

## 1. DEFINITIONS

- 1.1 "Company" means Flowstore Systems Ltd, registered in England and Wales with company no. 01734709.
- 1.2 "Contract" means the contract between the Company and the Customer for the sale and purchase of the Goods as set out in the Order and any Specification as accepted in writing by the Company and in accordance with these Terms and Conditions.
- 1.3 "Customer" means the person whose Order for Goods from the Company is accepted in writing by the Company.
- 1.4 "Force Majeure Event" has the meaning given in clause 11.1.
- 1.5 "Goods" means the plant, equipment or materials (or any part of them) set out in the Order.
- 1.6 "Order" means an order for Goods (and any installation of such Goods) from the Company as set out in the Customer's purchase order form, whether or not based on information provided in any quotation by the Company.
- 1.7 "Specification" means any specification for the Goods, including any related plans and drawings, and any description of the installation services required, as agreed by the Customer and the Company.
- 1.8 "Terms and Conditions" means the terms and conditions set out in this document.
- 1.9 The following meanings also apply:
- 1.9.1 A person includes a natural person, corporate body, or unincorporated body (whether or not having separate legal personality);
  - 1.9.2 A reference to a party includes its personal representatives, successors or permitted assigns;
  - 1.9.3 A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
  - 1.9.4 Any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms;
  - 1.9.5 A reference to writing or written includes faxes and e-mails.

## 2. FORMATION OF CONTRACT

- 2.1 These Terms and Conditions apply to the Contract to the exclusion of any other terms that the Customer may seek to impose or incorporate, or which may be implied by trade, custom, practice or course of dealing.

- 2.2 No addition or variation to, or departure from, or waiver of the Terms and Conditions shall be effective or binding on the Company unless expressly agreed in writing by a duly authorised officer of the Company (a list of such officers being available on request);
- 2.3 A quotation for the Goods given by the Company shall not constitute an offer. A quotation shall be valid as the basis for an Order by the Customer for a period of 30 business days only from its date of issue.
- 2.4 An Order constitutes an offer by the Customer to purchase the Goods in accordance with these Terms and Conditions. The Customer is responsible for ensuring that the terms of the Order and any applicable Specification supplied by the Customer are complete and accurate.
- 2.5 The Order (and any applicable Specification) shall be deemed to be accepted only when the Company issues a written acceptance of the Order to the Customer, at which point the Contract shall come into existence.
- 2.6 At any time prior to or simultaneously with the issue of its written acceptance of the Order to the Customer, the Company may require the Customer promptly to obtain trade and/or bank references in respect of the Customer and to provide such references to the Company on receipt of the same.
- 2.7 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in the Contract.
- 2.8 Any samples, drawings, descriptive matter, or advertising produced by the Company and any illustrations contained on the Company's website or in its catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract or have any contractual force.

### 3. GOODS

- 3.1 Descriptive particulars of the Goods, including any statements as to their performance or capacity, are contained on the Company's website or in its catalogues or brochures, as modified by any applicable Specification.
- 3.2 To the extent that the Goods are to be manufactured in accordance with a Specification supplied by the Customer, the Customer shall indemnify the Company against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties, and legal and other reasonable professional costs and expenses) suffered or incurred by the Company in connection with:
- 3.2.1 any claim made against the Company for actual or alleged infringement of a third party's intellectual property rights; and/or
- 3.2.2 any breach of any applicable law,

arising out of or in connection with the Company's use of the Specification. This clause 3.2 shall survive the termination of the Contract.

3.3 The Company reserves the right to amend any Specification and/or make changes to the Goods without notice to the Customer if required by any applicable statutory or regulatory requirements or if considered necessary by the Company in its reasonable discretion.

#### 4. DELIVERY

4.1 The Company shall ensure that each delivery of Goods is accompanied by a delivery note which shows the date of the Order, the relevant Customer and Company reference numbers, the type and quantity of the Goods, and, if the Order is being delivered by instalments, the outstanding balance of Goods remaining to be delivered.

4.2 The Company shall deliver the Goods to the location set out in the Order or to such other location as the parties may agree in writing (the "Delivery Location") within a reasonable time after the Company notifies the Customer that the Goods are ready for delivery.

4.3 Delivery of the Goods shall be completed on the Goods' arrival at the Delivery Location whether or not the Goods have been unloaded and whether or not the Goods are thereafter to be installed by the Company.

4.4 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence.

4.5 On delivery, the Customer shall ensure that:

4.5.1 suitable representatives of the Customer are attendant at the Delivery Location to receive delivery and give a written acknowledgement thereof; and

4.5.2 the Goods are insured by the Customer for their full price against loss or damage by all such events and risks as are normally covered in relation to goods of the same type as the Goods.

4.6 If:

4.6.1 the Company has requested trade and/or bank references in accordance with clause 2.6;

4.6.2 by the time the Goods are ready such references have not been provided or are unsatisfactory in the reasonable opinion of the Company; and

4.6.3 the Company has invoiced the Customer and the Customer has not paid such invoice in accordance with clause 7.6,

then delivery of the Goods shall be conditional upon payment of the invoice in full and the Company shall have no liability in respect of any failure or delay in the delivery of the Goods so long as such payment remains outstanding.

- 4.7 The Company shall have no liability for any failure or delay in the delivery of the Goods that is caused by the Customer's failure to provide the Company with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.8 Subject to clauses 4.6 and 4.7 above, the Company's liability for failure to deliver the Goods shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality from a supplier in the U.K., less the price of the Goods.
- 4.9 If the Customer fails to accept delivery of the Goods on the date on which the Goods are first tendered for delivery or on the third business day of the Company having notified the Customer that the Goods are ready for delivery (whichever is the earlier), or if the Customer notifies the Company that it wishes to postpone delivery, then, except where such failure or delay or request to postpone is caused by a Force Majeure Event or the Company's failure to comply with its obligations under the Contract:
- 4.9.1 delivery of the Goods shall be deemed to have been completed at 9.00 am on the date on which the Goods are first tendered for delivery or on the third business day of the Company having notified the Customer that the Goods are ready for delivery (whichever is the earlier); and
- 4.9.2 the Company shall store the Goods until actual delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- 4.10 If 10 business days after the date on which the Company notified the Customer that the Goods were ready for delivery the Customer has still not accepted delivery of them, then, except where such failure or delay is caused by a Force Majeure Event or the Company's failure to comply with its obligations under the Contract, the Company may resell or otherwise dispose of all or part of the Goods.
- 4.11 The Company 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.

## 5. QUALITY

- 5.1 The Company warrants that on delivery, and for a period of 12 months from the date of delivery (the "Warranty Period"), the Goods shall:
- 5.1.1 conform in all material respects with their description and any applicable Specification;
- 5.1.2 be free from material damage or defects in design, material and workmanship; and
- 5.1.3 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).
- 5.2 For the avoidance of doubt, the Company makes no warranty whatsoever as to the suitability of the Goods for use in conjunction with any other goods whether or not supplied by the Company.

5.3 Subject to clause 5.5 below, if:

5.3.1 the Customer gives notice in writing to the Company during the Warranty Period within 7 days of discovery of the Goods' non-compliance with the warranty set out in clause 5.1, specifying in reasonable detail the nature and extent of such non-compliance; and

5.3.2 the Customer, at its own cost and at the option of the Company, either returns such Goods for examination at the Company's place of business (properly packaged, protected, and insured), or grants the Company a reasonable opportunity to examine the Goods at the premises where the Goods are located, inspect all relevant documentation held by the Customer, and ask questions of any of its personnel,

then the Company shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.

5.4 These Terms and Conditions shall apply to any repaired or replacement Goods supplied by the Company in accordance with clause 5.3.

5.5 Except as provided in this clause 5, the Company shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.1. In particular the Company shall have no such liability where:

5.5.1 the Customer makes any further use of such Goods after giving notice in accordance with clause 5.3;

5.5.2 the defect arises because the Customer failed to follow the Company's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or good trade practice regarding the same;

5.5.3 the defect arises as a result of the Company following any drawing, design or Specification supplied by the Customer;

5.5.4 the Customer alters or repairs such Goods without the written consent of the Company;

5.5.5 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; and/or

5.5.6 the Goods differ from their description and any Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

5.6 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.

## 6. TITLE AND RISK

6.1 The risk in the Goods shall pass to the Customer on completion of delivery.

6.2 Title to the Goods shall not pass to the Customer until the Company has received payment in full (in cash or cleared funds) for:

6.2.1 the Goods; and

6.2.2 any other goods or services that the Company has supplied to the Customer in respect of which payment has become due.

6.3 Until title to the Goods has passed to the Customer, the Customer shall:

6.3.1 hold the Goods on a fiduciary basis as bailee for the Company (which shall retain legal and beneficial title to the Goods);

6.3.2 store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Company's property;

6.3.3 maintain the Goods in satisfactory condition and not make any modification or addition to the Goods nor incorporate them into any other goods, save with the express prior written consent of the Company;

6.3.4 keep the Goods insured for their full price against loss or damage by all such events and risks as are normally covered in relation to goods of the same type as the Goods;

6.3.5 notify the Company immediately if it becomes subject to any of the events listed in clause 9.2; and

6.3.6 give the Company such information relating to the Goods as the Company may require from time to time.

6.4 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 9.2, or the Company reasonably believes that any such event is about to happen and notifies the Customer accordingly, then, without limiting any right or remedy the Company may have, the Company may at any time require the Customer to deliver the Goods to the Company and, if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

## 7. PRICE AND PAYMENT

7.1 The price of the Goods shall be the price set out in the Order, or, if no price is quoted, the price set out in the Company's published price list in force as at the date of completion of delivery.

7.2 The price of the Goods is exclusive of the costs and charges of packaging, insurance and transport of the Goods, which may be invoiced to the Customer.

7.3 The price of the Goods is exclusive of amounts in respect of value added tax (VAT). The Customer shall, on receipt of a valid VAT invoice from the Company, pay to the Company such additional amounts in respect of VAT as are chargeable on the supply of the Goods.

7.4 The Company may, by giving notice to the Customer at any time up to three business days before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:

- 7.4.1 any factor beyond the Company's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
  - 7.4.2 any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Specification;
  - 7.4.3 any delays caused by unsatisfactory site conditions;
  - 7.4.4 any special expedition at the request of the Customer; or
  - 7.4.5 the failure of the Customer to give the Company prompt, adequate, or accurate information or instructions.
- 7.5 Save in the circumstances set out in clause 7.6:
- 7.5.1 The Company shall invoice the Customer for the Goods on or at any time after the completion of delivery.
  - 7.5.2 The Customer shall pay the invoice in full and in cleared funds within 30 business days of the date of the invoice.
- 7.6 If:
- 7.6.1 the Company has requested trade and/or bank references in accordance with clause 2.6; and
  - 7.6.2 by the time the Goods are ready such references have not been provided or are unsatisfactory in the reasonable opinion of the Company,
- then the Company may invoice the Customer immediately and require payment of such invoice within 10 business days and in any case prior to completion of delivery.
- 7.7 Payment by the Customer shall be made to the bank account nominated in writing by the Company. Time of payment is of the essence.
- 7.8 If the Customer fails to make any payment due to the Company under the Contract by the due date for payment (the "Due Date"), then the Customer shall pay interest on the overdue amount at the rate of 4% per annum above the Bank of England's Minimum Lending rate from time to time. Such interest shall accrue on a daily basis from the Due Date until the date of actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
- 7.9 The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against the Company in order to justify withholding payment of any such amount in whole or in part, save with the express written consent of the Company. The Company may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by the Company to the Customer.

## 8. INSTALLATION

- 8.1 Where the Contract provides that the Company shall install the Goods, this clause 8 shall apply.
- 8.2 The installation of the Goods shall take place immediately following delivery at the Delivery Location set out in the Order and/or Specification (unless agreed otherwise in writing between the parties).
- 8.3 The Company warrants to the Customer that the installation will be carried out using reasonable care and skill.
- 8.4 The Customer shall at its own expense:
- 8.4.1 make all necessary preparations to the relevant location in advance of delivery as reasonably required by the Company and notified to the Customer within a reasonable period prior to delivery;
  - 8.4.2 at the time of installation provide all facilities, equipment and information as reasonably required by the Company, its agents, subcontractors and consultants, including (but not limited to) access to the relevant location, light, heat, electricity, water, suitable unloading lifting and scaffolding equipment, and level sound flooring;
  - 8.4.3 ensure that all facilities and equipment provided by the Customer in accordance with clause 8.4.2 above comply with all applicable health and safety laws and regulations in force at the time;
  - 8.4.4 obtain all necessary licences, permissions and consents which may be required in respect of the Customer for the installation of the Goods; and
  - 8.4.5 cooperate with the Company in all matters related to the installation.
- 8.5 If the installation of the Goods by the Company is prevented, interrupted or delayed by any act or omission by the Customer, its agents, representatives or consultants, or failure by the Customer to perform any of its obligations under the Contract (a "Customer Default"):
- 8.5.1 the Company may, without limiting its other rights or remedies, suspend installation of the Goods until the Customer remedies the Customer Default and rely on the Customer Default to relieve it from the performance of any of its obligations to the extent that the Customer Default prevents or delays the Company's performance of any such obligations;
  - 8.5.2 the Company shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Company's failure or delay to perform any of its obligations as set out in this clause 8;
  - 8.5.3 the Customer shall reimburse the Company on written demand for any costs or losses sustained or incurred by the Company arising directly or indirectly from the Customer Default.

## 9. CUSTOMER'S INSOLVENCY OR INCAPACITY

- 9.1 If the Customer becomes subject to any of the events listed in clause 9.2, or the Company reasonably believes that the Customer is about to become subject to any of them and notifies the Customer accordingly, then, without



limiting any other right or remedy available to the Company, the Company may terminate the Contract with immediate effect or suspend all further deliveries under the Contract or under any other contract between the Customer and the Company without incurring any liability to the Customer, and all outstanding sums in respect of Goods delivered to the Customer shall become immediately due.

9.2 For the purposes of clause 9.1, the relevant events are:

- 9.2.1 the Customer suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- 9.2.2 the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than where these events take place for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;
- 9.2.3 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Customer, other than for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;
- 9.2.4 an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Customer;
- 9.2.5 a person has become entitled to appoint or has appointed a receiver or administrative receiver over the Customer's assets; and/or
- 9.2.6 the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or substantially the whole of its business.

9.3 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination. Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

## 10. LIMITATION OF LIABILITY

10.1 Nothing in these Conditions shall limit or exclude the Company's liability for:

- 10.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
- 10.1.2 fraud or fraudulent misrepresentation;
- 10.1.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979;
- 10.1.4 defective products under the Consumer Protection Act 1987; or

10.1.5 any matter in respect of which it would be unlawful for the Company to exclude or restrict liability.

10.2 Subject to clause 10.1:

10.2.1 the Company shall under no circumstances 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

10.2.2 the Company'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 the price of the Goods.

## 11. FORCE MAJEURE

11.1 Notwithstanding any other provision of the Contract, neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), the inability to obtain or renew any necessary licence or authorisation relevant to the Contract, the default of suppliers or subcontractors, the non-availability of suitable materials, the effect of any statute, order, regulation or other law issued by or on behalf of any government or other competent authority, the failure of energy sources or transport networks, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, explosions, collapse of building structures, fires, floods, storms, earthquakes, epidemics or similar events, natural disasters, or extreme adverse weather conditions (a "Force Majeure Event").

11.2 On the occurrence of a Force Majeure Event, the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed, provided that if the period of delay or non-performance continues for more than three months, either party may terminate this agreement by giving seven days' written notice to other party.

## 12. GENERAL

12.1 The Company may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

12.2 The Customer may not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of the Company.

- 12.3 Any notice or other communication given to a party under or in connection with the Contract (save in connection with any legal proceedings) shall be in writing, addressed to that party at its registered office 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, sent by pre-paid first class post, recorded delivery, commercial courier, fax or e-mail.
- 12.4 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 12.3; if sent by pre-paid first class post or recorded delivery, at 9.00 am on the second business day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or e-mail, one business day after transmission.
- 12.5 If any court or competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- 12.6 If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.
- 12.7 A waiver of any right or remedy under the Contract is only effective if given in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
- 12.8 A person who is not a party to the Contract shall not have any rights under or in connection with it.
- 12.9 The Contract, 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, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.