

Advanced Water Treatment (UK) Ltd Purchasing Terms

The Seller's attention is specifically drawn to this clause

This Order shall be subject to the terms and conditions stated below (including any supplementary conditions referred to therein) and shall be deemed to incorporate any Specification or other document referred to in the Order and a change notice pursuant hereto. References to the Seller's quotation in the Order shall not be construed to indicate acceptance of the terms and conditions contained therein. The Order shall be accepted upon receipt by the Purchaser of the acknowledgement, or, if earlier, upon the commencement of the Works by the Seller following receipt of the Order. Either of these events shall be deemed to be an express acceptance by the Seller to supply the Works upon the terms and conditions set out below. This shall override and exclude any terms or conditions proposed by the Seller save in so far that the Purchaser has expressly accepted them in writing as variations.

1. Definition

"Purchaser" shall mean Advanced Water Treatment (UK) Ltd its successors and assigns.

"Seller" shall mean the person or company to whom the Order is addressed, including its successors and permitted assigns.

"Order" shall mean the Purchaser's official and valid written document used expressly for conveying original instructions and associated variations thereto that specify the extent of the Seller's supply and the conditions that will be applicable in all respects to effect completion of the Works.

"Works" shall mean all plant, goods, equipment and services of every kind and work to be done by the Seller under the Order.

"Delivery" shall mean delivery to the point specified in the Order.

2. Terms of Payment

(a) The Purchaser shall make payment to the Seller in accordance with this Order, but not less than the last day of the month following the one in which the invoice is dated, unless previously agreed in writing by the Purchaser.

(b) The valid invoice is to be rendered to the Purchaser endorsed as complete shipment of the Works along with sufficient detail including Order/item numbers and documentation including appropriate signed receipts of delivery to enable the Purchaser to identify the Works to which the invoice relates.

(c) All claims for additional expenses incurred by the Seller by reason of a delay, acceleration or alteration of the Works by the Purchaser (otherwise than by reason of the default of the Seller or as a consequence of a clause outside the control of the Purchaser) must be submitted to the Purchaser fully documented no later than one month after the Purchaser's instruction relating thereto, or otherwise the cause thereof. Failure to comply with this provision will result in the rejection of any invoice which exceeds the value of this Order including the value of variations authorised by Purchaser's change notice.

(d) The Purchaser shall be entitled to deduct from the payments due to the Seller under the Order, such sums for which the Seller is or may become liable under these conditions, and the Seller shall issue an appropriate credit note when called upon to do so by the Purchaser.

3. Security

If required by the Purchaser the Seller shall provide a surety, subject to the approval of the Purchaser by way of guarantee for the due and faithful performance of the Works. Such guarantee to be binding notwithstanding variations, alterations or extensions of time as may be agreed in accordance with these conditions.

4. Sub-letting

The Seller shall not sub-let or assign this Order in part or in whole without the prior written consent of the Purchaser. The restriction shall not, unless otherwise stated, apply to sub-contracts for materials or minor details, or for any part of the works of which the makers or suppliers are named in the Order.

5. Quality Requirements

It is a condition of this order that:

(a) The Works shall be new and in strict compliance with relevant British Standards or those specified by the Purchaser in this Order and of the best quality so as to be fit for the purpose for which they are required.

(b) The Works shall be supplied or performed by or on behalf of the Seller in accordance with the quality system standard ISO 9001:2000, in a manner consistent with the best practices of the industry in which the Purchaser is engaged. The Works shall be safe and without undue or unreasonable risk to health when used.

(c) EC Directives: Unless separately agreed by the Purchaser in writing, all Works are to be supplied and/or executed in strict compliance with all applicable EU Directives. Where necessary the Works shall be suitably CE marked and accompanied by EU Certification of Conformity supported by the appropriate technical file. If the Seller considers that their Works are exempt, then they are to advise the Purchaser in writing of all the relevant details.

6. Inspection

(a) The Purchaser or their nominee shall have the right to inspect the Works and the Seller's drawings relating thereto at any time and to nominate such tests as may be necessary to prove the performance and sufficiency of the Works. Such inspections, tests and/or approval of drawings shall not relieve the Seller of any of their obligations under this Order. The Seller where required by the Order shall promptly provide test certificates.

(b) The Seller shall at their expense provide all necessary supplies of labour and facilities to enable tests and inspections to be carried out.

(c) Times and dates for the conduct of specific tests shall be agreed by the Purchaser at their discretion, after consultation with the Seller.

(d) The Purchaser shall have the right to reject the Works or any part thereof, which does not in their opinion conform to the requirements of this Order. Failure to reject the Works or any part thereof shall not prejudice the Purchaser's right to reject the same at any stage until final acceptance by the Purchaser's client.

7. Programme

The Seller shall submit to the Purchaser for approval within the times named in the Order, such drawings, samples, pattern, models and programmes as may be called for therein. Any expenses resulting from an error or omission in any form, delay in delivery of the drawings and information shall be borne by the Seller.

8. Delivery

It is a condition of this Order that:

(a) Delivery of the works shall be completed at the time and in the sequence at the place and in the manner specified in this Order, including packaging to the Purchaser's requirements.

(b) All Works to be supplied by the Seller under this Order shall be at the Seller's risk until Delivery has been completed in accordance with this Order.

(c) Any Works delivered in error, rejected Works or surpluses in excess of trade practice will not be charged to the Purchaser and may be returned to the Seller at the Seller's expense.

(d) Unless agreed otherwise by the Purchaser all shipments and deliveries of the Works are to be complete and to the Order requirements.

9. Property

Property in the Works shall pass to the Purchaser when any payment in respect thereof is made to the Seller or the works or any part thereof are allocated to the Purchaser or upon Delivery, whichever is the earliest. The Seller warrants that the title given to the Purchaser is free of any charge or encumbrance or defect whatsoever. The Seller hereby indemnifies the Purchaser against any claim as to title to the works passed or purported as to title to the Works.

10. Forwarding Instructions and Documentation relating to Delivery

(a) The Seller shall be responsible for obtaining forwarding instructions from the Purchaser or their nominee, in order to comply with the obligations for delivery. The Seller shall provide the following documents as a minimum, unless stated otherwise on the Order.

(b) Advice notes – Two (2) copies to be posted to the Procurement Department at the invoice address.

(c) Packing note – one (1) copy stating the Purchaser's order number to which the items refer and the Seller's name and address must accompany the goods.

(d) Shipping specifications – To be submitted as per the instructions on the Order.

11. Defects in the Works after Delivery

(a) At the Purchaser's option the Seller shall, with all speed, make good by repair or by the supply of a replacement part, any defect which under proper use develops in the Works within the period commencing with the date of Delivery and ending after 8000 hours commercial operation but not later than twenty four calendar months after the works have been put into commercial use or such other period as may be stated in the Order and which arise from faulty materials, workmanship or design (not being a design specified by the Purchaser for which the Seller has disclaimed responsibility)

(b) Where the Purchaser requires the Works or any part thereof to be repaired or replaced hereunder the same shall be removed and the repaired Works or replacement Works shall be installed at the cost of the Seller within a time specified by the Purchaser. If the Seller cannot achieve this time, or in the opinion of the purchaser, could default in attempting to do so, then the Purchaser is at liberty to correct the fault and charge the Seller for the cost incurred.

(c) The Seller's liability under this clause shall not affect other rights the Purchaser may have arising from the Order.

(d) Provisions of the like nature to 11(a) 11(b) and 11(c) shall apply in respect of repairs or replacements to defective parts of the Works.

12. Delay in Delivery

If the Seller shall fail to Deliver the Works in accordance with the Order within the time fixed by the Order for Delivery (or any extension thereof permitted by the Purchaser) there shall be deducted from the value of the Order, as liquidated damages, the percentage named in the Order, up to the value of the Order for each week or part of a week between the due date for Delivery and the actual date of Delivery. The

amount so deducted shall not exceed the maximum percentage stated on the Order of the Order value, or the value of the Order if no percentage is stated. When liquidated damages are not an integral part of the Order the Seller shall indemnify and hold harmless the Purchaser from all claims, costs and losses resulting from the delay.

13. Insurance

The Seller shall indemnify and hold harmless the Purchaser against all damage or loss or injury to the Purchaser or others arising out of the Seller's performance of the Works under this Order. The Seller shall maintain adequate insurance in respect of this indemnity including, but without prejudice to the generality of the foregoing: Public Liability, Employers Liability, Goods in Transit and All Risks insurance policies. The Seller upon request by the Purchaser shall provide reasonable proof of the validity of the Seller's cover under the aforementioned and other policies.

14. Free Issue Materials

The Seller shall be responsible for the safety, proper use and, if appropriate, maintenance of free issue materials entrusted to them by the Purchaser and such materials shall be and remain the property of the Purchaser.

The Seller shall use such materials solely for the purposes of the order and all surpluses shall be disposed of at the Purchaser's discretion. Waste of free issue materials arising from deterioration of finish and/or quality, bad workmanship or loss whilst in the custody of the Seller shall be made good at the Seller's expense.

15. Variations

The Purchaser may at any time by notice in writing to the Seller direct the Seller to alter, amend, omit, add to, or otherwise vary the Order and the Seller shall carry out such variations and be bound by the same conditions so far as applicable as though the said variations were part of the Purchaser's specified requirements. In circumstances where a change in the value of the Order is agreed by the Purchaser, revision of value and changes in payments consequently thereon will only be effected by an official change notice issued by the Purchaser. If such variation shall involve a cancellation in whole or in part of the Order then if the Seller is not in default under the Order the Purchase shall make payment to the Seller of costs reasonably and properly incurred by the Seller in the performance of the Order at the date of such cancellation. Save as herein expressed the Purchaser shall not be liable to the Seller for payment of any compensation for such cancellation.

16. Seller's Default

If in the opinion of the Purchaser the Seller shall not have executed the works in accordance with the Order or shall not have conducted his work so as to be able to deliver or complete the Works at the time specified in the Order or shall otherwise be, in the opinion of the Purchaser in default, then without prejudice to any rights it may have the Purchaser may by notice in writing call upon the Seller to remedy the fault by a date to be specified by the Purchaser. If the default be not so remedied the Purchaser may cancel the Order in whole or in part and in such event the Purchaser shall be entitled to employ others to carry out the Works, where appropriate in his opinion to make use of the Seller's plant tackle and equipment, and to retain any monies due or becoming due to the Seller under this Order and apply the same in payment of the extra cost and damages incurred by the Purchaser arising out of the cancellation. If the extra costs and damages incurred by the Purchaser as above mentioned shall exceed the balance due from the Purchaser to the Seller, the Seller shall pay such excess forthwith upon presentation of the Purchaser's invoice.

17. Patent Rights

The Seller shall indemnify and hold harmless the Purchaser and the Purchaser's clients against any and all losses, costs, claims, damages and expenses on account of any and all suits and judgements arising out of the use or sale of the Works supplied by the Seller which infringe or are alleged to infringe any right under any Letters Patent registered design copyright or trademark.

18. Confidentiality

The Seller shall maintain and respect the confidentiality of drawings and other information provided to them by the Purchaser and make use thereof only for the purpose of this Order. The Seller shall not refer to the Works they have executed for the Purchaser in any kind of publicity unless so authorised by the Purchaser in writing.

19. Compliance

The Seller warrants that the Works performed under this Order shall have been produced sold and delivered in strict compliance with all applicable laws and regulations to which the Works are subject. The Seller shall execute and/or deliver such documents as may be required to effect, or to evidence compliance.

20. Fees

The Seller will be responsible for all fees, royalties and commissions payable in relation to the Works however or wherever these shall occur.

21. Bankruptcy

If the Seller shall become bankrupt or insolvent, or shall have a receiving order made against them, or commence to be wound up (other than for the purposes of amalgamation or reconstruction), or carry on business under a receiver or manager for the benefit of the Seller's creditors, the Purchaser shall be at liberty either:

(a) To terminate the Order forthwith by notice in writing to the Seller or to any person in whom the Order may become vested and to assume the rights granted to the Purchaser under clause 16 of these conditions as if the Order had been taken out of the Seller's hands there under, or

(b) To give such receiver, manager, liquidator or other person the option of carrying out the Order subject to the provision of adequate security to the Purchaser.

22. Notices

All notices, invoices, or other correspondence required under this Order to be delivered to the Seller by the Purchaser shall be addressed to the last known place of business of the Seller and shall be deemed to have arrived in the Seller's hands at the latest on the day following the date of sending by the Purchaser. The Seller is to correspond with the Purchaser at the Purchaser's principal place of business shown on the Order.

23. Law

This Order shall in all respects to be construed and take effect in accordance with the law of England.

2.4 Site Work

If the Works directly or indirectly involves the handling of installation, testing or commissioning of the Works on a site nominated by the Purchaser or Purchaser's client, the Works shall be subject to the supplementary conditions 'A' contained in Purchaser's form reference AWTPTC002/2 and those conditions are incorporated into the order.

25. Export

If the order involves export of the Works to a destination overseas stipulated by the Purchaser or his nominee, or delivery to a UK Port for shipment overseas, the Supplementary Conditions 'B' contained in Purchaser's form reference AWTPTC002/3 are incorporated into the Order.

26. Arbitration

If at any time any dispute shall arise between the Purchaser and the Seller, the same shall be referred to an independent arbitrator. The award of the arbitrator shall be final and binding upon the parties. Performance of the Works shall continue unaffected by the arbitration proceedings. Any and all costs incurred by either party due to arbitration will be payable by the Seller.

27. Force Majeure

If either party shall be delayed in fulfilling its obligations by reason of circumstances beyond its control, it shall notify the other party of those circumstances along with supporting documentation reasonably required by the other party. The party so delayed shall for the duration of the circumstances giving rise to the delay be relieved of its obligations under this Order provided always that the party so delayed shall have within fourteen days of the circumstances arising, advised the other party of the possibility of delay and that all reasonable efforts have been made to minimise the effect of such circumstances.

However, nothing in this clause shall remove the Purchaser's right to cancel the order under the terms of clause 15 of these conditions.

SUPPLEMENTARY PURCHASE CONDITIONS 'A' – SITE WORK

AWTPTC002/2

These conditions are supplementary to the Purchaser's General conditions of Purchase for Contract Plant, Goods, Equipment and Services form Reference AWTPTC002/1 and are incorporated into the Order.

A1.

The General Conditions of Purchase for Contract Plant, Equipment and Services shall be modified as follows:

- (a) The term "Delivery" defined in clause 1 shall be deemed to include the activity(ies) defined in the Order as being the terminal point(s) for the Works.
- (b) The insurances required under clause 13, shall extend to cover the activities of the Seller's employees or agents whilst on site for any purpose including rectification of defects pursuant to clause 11. The Seller shall, unless otherwise directed in writing by the Purchaser, insure the Works as may for the time being be on site in the joint names of the Seller and the Purchaser against loss or destruction by fire, explosion, lightning, earthquake, malicious and accidental damage, theft, flood, storm, tempest, aircraft and other aerial devices or articles dropped or falling therefrom for the full replacement value thereof.
- (c) The following words are to be added to clause 13. "The Seller shall properly cover up and protect until taken over under clause A.2.(f) of these Supplementary Conditions any section or portion of the Works liable to injury by exposure to the weather and shall by any act of the Seller or by a failure of the Seller to comply with any obligation imposed on them by this clause shall be made good by and at the sole cost of the Seller."
- (d) Property in the Works shall also vest under clause 9 when any section or portion is delivered to the site.

A2.

The following clauses shall be additional to the clauses contained in the General Conditions of Purchase for Contract Plant, Goods, Equipment and Services and are incorporated into the Order.

- (a) The Seller shall at his own expense provide all equipment, materials, labour, supervision, haulage, power tools, tackle and apparatus necessary for the proper execution of the Works. The Seller shall however be permitted to use for the execution of the works those supplies of electricity, water and gas as are available to the Purchaser on the site subject to terms to be stipulated by the Purchaser.
- (b) The Seller shall be deemed to have examined the site, including but not limited to the Health and Safety requirements, this Order, these Purchase Conditions and specifications with such schedules, drawings and plans as are annexed thereto, or referred to therein and to have satisfied themselves before tendering as to the correctness and sufficiency of their tender to all matters, cost implications and things necessary for the timely and proper completion of the Works.

(c) The access to and occupation of the site shall not be exclusive to the Seller, but only such as shall enable the Seller to execute the works. The Seller shall afford to the Purchaser and to other contractors every reasonable facility for the execution of other work concurrent with the works and shall carry out the Works without undue interference with the operations of the Purchaser or of the other contractors.

(d) The Purchaser may direct the Seller to work outside normal hours such as prevail in the district where the site is located. The Seller is deemed to be aware of the programme requirements of the Purchaser and the Purchaser's client and shall be responsible for adhering strictly thereto. The Seller shall work such hours as necessary to adhere to both completion dates and required order of completion of the Works.

(e) The Seller shall be responsible for all constructional plant tools and tackle brought by them onto the site and for constructional plant tools and tackle loaned to them by the Purchaser. The Seller shall supply the Purchaser with a complete list of all constructional plant tools and tackle on arrival at site and all items on the list shall become vested in the Purchaser. In the event that the Purchaser shall assume their rights under clause 16 of the General Conditions of Purchase for Contract Plant, Goods, Equipment and Services title therein shall remain vested in the Purchaser until the Works are completed and the Seller shall not be entitled to remove items from the site until permitted to do so by the Purchaser.

(f) The Works shall be deemed to have been completed in accordance with the Order when the Purchaser shall have taken over the Works by issuing a certificate to the Seller indicating the Works are substantially complete. This certificate shall not however relieve the Seller of their responsibilities under clause 11 of the General Conditions of Purchase for Contract Plant Equipment and Services.

SUPPLEMENTARY PURCHASE CONDITIONS 'B' – EXPORT ORDERS AWTPTC002/3

These conditions are supplementary to the Purchaser's General Conditions of Contract Plant, Goods, Equipment and Services form Reference AWTPTC002/1 and are incorporated into the Order.

B1.

The General Conditions of Purchase for Contract Plant, Goods, Equipment and Services shall be modified as follows:

(a) The term "Delivery" defined in clause 1 shall be construed as being in accordance with the express terms of the Order and any standardised abbreviations ordinarily used in the context of shipment shall be construed in accordance with "Incoterms 2000".

(b) The insurance under clause 13 shall, where the context of the Order so requires extend to cover all risks from the time of despatch of shipment from the Seller's premises until 30 days after arrival at their ultimate overseas destination.

(c) Clause 20 shall in addition be construed as including all customs and import duties, along with wharfage percentage and port rates or dues, and any other charges incurred up to and including final delivery to site or point of destination. Where the context of the Order so requires offloading is not to be included.

B2.

The conditions are supplementary to the Purchaser's General Conditions for Contract Plant, Equipment and Services form reference OM80001/3 and are incorporated into the Order.

(a) Consignments shall be suitably packed and protected for overseas shipment and delivered in accordance with the terms of the Order. All packing must be to BS1133 Sect 8 1981 as a minimum and where applicable must, in addition, comply with the Purchaser's relevant packing instructions. The Purchaser reserves the right to inspect packing and free access must be granted to the Purchaser or their nominee for this purpose. Any packing which does not comply with BS 1133 Sect 8 1981 and the Purchaser's packing instructions must be rectified at the Seller's expense.

(b) Packages must be clearly marked by the Seller in accordance with the requirements of the Purchaser. The Purchaser may inspect all marking and any rectification they require will be carried out by the Seller, at the Seller's expense.

(c) Invoices must state the country of origin of the goods to which they relate, bear any clauses required for import into the country of destination and be duly certified.

(d) Any Customs fines or other charges including but not limited to demurrage on vehicles incurred due to incorrect information supplied by the Seller, or the Seller's failure to follow the Purchaser's instructions, will be for the Seller's account.

Advanced Water Treatment (UK) Ltd
Unit 3 Bartons Court
St Johns Business Estate
Downham Market
Norfolk. PE38 0QR

Phone: +44 (0) 1366 387003

Email: dave.norman@advancedwatertreatment.co.uk

www: advancedwatertreatment.co.uk