised by Diaphragm Pumps;
- 9.3.4. any breach of the obligations set out in clause 8;

9.3.5. any failure to comply with any applicable legislation or any guidelines issued by the Health and Safety Executive or other appropriate regulatory authority current at the time of use of the Goods by the Buyer or any of its employees, agents or sub-contractors.

9.4. Any parameters given in respect to the performance of the Goods are based on the design parameters set out in the Specification and Diaphragm Pumps will not be liable for any failure of the Goods to achieve these parameters unless the operating conditions for the Goods are the same as set out in the Specification

9.5. Subject to the conditions set out in clause 10 Diaphragm Pumps warrants that the Services will be performed with reasonable skill and care.

9.6. It is understood that Diaphragm Pumps is not an insurer and insurance (if any) shall be obtained by the Buyer, and that amounts payable to Diaphragm Pumps under the Contract are based upon the value the Goods and/or Services to be provided hereunder and the scope of Diaphragm Pumps's liability as set forth herein.

9.7. Subject as expressly provided in these Conditions, and except where the Goods and/or Services are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977), all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

9.8. Where the Goods are sold under a consumer transaction (as defined by the Consumer Transactions (Restrictions on Statements) Order 1976) the statutory rights of the Buyer are not affected by these Conditions.

9.9. Any claim by the Buyer which is based on any defect in the quality or condition of the Goods or their failure to correspond with the Specification shall be notified to Diaphragm Pumps within 7 days from the date of delivery or (where failure). If delivery is not refused, and the Buyer does not notify Diaphragm Pumps accordingly, the Buyer shall not be entitled to reject the Goods and Diaphragm Pumps shall have no liability for such defect or failure.

9.10. Where any valid claim in respect of any of the Goods and/or Services which is based on any defect in the quality or condition of the Goods and/or Services or their failure to meet specification is notified to Diaphragm Pumps in accordance with these Conditions and provided the Goods are returned to Diaphragm Pumps's premises carriage paid, Diaphragm Pumps's will at its option either replace the Goods (or the part in question) and/or Services free of charge or refund to the Buyer the Price of the Goods and/or Services (or a proportionate part of the price), but Diaphragm Pumps shall have no further liability to the Buyer.

9.11. Except in respect of death or personal injury caused by Diaphragm Pumps's negligence, Diaphragm Pumps shall not be liable to the Buyer 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 Contract, for any indirect, special or consequential loss or damage (whether for loss of profit or otherwise), costs, expenses or other claims for compensation whatsoever (whether caused by the negligence of Diaphragm Pumps, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods or their use or resale by the Buyer or the performance of the Services, and the entire liability of Diaphragm Pumps under or in connection with the Contract shall not exceed the Price, except as expressly provided in these Conditions.

10. INTELLECTUAL PROPERTY INDEMNITY

10.1. If any claim is made against the Buyer that the Goods infringe or that their use or resale infringes any intellectual property rights of any other person, then unless the claim arises from the use of any drawing, design or specification supplied by the Buyer, Diaphragm Pumps shall reimburse the Buyer against all reasonable loss and damages awarded against or incurred by the Buyer in connection with the claim provided that Diaphragm Pumps is given full control of any proceedings or negotiations in connection with any such claim and the Buyer shall give all assistance to Diaphragm Pumps's as it may require and take such steps as Diaphragm Pumps may reasonably require to mitigate or reduce any such loss, damages, costs or expenses for which Diaphragm Pumps is liable to indemnify the Buyer under this clause.

11. BUYERS INDEMNITY

11.1. The Buyer shall indemnify Diaphragm Pumps and keep it indemnified for the duration of the Contract against all injury (including death) to any persons and all loss and/or damage as a result of any act, default or negligence by the Buyer and its employees or agents (other than Diaphragm Pumps or its sub-contractors) and against all claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect thereof or in relation thereto.

12. INSOLVENCY OF BUYER

12.1. If the Buyer makes any voluntary arrangement with its creditors or becomes bankrupt or becomes subject to an administration order or goes into liquidation or Diaphragm Pumps reasonably apprehends that any of the events mentioned above is about to occur then Diaphragm Pumps shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Buyer, and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

13. GENERAL

13.1. Diaphragm Pumps shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of Diaphragm Pumps's obligations in relation to the Goods, if the delay or failure was due to any cause beyond Diaphragm Pumps's reasonable control.

13.2. Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to that party as its registered office or principle place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.

13.3. No waiver by Diaphragm Pumps of any breach of the Contract by Diaphragm Pumps shall be considered as a waiver of any subsequent breach of the same or any other provision.

13.4. If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby.

13.5. The Contract and its performance shall be governed by the laws of England, and Diaphragm Pumps agrees to submit to the non-exclusive jurisdiction of the English court.