

TERMS AND CONDITIONS OF PURCHASE

MVV Environment Ltd., MVV Environment Devonport Ltd., MVV Environment Ridham Limited and MVV O&M GmbH Branch UK ("MVV")

1. General

- 1.1 Acceptance of the purchase order ("The Order") shall bind the party to which the Order is addressed ("The Supplier") to these terms and conditions ("Terms and Conditions").
- 1.2 No variation or alternation of the Terms and Conditions shall be effective unless expressly accepted in writing by MVV ("The Buyer").
- 1.3 The Terms and Conditions shall apply to all Orders and any contract for the purchase of goods ("The Contract") which refers to these Terms and Conditions and shall prevail over the Supplier's terms and conditions, even though such conditions may be printed on the Supplier's acceptance of Order and/ or advice note or equivalent document.

2. Order changes

Any contract and any agreement relating to the Order or Contract are only effective upon written confirmation and signed by both parties.

3. Price and Payment

- 3.1 Subject to the terms of the Order or Contract, all prices shall be considered to be inclusive of amongst other things packaging, freight and insurance costs, delivery charges, impost, levies and custom dues and the Buyer will not be liable to make any payment for, or in respect of, the goods furnished according to the Order ("the Goods") or otherwise in excess of such prices. All prices shall be deemed to be exclusive of VAT which shall be invoiced by the Supplier at the rate current at the date of the relevant Tax Point.
- 3.2 The Buyer shall be entitled to any discount for prompt payment, bulk purchase or volume of purchase customarily granted by the Supplier, whether or not shown on its terms of sale.
- 3.3 Payment for the Goods shall be made by the Buyer to the Supplier 30 days from the date of invoice. The Supplier shall not withhold any discount for prompt payment by reason of any delay in payment arising out of any failure on the part of the Supplier to:
 - send on the day of despatch of each consignment of the Goods such advice of despatch and invoices as may be required by the Order or Contract.
 - mark clearly the Buyer's order number on the consignment package, packing notes, advice notes, invoices, monthly statements and all other correspondence relating thereto.
 - show Value Added Tax separately on all invoices and credit notes.
 - send the Buyer an account within one week of the end of each month in which any goods have been delivered showing details of all Goods delivered during such month and of the payment owing for the same.
- 3.4 All payments shall be made without prejudice to the Buyers' rights should the Goods prove not to be in accordance with the Contract. Neither price changes nor extra charges will be accepted by the Buyer.

4. Set-Off

- 4.1. The Supplier shall be entitled to set off any amount due to the Buyer by it only against such amount due to the Supplier by the Buyer that is undisputed or awarded by court decision to the Supplier.
- 4.2 The Buyer shall be entitled to set off any amount due to the Supplier by it against any amount due to the Buyer by the Supplier.

5. Risk and Property

The property in the Goods shall alienate to the Buyer on payment of their purchase price or their delivery to the Buyer, whichever shall occur firstly. However, the Goods shall remain at the Supplier's risk and insurance of the Goods shall be for the Supplier's account until delivery of the Goods to the Buyer has been completed.

6. Delivery and Claims

- 6.1 The Supplier shall at its own risk and expense in all respects deliver the Goods at the place or places in the manner and by the delivery date specified in the Order or Contract and in this respect time shall be of the essence of the Order or Contract. If deliveries are made to an incorrect place, the Supplier will be held responsible for additional expenses incurred in delivering them to the correct place.
- 6.2 The Goods shall be delivered properly packaged and secured. Packages and containers will be nonreturnable and no charge therefor shall be made unless otherwise agreed. In the case of loss of or damage to the goods while in the course of delivery, the Buyer shall give notice to the Supplier forthwith and the Supplier shall thereupon at its own expense promptly replace or repair such lost or damaged goods.
- 6.3 The Supplier will carry out such inspection and testing as is necessary to ensure coincidence with the Order or Contract without undue delay. The Buyer will rely on such inspection and testing. Nothing in this Clause shall be construed as affection or varying the obligation of the Supplier to deliver the Goods in accordance with the Order or Contract.
- 6.4 In the event of any strike, lock-out, fire, explosion or accident or other matter or occurrence which for any reason prevents or hinders the delivery of such Goods and/or payment therefor, delivery and/or payment may be suspended or postponed at the Buyer's option until the circumstances preventing or hindering delivery and/or payment have ceased

7. Warranties and Liability

- 7.1 The Goods shall be in line in all respects as to quality, quantity and description with the particulars stated in the Order or Contract and/or as amended from time to time in writing between the Buyer and the Supplier and signed by both parties. Unless otherwise agreed, the Goods must also conform with all applicable British, EC or other international standards applicable to the Goods.
- 7.2 The Goods supplied shall be fit for any such purpose as shall be made known by the Buyer to the Supplier and regarding to the Buyer relies on the Supplier's skill and judgement.

Without prejudice to any implied terms of the Order or Contract (whether implied by law or otherwise) the Supplier warrants that the Goods are of good quality and are free from defects in design, materials and workmanship, comply with all applicable standards, which including but not by way of limitation, any standards listed in the Order, and that any instructions or advice provided as to the use of the Goods are in accordance with the best practice.

- 7.3 The Supplier warrants that in the design, manufacture, supply and installation of the Goods and the provision of information relating thereto will comply and will facilitate the Buyers's compliance with the duties imposed by any applicable environmental and health and safety laws and with all other relevant statutory provision rules and regulations so far as they are applicable to the Goods and that the Goods will be supplied with all safety guards devices and markings sufficient to comply with all applicable legal requirements.
- 7.4 The Supplier shall defend, indemnify and hold the Buyer harmless against all claims of whatever nature including, but not by way of limitation, claims which result in the award of damages including but not limited to punitive damages caused by or arising out of any failure to comply with the terms of the above warranty (7.3). The Supplier will provide all facilities assistance and advice required by the Buyer or the Buyer's insurers for the purpose of contesting or dealing with any action claim or matter arising out of the Order or Contract or the Supplier's performance of the Order or Contract.
- 7.5 The Supplier shall indemnify the Buyer in full from and against all claims, preceding and demands made or brought against the Buyer and all costs, charges, liabilities, losses or expenses suffered by the Buyer, whether in contract, tort or otherwise, arising out of any infringement or alleged infringement, of any patent registered design, design right, trade mark, service mark (whether registered or not), copyright or other protected right in respect of the ownership, possession, use or disposal of the Goods, or any part or component thereof, by the Buyer.

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If any claim, proceeding or demand is made or brought or threatened against the Buyer in relation to which this indemnity operates the Supplier shall be notified thereof and, if so required by the Buyer, the Supplier shall take over the conduct of any litigation or settlement negotiations resulting there from and shall supply such information as to the state of such litigation or negotiations as the Buyer may require from time to time but no settlement of any claim or proceedings shall be concluded by the Supplier without full disclosure of the terms thereof to, and the consent to such terms by, the Buyer.

The conduct by the Supplier of any such litigation shall be conditional upon the Supplier having first given to the Buyer such indemnity as shall from time to time be required by the Buyer to cover the amount ascertained or agreed or estimated as the case may be, of any compensation, damages, expenses and costs for which the Buyer may become liable. The Buyer shall, at the request of the Supplier, afford all available assistance for any such purpose and shall be repaid any expenses incurred in doing so.

7.6 The Supplier warrants that the Goods comply consistently with the Order or Contract and the stipulations of Clauses 7.1 to 7.3 (inclusive) hereof and that they are free of any defect in design, material or workmanship. If within twenty four (24) months after delivery or such other period as may be agreed any defect in the Goods shall be discovered or shall arise under proper use whereof the Buyer shall have given notice in writing to the Supplier, the Supplier shall repair or replace the Goods as to remedy the defect without cost to the Buyer as soon as possible. In default thereof the Buyer shall have the right to procure the same to be repaired or replaced and the Supplier shall pay to the Buyer as liquidation damages such sums as may reasonably be incurred by the buyer hereby. Upon discovering such defect as aforesaid the Buyer shall return the defective Goods or parts thereof to the Supplier at the Supplier's risk and expense unless otherwise agreed in writing between the parties. The foregoing provisions of this Clause shall not prejudice any further or other rights of the Buyer arising from or in consequence of any defects in the Goods.

7.7 The Supplier agrees to assign to the Buyer upon request the benefit of any warranty guarantee or like rights which it has against any third party manufacturer or the supplier of the Goods or any parts thereof.

8. Bankruptcy

If the Supplier shall commit any act of bankruptcy or if any petition or receiving order in bankruptcy shall be presented or made against the Supplier or if the Supplier makes or offers any scheme of arrangement or if (where the Supplier is a company) notice of any resolution to wind up the Supplier shall be given or any petition to wind up the Supplier shall be presented or if the receiver or administrator of the Supplier's undertaking property or assets or any part thereof shall be appointed, then in any event the Buyer shall be entitled but not bound to terminate the Order or Contract by notice in writing but without prejudice to any right of action which shall at the date of such notice have accrued to the Buyer.

9. Confidentiality Agreement

9.1 The Supplier shall treat all information and knowledge he has acquired in connection with the Order or Contract and its execution strictly confidential.

9.2 Clause 9.1 shall not apply to data and other information that have to be disclosed by law or administrative order.

10. Remedies

10.1 Without prejudice to any other right or remedy which the Buyer may have, if any Goods are not supplied in accordance with, or the Supplier fails to comply with, any of the terms of the Order or Contract the Buyer shall be entitled to avail itself of any one or more of the following remedies at its discretion, whether or not any part of the Goods have been accepted by the Buyer:

- to rescind the Order or Contract;
- to reject the Goods (in whole or in part) and return them to the Supplier at the risk and cost of the Supplier namely a full refund for the Goods so returned shall be paid forthwith by the Supplier;

- at the Buyer's choice to give the Supplier the opportunity at the Supplier's expense either to remedy any defect in the Goods or to supply replacement Goods and carry out any other necessary work to ensure that the terms of the Contract are fulfilled;
- to withhold to accept any further deliveries of the Goods but without any liability to the Supplier;
- to carry out at the Supplier's expense any work necessary to make the Goods comply with the Contract;
- to claim such damages as may have been sustained in consequence of the Supplier's breach or breaches of Contract.

10.2 Failure or delay by the Buyer in enforcing or partially enforcing any provision of the Order or Contract will not be construed as a waiver of any of its rights under the Order or Contract.

10.3 Any waiver by the Buyer of any breach of, or any default under, any provision of the Order or Contract by the Supplier will not be considered in waiver of any subsequent breach or default and will in no way affect the other terms of the Order or Contract.

11. Assignment

11.1 The Supplier shall not be entitled to assign or transfer or purport the Order or Contract or any part of it without the prior written consent of the Buyer.

11.2 The Buyer may assign or transfer or purport its rights under any Order or Contract or any part of it to any person, firm or company.

12. Miscellaneous

12.1 If any term of the Offer or Contract or of these Terms and Conditions is found by any court, tribunal or administrative body of competent jurisdiction to be entirely or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall, to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness, be obtained severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.

12.2 In these conditions any reference to any statute or statutory provision shall, unless the context otherwise requires, be construed as a reference to that statute or provision as from time to time amended, consolidated, modified, extended, re-enacted or replaced.

12.3 Both the Buyer and their customer or representative reserve the right at all times to visit the Supplier and/or their sub-contractors premises by prior agreement. Each right and remedy of the Buyer under the Order or Contract is without prejudice to any other right or remedy of the Buyer whether under the Order or Contract or not.

12.4 A notice required or permitted under these Terms and Conditions shall be addressed in writing (including facsimile transmission but not electronic mail unless expressly agreed between the Buyer and the Supplier) at its registered office or principal place of business or such other address as may have been notified to the party giving the notice.

12.5 No term of any Order or Contract shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to it.

12.6 The Order or Contract and any contractual or non-contractual obligation arising from or connected with it shall be governed by and construed in all respects in accordance with the laws of England and Wales. The parties agree to submit to the exclusive jurisdiction of the English Courts provided that the Buyer may at its discretion take proceedings in the courts of the state in which the Supplier is domiciled.