

**INTELLICT WATER LIMITED
Standard Terms & Conditions of Supply**

1. DEFINITIONS

- (1) In these terms:
 - 'Buyer' means the company, firm, body or person purchasing the Goods;
 - 'Company' means INTELLICT WATER LIMITED (company number 05451911);
 - 'Contract' means any contract for the supply of Goods;
 - 'Support Services' means the support and maintenance services set out in the Company's standard service level agreement as amended from time to time by written notice from the Buyer and which shall be provided by the Company where the Buyer has agreed to purchase and the Company has agreed to provide support and maintenance services in respect of the Goods;
 - 'Goods' means the products (and/or services including without limitation any Support Services) supplied or agreed to be supplied by or on behalf of the Company to the Buyer under any contract and shall include without limitation any software, spare or replacement parts or consumables supplied or agreed to be supplied by or on behalf of the Company with or as part of such products;
 - 'Software' means any software supplied or agreed to be supplied by or on behalf of the Company from time to time;
 - 'Sensors' means any sensors or other consumable items supplied or agreed to be supplied by or on behalf of the Company from time to time for use as part of or with any software;
 - 'Terms' means these written standard terms and conditions of sale.

2. CONTRACTUAL TERMS

- (1) All quotations, orders and Contracts are entered into by the Company for the supply of the Goods subject to these Terms to the exclusion of all other terms and conditions that conflict with them. All terms or conditions stipulated by the Buyer at any time are excluded unless expressly agreed otherwise in writing by the Company.
- (2) Delivery terms for export shipments shall have the meanings defined in INCOTERMS 2000 and the Uniform Laws on International Sales Act 1967 will not apply to any Contract.
- (3) Illustrations, descriptions and dimensions in the Company's catalogue, price list or other documents, are approximate only and are intended only to present a general idea of the goods to which they refer and shall not form part of the Contract nor shall they constitute express or implied representation and the Company shall not have any liability for them. The Company reserves the right at any time to change specifications and correct any clerical, typographical or other similar errors or omissions made by its employees at any time without liability.

3. QUOTATIONS AND ACCEPTANCE

- (1) Unless otherwise stated in writing any quotation issued by the Company will remain open for 28 days and shall then lapse. A quotation shall not constitute an offer to supply and no contract exists unless the Company has accepted an order placed by the Buyer in accordance with clause 3(2) below.
- (2) No order placed by the Buyer (whether or not based on a quotation issued by the Company) is accepted by the Company and no contract is formed unless and until the Company issues a written acceptance of the Buyer's order or (if earlier) the Company takes steps to fulfil the order at which point a binding contract for the supply of the Goods and services concerned shall be formed between the Buyer and the Company subject to these Terms.
- (3) The Buyer must declare to the Company the final destination of the Goods at time of order.

4. IMPORT AND EXPORT LICENCES

- (1) The Buyer must obtain at its sole expense and responsibility any import or (where the Company instructs the Buyer to do so) export licences and other documents and consents required for the lawful export of the Goods from the United Kingdom and their transportation to, importation, sale and use in the country of destination. The Buyer shall also comply with all applicable laws concerning the export and import of the Goods and shall be responsible for ensuring that the transportation, importation, sale and use in the country of destination complies with all applicable laws (including without limitation any laws of the USA or England & Wales that may restrict the supply of certain goods and services to particular territories or persons).
- (2) The Company shall be under no liability whatsoever for any failure by the Buyer to comply with clause 4(1) and the Buyer shall indemnify the Company against all losses, liabilities, costs, claims, demands, fines, penalties and expenses arising out of any such failure.

5. PRICE

- (1) Unless otherwise specified in writing by the Company, all prices are quoted and all orders are accepted on the basis of delivery EXW, United Kingdom.
- (2) The price for the Goods quoted by the Company is fixed for the quotation period described in clause 3(1) above. If the Goods are supplied by the Company without issuing a quotation or an order it is placed after expiry of any quotation, the price for such Goods shall be in accordance with the Company's current list prices for Goods applicable at the date of dispatch by the Company.
- (3) Prices do not include Value Added Tax (or any other tax or duty relating to the manufacture, transportation, sale or delivery of the Goods) or any costs or charges in relation to export and/or import, packaging, loading, unloading, carriage and insurance. Such taxes and duties will be paid by the Buyer at the rates applicable from time to time and such costs and charges will be paid by the Buyer in addition (if appropriate) at the Company's standard rates applicable from time to time on receipt of an appropriate invoice.
- (4) For the avoidance of doubt, the Support Services do not include attendance by any of the Company's personnel at the Buyer's sites to provide on-site support and maintenance unless the parties agree otherwise and any such on-site support and maintenance shall be paid by the Buyer in addition to the Price at the Company's standard rates applicable from time to time on receipt of an appropriate invoice.

6. PAYMENT

- (1) Unless expressly otherwise agreed in writing by the Company, the Buyer shall either:
 - (a) pay the full purchase price for the Goods comprised in the order on or before the date on which the order is accepted by the Company, or
 - (b) ensure that its order is accompanied by an Irrevocable Letter of Credit in favour of the Company, raised in the currency and on the terms agreed by the Company and confirmed by a UK bank nominated by the Company.
- (2) Where the Company agrees, in the Company's sole discretion to permit the Buyer to purchase Goods on credit then the Buyer shall ensure that it makes all payments in accordance with the credit terms agreed in writing by the Company. Unless otherwise specified in writing, payment is required to be made within 30 days of the invoice date. All amounts owing to the Company under the Contract shall become due and shall be paid by the Buyer immediately.
- (3) Where the order is fulfilled in separate instalments payment for each such instalment shall be made as if it constitutes a separate agreement.
- (4) If the Buyer fails to pay an invoice when due or otherwise breaches the Contract, then without prejudice to any other rights the Company reserves the right to:
 - (a) suspend any deliveries to the Buyer and cancel the Contract and any other agreement with the Buyer; and
 - (b) charge interest on any amount overdue at the rate of 3 per cent per annum above the base rate for the time being of the Minimum Lending Rate set by the Bank of England from time to time compounded daily from the date on which the amount became due until the date of payment and both after as well as before judgment and/or (in the Company's discretion) claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.
- (5) The Buyer will make all payments under the Contract without any deduction by way of set-off, counterclaim, discount, abatement or otherwise (except as and to the extent expressly otherwise required to be permitted by law). All amounts payable to the Company under any Contract will become immediately due on termination of the Contract.

7. DELIVERY

- (1) Time of delivery shall not be of the essence of the Contract. Any date of delivery specified is an estimate only. Whilst the Company will use reasonable commercial endeavours to deliver the Goods by the date specified (if any) it shall not be liable in any way for delay in delivery however caused, (including without limitation negligence) nor shall such a delay render the Company liable for any loss (including but not limited to any loss of profit), costs, damages, charges or expenses caused directly or indirectly by any delay. However, the Buyer shall be entitled (as its sole remedy) to terminate a Contract in respect of specific Goods if the Company has failed to deliver the Goods within 20 after any date for delivery agreed by the parties, the Buyer has served written notice requiring the Goods to be delivered within a further 30 days and the Company has failed to deliver the Goods within that period (in such case other than as a result of the Buyer's default and excluding any delays to which clause 13 applies).
- (2) The Company shall be entitled to deliver in instalments and the Buyer must accept delivery upon the delivery date specified. If the Buyer fails to do so, the invoice will nevertheless become payable. In addition, the Company reserves the right to make a reasonable charge for storage and other expenses incurred as a consequence of the Buyer's non-acceptance, and shall not be required to deliver the Goods until such charge has been paid in full by the Buyer.

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9. TITLE AND RISK

- (1) Title and ownership (both legal and equitable) of all physical Goods will remain with the Company (regardless of delivery or passing of risk) until the Company has received in cleared funds payment in full:
 - (a) for the Goods supplied under the Contract; and
 - (b) for all other sums which are or which become due to the Company from the Buyer or any account (including under any other contract).
- (2) Until ownership passes to the Buyer, the Buyer shall:
 - (a) hold the Goods on a fiduciary basis as the Company's bailee;
 - (b) keep the Goods free from any charge, lien or other encumbrance;
 - (c) store the Goods (at no cost to the Company) separately from all other goods or materials of the Buyer or any third party in such a way that they remain readily identifiable as the Company's property and easily accessible to the Company;
 - (d) not destroy, deface or obscure any identifying mark on the Goods or their packaging;
 - (e) maintain the Goods in a satisfactory condition;
 - (f) not incorporate, attach or annex the Goods to any real property without the Company's prior written consent;
 - (g) allow the Company access at any reasonable time to enable the Company to verify that the Buyer has complied with its obligations under this clause.
- (3) Until ownership passes to the Buyer the Company reserves the right to dispose of the Goods and the Company may enter upon the Buyer's premises at all reasonable times to recover the Goods for this purpose. Without prejudice to the foregoing, the Buyer shall be at liberty to sell, use or dispose of the Goods or such other goods to bona fide third parties in the normal course of its business and it shall be a sale, use or disposition of the Company's property on the Buyer's own behalf and the Buyer will deal as principal when making such sale, use or disposition. The Goods will be deemed sold or used in the order delivered to the Buyer. The Company will be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Company.
- (4) For the avoidance of doubt title to and ownership of all Software and all intellectual property rights in the Goods shall remain with the Buyer (or the Buyer's third party licensors) at all times and shall be licensed to the Buyer upon the terms set out in clauses 11 and 12.
- (5) Risk in the Goods will pass to the Buyer on delivery to the Buyer or the Buyer's carrier.

10. TERMINATION

- (1) Without prejudice to its other rights, the Company shall have the right forthwith to terminate the Contract by notice in writing to the Buyer and recover any resituable losses or expenses (if the Buyer: (a) fails to make any payment when it becomes due or breaches any other obligation under the Contract or any other agreement with the Company and/or the case of a remedial breach) fails to remedy the breach within a reasonable time specified by the Company in its written notice to do so; or (b) commits any act of bankruptcy or compounds with its creditors for a petition or receiving order in bankruptcy is presented or made against the Buyer or (if the Buyer is a company) a resolution or petition to wind up the Buyer is passed or presented (otherwise than for the purpose of reconstruction or amalgamation while solvent) or a receiver or administrative receiver, administrator, manager or liquidator is appointed of any of the Buyer's assets or undertaking or if the Buyer becomes unable to pay its debts or other circumstances arise which entitle the Court or a creditor to appoint a receiver, administrative receiver, administrator, manager or liquidator or to make a winding up order or any thing equivalent or similar to the foregoing occurs under the Buyer's local jurisdiction.

11. SOFTWARE

- (1) Where any Software is supplied by the Company, the Company shall grant (or procure the grant of) the Buyer a non-exclusive, non-transferable licence to use the Software in the territory specified by the Company solely for the purpose of using the specific items of Goods with which such Software is supplied (for the purposes for which those Goods have been supplied by the Company and in accordance with any user documentation supplied by the Company for use with the Software and not for any other purpose). Where the Software contains any software or intellectual property rights in which are owned by a third party ("third party software"), the Buyer shall comply with and agrees to be bound by the third party licensor's standard terms and conditions applicable to such software in addition to the licence terms set out in this clause 11. The Company shall provide the Buyer with access to a copy of such terms and conditions where requested by the Buyer.
- (2) The licence to use the Software is personal to the Buyer and the Buyer is not entitled to and shall not sub-license, rent, lend, assign or transfer in any other way the licence to use the software or any of its rights or obligations in respect of it whether in whole or in part without the express prior written consent of the Company.
- (3) The Buyer shall not (and shall not permit any third party to) alter, copy, modify, adapt, translate, reverse engineer, decompile, disassemble or in any manner decompile or seek to obtain the source code to the Software in whole or in part except as and to the extent expressly required to be permitted by law. For the avoidance of doubt, the Buyer acknowledges that the Software supplied by the Company may include certain applications or features which the Buyer has not been authorised to use and have been de-activated by the Company. The Buyer agrees that it will not take any steps to activate or use any of such features or applications without the Company's consent and that such applications or features be treated for the purposes of these Terms as not forming part of the Software.
- (4) The licence granted by the Company to the Buyer to use the Software is perpetual save that if the Contract is terminated under clause 10 any licence to use the Software granted by the Company under these Terms shall automatically terminate.
- (5) For the avoidance of doubt the licence granted in this clause 11 relates to the Software in object code only and the Buyer shall not have any rights in respect of the source code to the Software.

12. INTELLECTUAL PROPERTY AND INFRINGEMENT OF RIGHTS

- (1) The Buyer shall indemnify the Company against all losses, liabilities, costs, claims and expenses arising out of or in connection with any work done in accordance with the Buyer's specifications or instructions which involve infringement or alleged infringement of any patent, trade mark, registered or unregistered design, copyrights (including without limitation rights in software), database rights or any other form of intellectual property or alleged misuse or disclosure of confidential information (together referred to as "IPR").
- (2) If the Buyer uses or sells the Goods or makes any modification to the Goods not authorised by the Company in such a way as to infringe any IPR the Company shall not be responsible for such infringement and the Buyer agrees to indemnify the Company from and against all losses, liabilities, costs, claims and expenses arising from this. All IPR in and relating to the Goods, their manufacture, development or creation and ownership of all drawings and all IPR in them are and shall remain, vested in the Company at all times and the Buyer will, at the request of the Company, do any act and execute and any documents necessary to confirm such rights in or transfer such rights to the Company. The Buyer shall not reproduce the design of the Goods or any part, model, design or drawing supplied to the Buyer or any trade marks or other trade names or marks used by the Company without the Company's prior written permission and all drawings supplied to the Buyer shall be returned to the Company forthwith upon receipt of the Company's request. The Buyer is not entitled to and shall not modify, reverse engineer or disassemble the Goods (or permit any third party to do so) without the prior written consent of a director of the Company except where and to the extent that this is required to be permitted by law.

13. FORCE MAJEURE

- Neither party shall be liable or be deemed to be in breach of their obligations (other than payment of money) to the extent that any delay or failure is caused by anything beyond the party's reasonable control. If such delay or failure continues for at least 90 days, either party will be entitled to terminate the Contract by notice in writing.

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14. COMPANY'S LIABILITY

(1) THE BUYER'S ATTENTION IS IN PARTICULAR DRAWN TO THIS CLAUSE 14.

The prices charged for the Goods are based strictly on the understanding or acceptance by the Buyer of the provisions in the Contract for the limitation of the Company's liability. Should the Buyer wish for the Company to accept additional liability then the Company may be willing to offer this, subject to an agreed increase in prices to take account of the additional risk undertaken, but no such additional liability will be undertaken except as and to the extent that it is expressly agreed in writing between the parties and such written agreement refers to this clause 14.

(2) The Buyer accepts responsibility for the selection of the Goods to achieve the Buyer's intended purpose. Prior to use of the Goods by the Buyer for any reason other than testing the suitability of the Goods for the Buyer's intended purpose, the Buyer shall carry out such acceptance tests and undertake all necessary configuration and calibration of the Goods in order to satisfy itself that the Goods meet its requirements. All such acceptance testing, calibration and configuration shall be carried out by appropriately skilled and qualified personnel of the Buyer and the Goods shall not be liable for any failure of the Goods or personal injury caused by the Buyer's negligence or for breach of the conditions (if any) implied by s12 of the Sale of Goods Act 1979 or s2 of the Supply of Goods and Services Act 1982 or for any liability that it is not lawful to exclude.

(3) Nothing in these conditions excludes or limits the Company's liability for fraudulent misrepresentation or for death or personal injury caused by the Company's negligence or for breach of the conditions (if any) implied by s12 of the Sale of Goods Act 1979 or s2 of the Supply of Goods and Services Act 1982 or for any liability that it is not lawful to exclude.

(4) The Company shall not be liable to the Buyer in contract, tort (including but not limited to negligence), misrepresentation or otherwise howsoever for any:

- (a) direct or indirect loss of use, profit, anticipated profit, revenue, business, contracts, overhead recovery, machinery costs, revenue or anticipated savings; or
- (b) damage to the Buyer's reputation or goodwill; or
- (c) business interruption costs; or
- (d) special, indirect or consequential loss or damage arising out of or in connection with the Contract regardless of whether or not the Company has been advised of the possibility of such loss or damage occurring.

(5) The Buyer acknowledges that the potential losses that it may suffer as a result of inaccurate results and data resulting from the use of the Goods or the failure of the Goods to obtain results and/or data are significantly greater than any price payable to the Company for the supply of such Goods. The Buyer accepts that it is in a better position than the Company to insure against such losses and accepts the entire risk as to the quality and accuracy of any results or data resulting from use of the Goods and the Company shall not be liable for any loss or damages arising from the use of inaccurate results or data or any failure to obtain results and/or data arising out of or in connection with the Goods even if the Company has been advised of the possibility of such damages.

(6) Subject to clause 14(3) the aggregate liability of the Company to the Buyer for loss of or damage to physical property caused by negligence shall not exceed £500,000 for any one event or series of connected events and in aggregate in any one insurance year except that liability for loss of or damage to the Goods themselves shall be subject to the liability limits set out in clause 14(7) below.

(7) Subject to clauses 14(3) and 14(6) the Company's aggregate liability arising out of or in connection with the Contract, whether in contract, tort (including without limitation negligence), misrepresentation or otherwise howsoever will not exceed 150% of the total price paid or due to be paid by the Buyer under the Contract (or where the liability relates to particular Goods the total price paid or due to be paid by the Buyer for the Goods concerned) and the Company's aggregate liability arising out of or in connection with any Support Services provided or to be provided by the Company in any 12 month period shall not exceed 150% of the total price paid or due to be paid by the Buyer to the Company in respect of such Support Services in that period.

(8) Where the Company is not the manufacturer of the Goods then notwithstanding the rest of this clause 14, the total liability of the Company arising out of or in connection with any Goods manufactured by any third party shall not in any event exceed the amount recovered by the Company from the third party supplier concerned in respect of the matter concerned. The Company shall use reasonable efforts to ensure that it does not exceed its rights against any such supplier.

(9) The Buyer agrees that it will have no remedy in respect of any untrue statement innocently or negligently made by or on behalf of the Company prior to the Contract upon which the Customer relied in entering into the Contract, whether such statement was made orally or in writing.

(10) The Buyer will indemnify the Company and its employees from all losses, liabilities, costs, claims and expenses arising out of third party claims resulting from the Company complying with the instructions of the Buyer or its authorised representatives.

(11) References in this clause 14 to the Company include a reference to the Company's officers, employees, agents and sub-contractors taken together as a whole and each of them shall have the benefit of the limits on and exclusions from liability set out in this clause 14. For the avoidance of doubt the liability limits in this clause 14 are the aggregate liability for these people taken as a whole and not per person.

15. WARRANTY & SUPPORT SERVICES

(1) Subject to clauses 15(4) and 15(5), the Company warrants that for a period of 12 months from the date of delivery the Goods will comply with the Company's written specification for them in all material respects and that where the Goods are provided with a calibration certificate that on delivery the Goods shall be calibrated in accordance with such calibration certificate. However, the Company cannot warrant that the Goods are of satisfactory quality or fit for any particular purpose as it is the Buyer's responsibility to determine the use to which the Goods are to be put, the tests to be carried out before they are used, to ensure that they are properly calibrated prior to their use and that they are regularly tested and maintained throughout their use. The Company shall at its option, either repair or replace during normal working hours the Goods (or any relevant part(s) of them) which fail during the warranty period described above to comply with this warranty provided that the Buyer notifies the Company of this in writing before the expiry of the warranty period. Such replacement goods (or parts) shall be treated as part of the Goods and shall be warranted for the remainder of the unexpired warranty period. Subject to clause 14(3), the Company shall not have any liability in contract, tort (including without limitation negligence), misrepresentation or otherwise for defects in the Goods that are not notified to the Company within the warranty period described in this clause 15(1). The warranty service will be performed at the Company's site in the UK or such other site as the Company may reasonably specify and the Buyer shall promptly deliver the Goods that it claims breach the warranty to the Company at the address specified by the Company from time to time. The Company will deliver the repaired or replacement items to an address agreed in writing between the parties or in the event that no such agreement is made to the address of the Buyer's place of business as specified in the Buyer's order. Where any Goods are sent to the Company for repair or replacement under the warranty, the Buyer will pay for the costs of delivery and return of any such Goods from and to the Company's site described above regardless of whether or not the Goods concerned are defective.

(2) The Buyer shall ensure that the installation, operation and use of the Goods is carried out in accordance with all reasonable instructions of the Company from time to time.

(3) The Buyer acknowledges that the warranty does not apply to (and the Company shall not be liable for) any defects caused by:

- (a) alterations, modifications, repairs or any other work done on or in relation to the Goods by anyone other than the Company or as approved by the Company; or
- (b) use of the Goods in conjunction with any third party products or anything external to the Goods;
- (c) failure to comply with clause 15(3) or accident, misuse, willful damage, or abnormal working conditions;
- (d) materials, designs or instructions provided by or on behalf of the Buyer; or
- (e) anything external to the Goods and any matter beyond the reasonable control of the Company.

(5) The Buyer accepts that the Company does not give any warranty in respect of the Sensors other than that they comply with the Company's written specification for them in all material respects as at the date on which they are delivered. The Buyer shall regularly monitor the performance of the Sensors and shall replace them promptly in accordance with the guidelines specified by the Company from time to time. The Buyer shall regularly replace the Sensors more frequently where the conditions in which they operate are likely to result in the need for more frequent replacement and immediately where the results obtained by it indicate that the Sensors may have failed. Where the Buyer replaces Sensors it shall do so in accordance with the Company's standard policies and procedures applicable from time to time and shall ensure that Sensors shall only be replaced by appropriately trained personnel of the Buyer.

(6) All warranties, conditions, representations or other terms that would otherwise be implied into the Contract by law, course of dealing or otherwise howsoever (other than the terms, if any, implied by s12 of the Sale of Goods Act 1979 and s2 of the Supply of Goods and Services Act 1982) are expressly excluded from the Contract to the fullest extent permitted by law.

(7) Where the Buyer purchases Support Services from the Company, the Company will provide the Buyer with the Support Services for the period specified in the Company's standard service level agreement upon the terms and conditions set out in that service level agreement as they may be amended from time to time by written notice from the Company to the Buyer. Such terms and conditions shall apply to such Support Services in addition to these Terms (and such service level agreement shall form part of the Contract) except that if there is any conflict between their terms and these Terms, then these Terms shall apply. The Support Services shall be provided with reasonable care and skill but the Company does not make any other warranty, representation, condition or guarantee in connection with them.

16. MISCELLANEOUS

- (1) Any notice required to be given by either party hereunder shall be made in writing and despatched to the other party by first class registered air mail or recorded delivery at the respective addresses of the parties as set out in the order, acceptance of the order or by fax to any fax numbers for the parties as stated in these documents. Any notice sent by post shall be deemed (in the absence of evidence of delivery receipt) to have been received on the fifth day after the day of posting. Any notice sent by fax shall be deemed to have been delivered when the formal answerback code is received by the sender.
- (2) The Buyer shall not assign or delegate or otherwise deal its rights or obligations under the Contract without the Company's prior written consent. The Company shall have the right to assign its rights to an associated company or other person upon notification to the Buyer and shall be entitled to freely subcontract its obligations under the Contract.
- (3) The failure of either party to exercise or enforce any right conferred under the Contract shall not be deemed to be a waiver of any such right nor operate so as to bar the exercise or enforcement thereof or of any other right on any later occasion. Any provisions of these Terms (or any part of them) which contravene any applicable law or regulation shall be deemed severable and shall not affect any other provisions (or other parts of the provision) concerned.
- (4) Except for the benefit of clause 14 which shall be enforceable by the persons described in clause 14(11) a person who is not a party to the Contract will have no right under the Contract (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- (6) Any Contract or which these Terms form part shall be governed and construed and interpreted in accordance with English Law and the Buyer and the Company agree to submit to the non-exclusive jurisdiction of the English Courts.