



## Interpretation

- In the Conditions of Sale and Conditions for Provision of Services set out below:  
"CUSTOMER" means the person who accepts a quotation of the Company for the sale or servicing of the Goods, or whose order for the Goods or request for the Goods to be serviced is accepted by the Company.  
"GOODS" means the goods (including any instalment of the goods or any parts for them) which the Company is to supply or service in accordance with the Conditions.  
"COMPANY" means MDM PUMPS LTD (registered in England and Wales under number 184815).  
"CONDITIONS" means the standard terms and conditions of sale or for services as the case may be set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Customer and the Company.  
"CONTRACT" means the contract for the purchase and sale or servicing of the Goods.  
"WRITING" includes telex, cable, facsimile transmission and comparable means of communication.
- Any reference in the Conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.
- The headings in the Conditions are for convenience only and shall not affect their interpretation.

## CONDITIONS OF SALE

### 1. Basis of Sale.

- The Company shall sell and the Customer shall purchase the Goods in accordance with any written quotation of the Company which is accepted by the Customer or any written order of the Customer which is accepted by the Company subject in either case to these Conditions which shall govern the Contract to the exclusion of any other terms and conditions subject to which any such quotation is accepted or purported to be accepted or any such order is made or purported to be made by the Customer other than a variation which complies with Condition 1.2.
- No variation to these Conditions shall be binding unless agreed in writing between the authorised representatives of the Customer and the Company.
- The Company's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Company in writing. In entering into the Contract the Customer acknowledges that it does not rely on and waives any claim for breach of any such representations which are not so confirmed.
- Any advice or recommendation given by the Company or its employees or agents to the Customer or its employees or agents as to the storage application or use of the Goods which is not confirmed in writing by the Company, is followed or acted upon entirely at the Customer's own risk and accordingly the Company shall not be liable for any such advice or recommendation which is not so confirmed.
- Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Company shall be subject to correction without any liability on the part of the Company.

### 2. Orders and Specifications.

- No order submitted by the Customer shall be deemed to be accepted by the Company unless and until confirmed in writing by the Company's authorised representative.
- The Customer shall be responsible to the Company for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Customer and for giving the Company any necessary information relating to the Goods within a sufficient time to enable the Company to perform the Contract in accordance with its terms.
- The quantity, quality and description of any specification for the Goods shall be those set out in the Company's quotation and data sheet (if accepted by the Customer) or the Company's order (if accepted by the Customer).
- If the Goods are to be manufactured or any process is to be applied to the Goods by the Company in accordance with a specification submitted by the Customer, the Customer shall indemnify the Company against all loss, damages, costs and expenses awarded against or incurred by the Company in connection with or paid or agreed to be paid by the Company in settlement of any claim for infringement of any patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person which results from the Company's use of the Customer's specification.
- The Company reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable safety or other statutory requirements or, where the Goods are to be supplied to the Company's specification, which do not materially affect their quality or performance.
- No order which has been accepted by the Company may be cancelled by the Customer except with the agreement in writing of the Company and on terms that the Customer shall indemnify the Company in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Company as a result of cancellation.

### 3. Price of Goods.

- The price of the Goods shall be the Company's quoted price

or, where no price has been quoted (or a quoted price is no longer valid), the price listed in the Company's published price list current at the date of acceptance of the order. Where the Goods are supplied for export from the United Kingdom the Company's published export price list shall apply. All prices quoted are valid for 30 days only or until earlier acceptance by the Customer after which time they may be altered by the Company without giving notice to the Customer.

- The Company reserves the right by giving notice to the Customer at any time before delivery to increase the price of the Goods to reflect any increase in the cost to the Company which is due to any factor beyond the control of the Company (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture) any change in delivery dates, quantities or specifications for the Goods which is requested by the Customer or any delay caused by any instructions of the Customer or failure of the Customer to give the Company adequate information or instructions.
- Except as otherwise stated under the terms of any quotation or in any price list of the Company and unless otherwise agreed in writing between the Customer and the Company, all prices are given by the Company on an ex works basis.
- The price is exclusive of any applicable value added tax which the Customer shall be additionally liable to pay to the Company.
- The cost of pallets and containers and packing will be charged to the Customer in addition to the price of the Goods.

### 4. Terms of Payment.

- Subject to any special terms agreed in writing between the Customer and the Company, the Company shall be entitled to invoice the Customer for the price of the Goods on or at any time after delivery of the Goods unless the Goods are to be collected by the Customer or the Customer wrongfully fails to take delivery of the Goods, in which event the Company shall be entitled to invoice the Customer for the price at any time after the Company has notified the Customer that the Goods are ready for collection or (as the case may be) the Company has tendered delivery of the Goods.
- The Customer shall pay the price of the Goods and, unless it is agreed in writing that the Goods are to be collected by the Customer, the cost of the carriage and packaging of the Goods within 30 days of the date of the Company's invoice notwithstanding that delivery may not have taken place and the property in the Goods has not passed to the Customer. The time of payment shall be of the essence of the Contract. Receipts for payment will be issued only upon request. Any discount allowed by the Company will be disallowed if payment is not made by the due date.
- 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:
  - cancel the Contract or suspend any further deliveries to the Customer under the same or any other contract and in the event of suspension may suspend until payment is made with interest as set out in clause 4.3.3 and until arrangements for future payments satisfactory to the Company are made.
  - appropriate any payment made by the Customer to such of the Goods (or the goods supplied under any other contract between the Customer and the Company) as the Company may think fit (notwithstanding any purported appropriation by the Customer) and
  - charge the Customer interest (both before and after any judgement) on the amount unpaid as from the date of the invoice at the rate of two per cent per annum above National Westminster Bank Plc's base rate from time to time compounded every three months until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest) and in any case where a discount as to price has been agreed for payment by a certain date interest shall be calculated without regard to the discount.

### 5. Delivery.

- Delivery of the Goods shall be made by the Customer or carrier collecting the Goods at the Company's premises or by the delivery of the Goods by the Company to the Carrier as the case may be or, if some other place for delivery is agreed by the Company, by the Company delivering the Goods to that place.
- Unless otherwise agreed in writing the Customer shall be deemed to have authorised the Company to send the Goods by a carrier to be appointed by the Company.
- Unless otherwise agreed in writing the Goods will be despatched to the address on the Customer's order.
- Any dates quoted for delivery of the Goods are approximate only and the Company shall not be liable for any delay in delivery of the Goods howsoever caused. Time for delivery shall not be of the essence unless previously agreed by the Company in writing. The Goods may be delivered by the Company in advance of the quoted delivery date.
- Unless the contract otherwise provides, the Company may deliver the Goods by instalments of its choosing.
- Where the Goods are 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 Conditions 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.

- If the Company fails to deliver the Goods for any reason other than any cause beyond the Company's reasonable control or the Customer's fault and the Company is accordingly liable to the Customer, the Company's liability shall be limited to the excess (if any) of the cost to the Customer (in the cheapest available market) of similar goods to replace those not delivered over the price of the Goods.
- If the Customer fails to take delivery of the Goods or fails to give the Company adequate delivery instructions by the time stated for delivery or fails to collect the Goods as the case may be (otherwise than by reason of any cause beyond the Customer's reasonable control or by reason of the Company's fault), then without prejudice to any other right or remedy available to the Company the Company may:
  - store the Goods until actual delivery and charge the Customer for the reasonable costs (including insurance) of storage, or
  - sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Customer for the excess over the price under the Contract or charge the Customer for any shortfall below the price under the Contract.

### 6. Risk and Property.

- Risk of damage to or loss of the Goods shall pass to the Customer:
  - in the case of Goods to be delivered by the Company to a carrier to be appointed by the Company, at the time of delivery to that carrier,
  - in the case of Goods to be collected by the Customer or his carrier from the Company's premises at the time when the Company notifies the Customer that the Goods are available for collection
  - in the case of Goods to be delivered otherwise than as set out in clauses 6.1.1 and 6.1.2 at the time of delivery or if the Customer wrongfully fails to take delivery of the Goods, the time when the Company has tendered delivery of the Goods.
- Notwithstanding delivery and the passing of risk in the Goods or any other provision of these Conditions, the property in the Goods shall not pass to the Customer until the Company has received in cash or cleared funds payment in full of the price of the Goods and all other goods agreed to be sold by the Company to the Customer for which payment is then due.
- Until such time as the property in the Goods passes to the Customer (and provided the Goods are still in existence and have not been resold) the Company shall be entitled at any time to require the Customer to deliver up the Goods 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 Goods are stored and repossess the Goods.
- The Customer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain 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. Warranties and Liability.

- Subject to the conditions set out below, the Company warrants that the Goods will correspond with their specification at the time of delivery.
- The above warranty is given by the Company subject to the following conditions:
  - The Company shall be under no liability in respect of any defect in the Goods arising from any drawing design or specification supplied by the Customer.
  - The Company shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage or negligence by anyone other than the Company's employees, abnormal working conditions, failure to follow the Company's instructions (whether oral or in writing), misuse, or alteration or repair of the Goods without the Company's approval.
  - The Company shall be under no liability under the above warranty (or any other warranty condition or guarantee) if the total price for the Goods has not been paid by the due date for payment.
  - The above warranty does not extend to parts materials or equipment not manufactured by the Company in respect of which the Customer shall be entitled only to the benefit of any such warranty or guarantee as is given by the manufacturer to the Company.
  - 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.
  - 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 Customer are not affected by these Conditions.
  - Any claim by the Customer which is based on any defect in the quality or condition of the Goods or their failure to correspond with specification shall, whether or not delivery is

- refused by the Customer, be notified to the Company 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 Customer does not notify the Company accordingly, the Customer shall not be entitled to reject the Goods and the Company shall have no liability for such defect or failure and the Customer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.
- 7.6 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 specification is notified to the Company in accordance with these Conditions, the Company shall be entitled to rectify or replace the Goods (or the part in question) free of charge or, at the Company's sole discretion to refund to the Customer the price of the Goods (or a proportionate part of the price) but the Company shall have no further liability to the Customer. In the event of the Company choosing to rectify the Goods it shall have a reasonable time to do so.
- 7.7 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 or any implied warranty, condition or other term or any duty at common law or under the express terms of the Contract for any consequential loss or damage (whether for loss of profit or otherwise), costs, expenses or other claims for consequential compensation whatsoever (and whether caused by the negligence of the Company 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 Customer.
- 7.8 The Company shall not be liable to the Customer or be deemed to be in breach of the Contract by reason of any delay in performing or any failure to perform any of the Company's obligations in relation to the Goods if the delay or failure was due to any cause beyond the Company's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Company's reasonable control:
- 7.8.1 Act of God, explosion, flood, tempest, fire or accident.
- 7.8.2 war, or threat of war, sabotage, insurrection, civil disturbance or requisition,
- 7.8.3 acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority.
- 7.8.4 import or export regulations or embargoes.
- 7.8.5 strikes, lock outs or other industrial actions or trade disputes (whether involving employees of the Company or of a third party),
- 7.8.6 difficulties in obtaining raw materials, labour, fuel, parts or machinery,
- 7.8.7 power failure or breakdown in machinery.
- 7.9 In the event of the Goods being returned to the Company the Customer will ensure that on delivery to the Company's premises the Goods are free from any noxious substances and will indemnify the Company against all damages, losses, costs, claims and demands resulting directly or indirectly from the Customer's failure to comply with this obligation.
- 8. Indemnity.**
- 8.1 If any claim is made against the Customer that the Goods infringe or that their use or resale infringes the patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person, the Company shall, except where the goods have been manufactured or had any process applied to them by the Company in accordance with a specification submitted by the Customer, 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:
- 8.1.1 the Company is given full control of any proceedings or negotiations in connection with any such claim,
- 8.1.2 the Customer shall give the Company all reasonable assistance for the purposes of any such proceedings or negotiations,
- 8.1.3 except pursuant to a final award, the Customer shall not pay or accept any such claim or compromise any such proceedings without the consent of the Company (which shall not be unreasonably withheld),
- 8.1.4 the Customer shall do 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),
- 8.1.5 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 by or agreed with the consent of the Customer (which consent shall not be unreasonably withheld) to be paid by any other party in respect of any such claim, and
- 8.1.6 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 such loss, damages, costs or expenses for which the Company is liable to indemnify the Customer under this clause.

## 9. Insolvency of Customer.

- 9.1 This clause applies if:

- 9.1.1 the Customer makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction), or
- 9.1.2 an encumbrancer takes possession or a receiver is appointed of any of the property or assets of the Customer, or
- 9.1.3 the Customer ceases or threatens to cease to carry on business, or
- 9.1.4 the Company reasonably apprehends that any of the events mentioned above is about to occur in relation to the Customer and notifies the Customer accordingly.
- 9.2 If this clause applies then, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Customer 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.

## 10. Export Terms.

- 10.1 In these Conditions '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. 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.
- 10.2 Where the Goods are supplied for export from the United Kingdom the provisions of this clause 10 shall (subject to any special terms agreed in writing between the Customer and the Company) apply notwithstanding any other provision of these Conditions.
- 10.3 The Customer 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 thereon.
- 10.4 Unless otherwise agreed in writing between the Customer and the Company, the Goods shall be delivered c.i.f. the sea port of destination.
- 10.5 The Customer shall be responsible for arranging for testing and inspection of the Goods at the Company's premises before shipment. The Company 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.
- 10.6 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 Barclays Bank Plc Lloyds Bank Plc Midland Bank Plc or National Westminster Bank Plc unless otherwise agreed in writing.

## 11. General.

- 11.1 Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to that other party at its registered office or principal 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.
- 11.2 No waiver by the Company of any breach of the Contract by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 11.3 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.
- 11.4 Any dispute arising under or in connection with these Conditions or the sale of the Goods shall be referred to arbitration by a single arbitrator to be appointed by agreement or (in default) nominated on the application of either party by the President for the time being of the Law Society.
- 11.5 The contract shall be governed by the laws of England.

## CONDITIONS FOR PROVISION OF SERVICES

### 1. Basis of Provision of Services.

- 1.1 Clauses 1.1, 1.2 and 1.3 of the Conditions of Sale set out above shall apply mutatis mutandis to the servicing of the Goods.
- 1.2 Any typographical, clerical or other error or omission in any quotation, acceptance of offer, invoice or other document issued by the Company shall be subject to correction without any liability on the part of the Company.
- 1.3 The Customer will pay the Company for the proper cost of inspecting and reporting on the condition of the Goods whether or not the Customer instructs the Company to proceed with servicing the Goods unless they are defective through the fault of the Company.
- 1.4 Where the Customer has not requested the Company in writing to deliver the Goods to the Customer or any other person or

has given no address for delivery and 60 days have elapsed since the receipt of the Goods by the Company or, if later, 21 days since the Company notified the Customer that the servicing has been completed:

- 1.4.1 The Customer will pay the Company's reasonable costs for the storage and handling of the Goods with effect from that date and
- 1.4.2 The Company may sell the Goods and account to the Customer for the proceeds of sale less any amount due from the Customer to the Company on any account including the costs referred to in Clause 1.4.1 and the costs of the sale or any attempted sale.

### 2. Charge for Services.

- 2.1 The charge for the services shall be the Company's quoted charge or, where no charge has been quoted, a reasonable charge.
- 2.2 Notwithstanding Clause 2.1, the provision of Clauses 3.2, 3.3, 3.4 and 3.5 of the Conditions of Sale shall apply mutatis mutandis to these Conditions.

### 3. Terms of Payment.

- 3.1 The terms of payment set out in Clause 4 of the Conditions of Sale shall apply mutatis mutandis to these Conditions.

### 4. Delivery.

- 4.1 The terms for delivery set out in Clause 5 of the Conditions of Sale shall apply mutatis mutandis to these Conditions.

### 5. Insurance & Risk

- 5.1 The Company will insure the Goods against damage or loss from the time the Goods arrive at the Company's premises until the risk passes back to the Customer in accordance with clause 5.2 of these Conditions.
- 5.2 The provisions as to the passing of risk to the Customer set out in Clause 6.1 of the Conditions of Sale shall apply mutatis mutandis to these Conditions.

### 6 The Company's Liability.

- 6.1 The Company shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage or negligence by anyone other than the Company's employees, abnormal working conditions, failure to follow the Company's instructions (whether oral or in writing), misuse or alteration or repair of the Goods without the Company's approval.
- 6.2 The Company shall be under no liability for any implied term of the contract if the total price for the servicing of the Goods has not been paid by the due date for payment.
- 6.3 The Company shall not be liable for anything which results from the condition of parts, materials or equipment not manufactured by the Company in respect of which the Customer shall be entitled only to the benefit of any such warranty or guarantee as is given by the manufacturer to the Company.
- 6.4 Any claim by the Customer which is based on any defect in the services provided by the Company with respect to the goods shall be notified to the Company within seven days of 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. If the Customer does not notify the Company accordingly the Company shall have no liability for such defect and the Customer shall be bound to pay the Company's charge as if the Goods had been delivered in accordance with the Contract.
- 6.5 Where any valid claim in respect of any of the Goods which is based on any defect in the services applied to the Goods is notified to the Company in accordance with these Conditions, the Company shall be entitled to rectify the work or replace the Goods (or the part in question) free of charge or, at the Company's sole discretion, to refund to the Customer the charges for the Company's services (or a proportionate part of the charges) but the Company shall have no further liability to the Customer. In the event of the Company choosing to rectify the Goods it shall have a reasonable time to do so.
- 6.6 The provisions contained in Clause 7.7, 7.8 and 7.9 of the Conditions of Sale shall apply mutatis mutandis to these Conditions.

### 7. Insolvency of Customer.

- 7.1 The provisions as to the insolvency of the Buyer set out in Clause 9 of the Conditions of Sale shall apply mutatis mutandis to the Customer and these Conditions.

### 8. General.

- 8.1 The provisions set out in Clause 11 of the Conditions of Sale shall apply mutatis mutandis to these Conditions.