

## CONDITIONS OF SALE (XYLEM FLOW CONTROL LIMITED)

### 1. Interpretation

#### 1.1 In these Conditions:

"Business Days" means any day which is not a Saturday, Sunday or bank or public holiday in England;

"Buyer" means the person who accepts a quotation of the Seller for the sale of the Goods or whose order for the Goods is accepted by the Seller pursuant to these Conditions;

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

"Contract" means the contract for the purchase and sale of the Goods incorporating these Conditions;

"Goods" means the goods (including any instalment of the goods or any parts for them) which the Seller is to supply in accordance with these Conditions;

"Liability" means actions, awards, costs, claims, damages, losses (including without limitation any direct or indirect consequential losses), demands, expenses, loss of profits, loss of reputation, judgments, penalties and proceedings and any other losses and/or liabilities; and

"Seller" means Xylem Flow Control Limited (registered in England under number 02819224).

1.2 Any reference in these 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

1.3 The headings in these Conditions are for convenience only and shall not affect their interpretation

### 2. Basis of the sale

2.1 The Seller shall sell and the Buyer shall purchase the Goods in accordance with:

2.1.1 any written quotation of the Seller which is accepted by the Buyer (such acceptance to be inferred unless the Buyer has rejected the quotation within 5 days of receipt); or

2.1.2 any written order of the Buyer which is accepted by the Seller in accordance with clause 3.1; subject in either case to these Conditions, which shall govern the Contract to the exclusion of any other terms and conditions.

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

2.3 The Seller's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Seller in writing. In entering into the Contract the Buyer acknowledges that it does not rely on and waives any claim for breach of any such representations which are not so confirmed.

2.4 Any advice or recommendation given by the Seller or its employees or agents to the Buyer or its employees or agents as to the storage application or use of the Goods which is not confirmed in writing by the Seller is followed or acted upon entirely at the Buyer's own risk and accordingly the Seller shall not be liable for any such advice or recommendation which is not so confirmed.

2.5 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 Seller shall be subject to correction without any Liability on the part of the Seller.

2.6 The Seller has no Liability for any statements nor for representations contained in any sales literature, websites, quotations, price lists and/or any other documentation unless repeated in these Conditions.

2.7 The Seller may furnish upon request data and engineering services relating to the application or use of Goods. The Seller is not liable whatsoever for any losses incurred by the Buyer sustained either directly or indirectly by any person in or through the adoption or use of such data or engineering services in whole or in part.

### 3. Orders and specification

3.1 No order submitted by the Buyer shall be deemed to be accepted by the Seller unless and until confirmed in writing by the Seller's employees.

3.2 The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Buyer and for giving the Seller any necessary information relating to the Goods within a sufficient time to enable the Seller to perform the Contract in accordance with its terms.

3.3 The quantity quality and description of and any specification for the Goods shall be those set out in the Seller's quotation (if accepted by the Buyer) or the Buyer's order (if accepted by the Seller).

3.4 If the Goods are to be manufactured or any process is to be applied to the Goods by the Seller in accordance with a specification submitted by the Buyer the Buyer shall indemnify and keep indemnified the Seller against all Liabilities of the Seller in connection with or paid or agreed to be paid by the Seller in settlement of any claim for infringement of any intellectual property rights of any other person which results from the Seller's use of the Buyer's specification.

3.5 The Seller reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable statutory or EC requirements or any other improvements the Seller believes are necessary or where the Goods are to be supplied to the Seller's specification which do not materially affect their quality or performance.

3.6 No order which has been accepted by the Seller may be cancelled by the Buyer except with the agreement in writing of the Seller and on terms that the Buyer shall indemnify and keep indemnified the Seller in full against all Liabilities incurred by the Seller as a result of cancellation

### 4. Price of the Goods

4.1 The price of the Goods shall be the Seller's quoted price or where no price has been quoted (or a quoted price is no longer valid) the price listed in the Seller's published price list current at the date of delivery whether in respect of the whole order or part of an order. Where the Goods are supplied for export from the United Kingdom the Seller's published export price list shall apply. All prices quoted are valid for the period quoted only (and where this period is not stated, for 30 days from the date of quotation) or until earlier acceptance by the Buyer after which time they may be altered by the Seller without giving notice to the Buyer.

4.2 The Seller reserves the right, by giving notice to the Buyer at any time before delivery, to increase the price of the Goods to reflect any increase in the cost to the Seller which is due to any factor beyond the control of the Seller (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 Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions.

4.3 Except as otherwise stated under the terms of any quotation or in any price list of the Seller and unless otherwise agreed in writing between the Buyer and the Seller, all prices are given by the Seller on an Ex Works basis (Incoterms 2000).

4.4 The price is exclusive of any applicable value added tax which the Buyer shall be additionally liable to pay to the Seller.

### 5. Terms of payment

5.1 Subject to any special terms agreed in writing between the Buyer and the Seller the Seller shall be entitled to invoice the Buyer for the price of the Goods on or at any time after date of shipment of the

Goods unless the Goods are to be collected by the Buyer or the Buyer wrongfully fails to take delivery of the Goods in which event the Seller shall be entitled to invoice the Buyer for the price at any time after the Seller has notified the Buyer that the Goods are ready for collection.

5.2 Payment terms shall be 30 days from date of invoice or as advised by the Seller in its quotation or separately in writing and shall apply 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 Where the Buyer disputes part of an invoice, it must pay the undisputed part in accordance with clause 5.2 and advise the Seller within 5 Business Days of the dispute including the amount in dispute and full reasons for the dispute. All such disputes shall be referred to the dispute resolution procedure set out in clause 12 and all sums due from the Buyer to the Seller as a result of that dispute resolution process must be paid within 15 Business Days of resolution of that dispute.

5.4 All payments by the Buyer under this Contract shall be made without any deduction, counterclaim, set off and/or any other withholding of monies.

5.5 If the Buyer fails to make any payment on the due date then without prejudice to any other right or remedy available to the Seller the Seller shall be entitled to:

5.5.1 cancel the contract or suspend any further deliveries to the Buyer

5.5.2 appropriate any payment made by the Buyer to such of the Goods (or the goods supplied under any other contract between the Buyer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer) and

5.5.3 charge the Buyer interest (both before and after any judgment) on the amount unpaid at the rate of two per cent per annum above HSBC Bank 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).

### 6. Delivery

6.1 Delivery of the Goods shall be made by the Buyer collecting the Goods at the Seller's premises at any time after the Seller has notified the Buyer that the Goods are ready for collection or if some other place for delivery is agreed by the Seller by the Seller delivering the Goods to that place. If the Seller delivers the Goods, delivery shall, at the Seller's sole option be effected Ex Works (Incoterms 2000) or by such other means as is agreed between the parties in writing.

6.2 Any dates quoted for delivery of the Goods are approximate only and the Seller shall not be liable for any delay in delivery of the Goods howsoever caused. No times for delivery shall be of the essence. The Goods may be delivered by the Seller in advance of the quoted delivery date upon giving reasonable notice to the Buyer.

6.3 Any arrangement by the Seller for onward carriage of the Goods by any means (which shall be charged for and included as part of the overall price provided to the Buyer) shall be deemed to be effected by the Seller as agent for the Buyer.

6.4 Where the Goods are to be delivered in instalments each delivery shall constitute a separate contract and failure by the Seller 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 the Seller fails to deliver the Goods (or any instalment) for any reason other than any cause beyond the Seller's reasonable control or the Buyer's fault and the Seller is accordingly liable to the Buyer the Seller'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 the Seller adequate delivery instructions at the time stated for delivery (otherwise than by reason of the Seller's fault) then without prejudice to any other right or remedy available to the Seller the Seller 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 under the Contract or charge the Buyer for any shortfall below the price under the Contract.

6.7 The Seller shall not be liable for loss of or damage to Goods in transit unless the carriers and the Seller are notified in writing within 5 Business Days of delivery.

### 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 the Seller's premises at the time when the Seller 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 the Seller's premises at the time of delivery or if the Buyer wrongfully fails to take delivery of the Goods the time when the Seller has tendered delivery of the Goods.

7.2 Notwithstanding delivery and the passing of risk in the Goods or any other provision of those Conditions the property in the Goods shall not pass to the Buyer until the Seller 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 Seller 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 the Seller'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 the Seller's property. But the Buyer 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) the Seller shall be entitled at any time to require the Buyer to deliver up the Goods to the Seller 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.

7.5 The Buyer 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 Seller but if the Buyer does so all moneys owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.

### 8. Warranties and liability

8.1 Subject to the conditions set out below the Seller warrants to the Buyer that the Goods will comply with any specification provided by the Seller or where no such specification has been provided, the Seller warrants that the Goods will be free from defects in workmanship and materials under normal conditions of use and service for 12 months from date of shipment.

8.2 The above warranty is given by the Seller subject to the following conditions:

8.2.1 if any part of the Goods so manufactured is alleged to be defective, it must be returned carriage paid and protected against damage in transit, to the Seller within 12 months from the date of shipment and if after examination by the Seller the Goods or part of them are found to be so defective then the Seller will at its option, repair or replace them free of charge or refund to the Buyer the price of the Goods (or a proportionate part of the price) and will return them to the Buyer carriage paid if in Great Britain. Where

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any part of the Goods manufactured by the Seller is repaired or replaced under the terms of the foregoing warranty, such warranty shall thereafter be limited to a period of 6 months from the date when the Goods shall have been redelivered to the Buyer;

8.2.2 The Buyer must carefully examine the Goods immediately on delivery of them and any claim by the Buyer which is based on any defect, their failure to correspond with specification or any short delivery shall (whether or not delivery is refused by the Buyer) be notified to the Seller within 5 Business 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 the Seller accordingly the Buyer shall not be entitled to reject the Goods and the Seller shall have no Liability for such defect or failure and the Buyer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.

8.2.3 In no event shall the Buyer be entitled to reject the Goods on the basis of any defect or failure which is so slight that it would be unreasonable for the Buyer to reject them.

8.2.4 The Seller shall be under no Liability:

8.2.4.1 in respect of any defect in the Goods arising from any drawing design or specification supplied by the Buyer;

8.2.4.2 where the Buyer has failed to comply with guidance provided by the Seller;

8.2.4.3 in respect of any defect arising from fair wear and tear wilful damage negligence abnormal working conditions failure to follow the Seller's instructions (whether oral or in writing), misuse or alteration or repair of the Goods without the Seller's approval;

8.2.4.4 unless the total price for the Goods has been paid by the due date for payment;

8.2.4.5 for faults arising from the use of any spare or replacement parts not authorised or recommended by the Seller;

8.2.4.6 if the Goods have in the Seller's judgement been correctly installed and normally used in accordance with the instructions provided for its installation, operation and maintenance;

8.2.4.7 unless performance figures and performance tolerances have been stipulated by the Buyer and agreed by the Seller at the time of ordering equipment, the Seller shall be under no Liability in the absence of any defect in material or workmanship for failure to obtain any particular performance;

8.2.4.8 if the Goods have in the Seller's judgement been altered, taken apart, repaired, tampered with, neglected, damaged or used in any way so as to adversely affect their performance or condition, the Seller shall not be liable for any fault arising from their use;

8.2.4.9 save where a method of delivery other than Ex Works (Incoterms 2000) has been agreed in writing between the parties, for loss or damage howsoever occasioned to customers' Goods while such Goods are in transit to or from the Seller or in the position of or in transit to or from the Seller's agents; or

8.2.4.10 for any parts which need replacement due to normal wear and tear.

8.2.5 The above warranty does not extend to parts, materials or equipment not manufactured by the Seller 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 the Seller;

8.2.6 Any equipment or defective part replaced by the Seller shall become its property immediately upon such replacement; and

8.2.7 Carriage to the Seller's works of any Goods or parts returned to it under a warranty claim shall be the responsibility of and at the expense of the Buyer.

### 9. Limitation of Liability

9.1 The Seller shall have no Liability for defective Goods where the defect has been caused or contributed to by the Buyer.

9.2 The Seller shall have no Liability to the Buyer if the price for the Goods has not been paid in full by the due date for payment.

9.3 The Seller shall have no Liability for any defect in the Goods caused or contributed to as a result of the Goods being used for display or demonstration purposes or being handled by the Buyer's customers.

9.4 The Seller shall have no Liability for additional damage, loss, liability, claims, costs or expenses caused or contributed to by the Buyer's continued use of defective Goods after a defect has become apparent or suspected or should reasonably have become apparent to the Buyer.

9.5 The Buyer shall give the Seller a reasonable opportunity to remedy any matter for which the Seller is liable before the Buyer incurs any costs and/or expenses in remedying the matter itself. If the Buyer does not do so, the Seller shall have no Liability to the Buyer in relation to such matter.

9.6 The Buyer shall produce to the Seller written evidence of any claims for which it is alleged that it has Liability together with written details of how that Liability was caused by the Seller and the steps the Buyer has taken to mitigate the loss before the Seller shall have any Liability for the claim by the Buyer.

9.7 The Seller shall have no Liability to the Buyer to the extent that the Buyer is covered by any policy of insurance and the Buyer shall ensure that its insurers waive any and all rights of subrogation they may have against the Seller.

9.8 The Buyer shall have no Liability to the Seller for any:

9.8.1 expenses, loss of profits and/or damage to goodwill;

9.8.2 pure economic and/or other similar losses;

9.8.3 special damages;

9.8.4 aggravated, punitive and/or exemplary damages;

9.8.5 loss of communications;

9.8.6 business interruption, loss of business, loss of contracts, loss of opportunity and/or production; and/or

9.8.7 consequential losses and/or indirect losses.

9.9 The Buyer shall be under a duty to mitigate any loss, damage, costs or expenses that it may suffer (including by maintaining an adequate stock of Goods).

9.10 The Seller's total Liability to the Buyer in connection with this Contract shall not exceed the price paid by the Buyer to the Seller for the Goods.

9.11 Each of the limitations and/or exclusions in this Contract shall be deemed to be repeated and apply as a separate provision for each of:

9.11.1 Liability in contract (including fundamental breach);

9.11.2 Liability in tort (including negligence);

9.11.3 Liability for breach of statutory duty; and

9.11.4 Liability for breach of Common Law and/or under any other legal basis;

except that the clause above placing financial caps on the Seller's Liability shall apply once in respect of all of the said types of Liability.

9.12 Nothing in this Contract shall exclude or limit the Seller's Liability for death or personal injury due to its negligence or any Liability which is due to its fraud or any other liability which it is not permitted to exclude or limit as a matter of law.

9.13 All warranties, terms, conditions and duties implied by law relating to fitness, quality or adequacy are excluded to the fullest extent permitted by law.

9.14 The Seller 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 the Seller's obligations in relation to the Goods if the delay or failure was due to any cause beyond the Seller's reasonable control and in such event the Seller shall be at liberty to cancel or suspend the order for the Goods without incurring any liability for any losses or expenses resulting therefrom. Without prejudice to the generality of the foregoing the following shall be regarded as causes beyond the Seller's reasonable control:

9.14.1 Act of God explosion flood tempest fire or accident;

9.14.2 war or threat of war sabotage insurrection civil disturbance or requisition;

9.14.3 acts restrictions regulations bye-laws prohibitions or measures of any kind on the part of any governmental parliamentary or local authority;

9.14.4 import or export regulations or embargoes;

9.14.5 strikes lock-outs or other industrial actions or trade disputes (whether involving employees of the Seller or of a third party);

9.14.6 difficulties in obtaining raw materials labour fuel parts or machinery;

9.14.7 power failure or breakdown in machinery.

### 10. Termination on Default or Insolvency

10.1 The Seller may immediately terminate this Contract by written notice if the Buyer:

10.1.1 fails to make any payment when due;

10.1.2 breaches the terms of this Contract (and if remediable the breach has not been remedied within 14 days of receiving notice requiring it to be remedied);

10.1.3 persistently breaches any one or more terms of this Contract;

10.1.4 ceases or threatens to cease to carry on business; and/or

10.1.5 is declared or becomes insolvent or bankrupt, has a moratorium declared in respect of any of its indebtedness, enters into administration, receivership, administrative receivership or liquidation or threatens to do any of these things, takes or suffers any similar action in any jurisdiction or any step is taken (including, without limitation, the making of an application or the giving of any notice) by it or by any other person in respect of any of these circumstances.

10.2 If the Seller has the right to terminate this Contract:

10.2.1 the Seller may enter, without prior notice, any of the Buyer's premises (or premises of third parties with their consent) where Goods owned by the Seller may be and repossess and use or sell any Goods found which are owned by the Seller so as to discharge any sums due to the Seller under this Contract or any other agreement between the parties;

10.2.2 the Buyer is automatically no longer permitted to re-sell and/or part with the possession of any Goods owned by the Seller until it has paid in full all sums due to the Seller under this Contract or any other agreement between the parties;

10.2.3 the Seller may withhold delivery of any undelivered Goods and stop any Goods in transit;

10.2.4 the Seller may cancel, terminate and/or suspend without Liability to the Buyer any agreement between the parties; and/or

10.2.5 all monies owed by the Buyer to the Seller shall immediately become due and payable.

10.3 The Seller shall have a lien over all property or goods belonging to the Buyer which may be in the Seller's possession. Upon the termination of this Contract for any reason if any monies due to the Seller from the Buyer have not been paid within 10 Business Days of the due date the Seller may sell any property or goods over which it has a lien (and the Buyer agrees that the Seller may give good title for such property and/or goods) and shall apply the proceeds of sale firstly in discharging any costs or expenses of sale, secondly in repaying any interest owed by the Buyer to the Seller, thirdly in payment of any principal sums owed to the Seller and fourthly the Seller shall account to the Buyer for the remainder (if any).

### 11. Export terms

11.1 Where the Goods are supplied for export from the United Kingdom the provisions of this clause 11 shall (subject to any special terms agreed in writing between the Buyer and the Seller) apply notwithstanding any other provisions of these Conditions. In relation to Goods supplied for export, where there is any conflict or inconsistency between the provisions of this clause 11 and the provisions of clauses 6 (Delivery) and 7 (Risk and Property), the provisions of this clause 11 shall prevail.

11.2 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 thereon.

11.3 Payment of all amounts due to the Seller shall be made as stipulated by the Seller or where the Seller does not so stipulate, by irrevocable letter of credit opened by the Buyer in favour of the Seller and confirmed by a bank in England acceptable to the Seller or if the Seller has agreed in writing on or before acceptance of the Buyer's order to waive his requirement by acceptance by the Buyer and delivery to the Seller of a bill of exchange drawn on the Buyer payable 60 days after sight to the order of the Seller at such branch of HSBC Bank in England as may be specified in the bill of exchange.

### 12. Dispute Resolution

12.1 If a dispute arises between the parties in relation to the operation or interpretation of this Contract, the parties will attempt, in good faith, to reach settlement as soon as possible:

12.1.1 initially between each party's key contact (nominated for that purpose by each party and who shall be authorised to settle such a dispute);

12.1.2 if agreement has not been reached within fourteen days of either party referring it for resolution pursuant to clause 12.1.1 and appointing its own key contact, either party may give written notice to the other giving details of the dispute and request a meeting between a director of each party; and

12.1.3 if agreement has not been reached within fourteen days of the meeting held in accordance with clause 12.1.2 either party may give written notice to the other to request a meeting between the Chief Executive officer of each party to seek to settle the dispute.

12.2 The parties acknowledge and agree that the dispute resolution procedure set out in this clause 12 will be followed prior to commencing any legal proceedings except nothing in this clause 12 shall prevent either party from seeking interim injunctive relief from a court of law.

### 13. General

13.1 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.

13.2 The Buyer shall not assign, charge, sub-contract, delegate, transfer, place in trust or dispose of this Contract and/or any of its rights or obligations under it without the prior written consent of the Seller. The Seller may assign this Contract in whole or in part without the Buyer's consent.

13.3 The Seller shall be entitled to perform its obligations under this Contract through any member of its group.

13.4 No waiver by the Seller of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.

13.5 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.

13.6 The Contract shall be governed by the Laws of England and the Buyer agrees to submit to the non-exclusive jurisdiction of the English Courts in any dispute or difference of any kind which may arise concerning the Contract.