



TERMS AND CONDITIONS OF SALE

1 Interpretation and Definitions

1.1 Definitions:

'KEE' means KEE Process Limited or any of its subsidiaries.

'Client Proposal/Quotation' means the document listing Equipment, both Customer and Location address, Contract type and costs.

'Contract' comprises these conditions of sale together with the Client Proposal/Quotation and Order Confirmation referred to therein, if applicable.

'Contract Date' means the date stated on the Client Proposal/Quotation as the start date.

'Customer' means the purchaser of the Product and/or the Services from KEE under the Contract.

'Product' means any product supplied by KEE under the Contract or direct to the Customer.

'Equipment' means the equipment described in the Client Proposal/Quotation

'Location' means the location of the Equipment shown in the Client Proposal/Quotation

'Normal Working Hours' means the hours between 9am and 5pm (inclusive) on any working day.

'Order Confirmation' means the document listing parts ordered, Customer and Location address with prices and the Customer's order number.

'Working Day' means any day other than Saturday or Sunday or a Bank or Public Holiday.

1.2 Interpretation:

- (a) A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- (b) A reference to a party includes its successors or permitted assigns.
- (c) A reference to legislation or legislative provision is a reference to it as amended or re-enacted. A reference to legislation or a legislative provision includes all subordinate legislation made under that legislation or legislative provision.
- (d) Any words following the terms **including, include, in particular, for example** or any similar expressions shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms.
- (e) A reference to **writing** or **written** includes fax and email.

2 Representations

2.1 Unless otherwise specially agreed by a Director of KEE in writing or by e-mail, any supply of the Services and/or the Product by KEE will be subject to the Contract to the exclusion of:

- 2.1.1 Any terms or conditions stipulated by the Customer;
- 2.1.2 Any terms implied by law, trade, custom or course of dealing; and
- 2.1.3 Any previous communications, representations or warranties not expressly incorporated herein.

2.2 Subjection to condition 2(1) no statements or warranties by any person representing or purporting to represent KEE shall vary, enlarge or override any of these Conditions of Sale.

2.3 All specifications, drawings, particulars of weight and dimension and performance data contained in any KEE literature are approximate only. Descriptions, illustrations, installation procedures and instructions contained in KEE catalogues, brochures, price lists, advertising matter and other literature produced or prepared by KEE are intended merely to represent a general idea of the Product or procedure described and shall not form part of the Contract.

2.4 KEE reserves the right to improve and modify any specifications, designs and dimensions whenever considered appropriate.

3 Commencement Terms and Conditions

3.1 Upon receipt of instructions relating to the Client Proposal/Quotation, KEE shall forward to the customer the Order Confirmation. If no queries have been raised by the Customer within 48 hours of receipt all the terms and conditions of sale in this Contract together with the Order Confirmation shall be deemed to have been accepted and will apply.

3.2 In the case of sundry products sold directly to the customer, delivery periods will be based upon receipt of a purchase order providing enough information for KEE to process the order, upon which an order confirmation will be issued and dispatch arranged.

4 Spare Parts and Replacements

Where spare parts and replacement components are not held in stock by KEE they will be ordered from an appropriate supplier for delivery to the Customer by normal means. Non-stock and bespoke items are non-refundable. KEE will not be liable for any inability to complete a service or repair due to delays of the supply of spare parts or replacement components.

5 Services not included

5.1 This Contract shall not apply to defects or malfunctions which in KEE's opinion have arisen as a result of:

- 5.1.1 Work external to the Equipment;
- 5.1.2 Transportation or relocation of the Equipment not performed by or on behalf of KEE;
- 5.1.3 Any error or omission relating to the operation of the Equipment;
- 5.1.4 Any modification, adjustment or repair to the Equipment made by a third party without the written consent of KEE;
- 5.1.5 The subjection of the Equipment to unusual physical or electrical stress, the neglect or misuse of the Equipment or any failure or fluctuation of electrical power, air conditioning, humidity control or other environmental controls;
- 5.1.6 Any damage to the Equipment;
- 5.1.7 Flooding;
- 5.1.8 Any other cause within is not due to the neglect or default of KEE.

5.2 If on investigation KEE reasonably determines that any defect in or malfunction of the Equipment is the result of any of the matters referred to in clause 5.1 the Customer shall be liable for all costs incurred by KEE including investigating the same and determining its cause, and abortive service visits to the Location.

5.3 Unless specifically included in the Quotation, KEE will not be responsible for providing the power supply to any item installed or replaced. It is the Customer's responsibility to ensure that a suitable power supply is available.

5.4 Unless specifically included in the Quotation, KEE assume that the works are safely able to be completed by one person. Where this is not the case, additional charges will apply. Except as expressly provided in this Contract or as agreed between the parties in writing, KEE shall have no obligation to provide any services to the Customer outside Normal Working Hours.

6 Customer's Obligations

6.1 The Customer shall:

- 6.1.1 At all times keep the Equipment in the environmental condition recommended by KEE;
- 6.1.2 Not move Equipment from the Location without obtaining the prior written consent of KEE;
- 6.1.3 Use the Equipment only in accordance with such instructions and recommendations relating to the care and operation of the Equipment as may be issued by KEE.

6.2 The Customer shall ensure that KEE's representatives have full and free access to the Equipment and to any records of its use kept by the Customer to enable KEE to perform its duties. If KEE is unable to gain access to the Equipment or the access has been changed or it is not considered safe KEE reserves the right to charge for the abortive visit. Any charges will be KEE's standard charges for contract call outs at the time of the abortive visits.

6.3 Unless included in the Quotation, the Customer shall ensure that a suitable power supply is available and freely accessible on site.

6.4 The Customer shall provide KEE with such information concerning the Equipment, its application, use, location and environment as KEE may reasonably request to enable it to carry out its duties and ensure KEE unhindered access to the location at all times.

6.5 The Customer shall take such steps as may be necessary to ensure the safety of any of KEE's representatives who visit any premises of the Customer.

6.6 The Customer shall be wholly responsible for ensuring that all relevant statutes, bylaws and regulations, consents and permissions appertaining to the use of the Equipment are adhered to, and the Customer will indemnify KEE against any claims whatsoever arising from breach of such laws and regulations.

6.7 The Customer will be responsible and pay for all charges levied by the Environment Agency or Scottish Environmental Protection Agency or any similar statutory bodies

6.8 The Customer shall be responsible for and pay all charges levied by the local electricity supply company.

7 KEE's charges

- 7.1 If KEE's services are requested without any reasonable justification, or by reason of any defect in or malfunction of the Equipment due to causes not covered under this Contract, the Customer shall be liable to pay KEE's standard charges from time to time in force for such services.
- 7.2 Cancellation or delay by the Customer will incur charges for non-stock or bespoke items at 100% of cost, restocking charge of 30%, and charges for any costs incurred by KEE in relation to the Equipment and not refundable, including but not limited to hotel rooms booked, tankers, deliveries, crane and ferries booked.
- 7.3 Cancellation or delay on less than three days' notice will, in addition to the charges at clause 8.2, incur charges of 100% of KEE's labour costs.
- 7.4 Where KEE is in receipt of Customer property for repair quote, the property will be held for 30 days following issue of a Quotation, after which KEE will dispose of the item and invoice the Customer for its correct disposal.

8 Duration and Termination

- 8.1 KEE shall be entitled to terminate this Contract:
- 8.1.1 Forthwith by giving written notice to the Customer if any sum payable under this Contract is not paid on the due date;
- 8.1.2 Where Equipment is serving more than one household and each household pays an equal share, failure to pay a sum on the due date by any of the households will leave the other households liable for any sum payable.
- 8.2 Either party shall be entitled forthwith to terminate this Contract by written notice to the other if that other party commits any continuing or material breach of any of the provisions of this Contract and, in the case of such a breach which is capable of remedy, fails to remedy the same within 30 days after receipt of a written notice giving full particulars of the breach and requiring it to be remedied.
- 8.3 For the purpose of clause 8.2, a breach shall be considered capable of remedy if the party in breach can comply with the provision in question in all respects other than as to the time of performance (provided that time of performance is not of the essence).
- 8.4 Any waiver by either party of a breach of any provision of this Contract shall not be considered as a waiver of any subsequent breach of the same or any other provision.
- 8.5 KEE reserves the right to amend the terms and conditions of this Contract at any time by giving one month's notice in writing to the Customer advising of such amendment. In the event that the Customer does not approve of the amendment the Customer may by giving one month's notice in writing terminate the Contract.
- 8.6 The rights to terminate this Contract given by this clause shall not prejudice any other right of remedy of either party in respect of the breach concerned (if any) or any other breach.
- 8.7 Upon termination of this Contract for any reason, subject as otherwise provided in this Contract and to any rights or obligations which have accrued prior to termination, neither party shall have any further obligation to the other under this Contract.

9 Nature of Contract

- 9.1 KEE shall be entitled to carry out its obligations under this Contract through any agents or sub-contractors appointed by it in its absolute discretion for that purpose.
- 9.2 Except as provided in clause 9.1, this Contract is personal to the parties, and neither of them may, without written consent of the order, assign, mortgage, charge *otherwise than by floating charge) or dispose of its rights hereunder, or sub-contract or otherwise delegate any of its obligations under this Contract.
- 9.3 Nothing in the Contract shall create, or be deemed to create, a partnership between the parties.
- 9.4 Each party acknowledges that, in entering into this Contract, it does not do so on the basis of or rely on any representation, warranty or other provision except as expressly provided in this Contract, and accordingly all conditions, warranties or other terms implied by statute or common law are hereby excluded to the fullest extent permitted by law.
- 9.5 If any provision of this Contract is held by any court or other competent authority to be void or unenforceable in whole or part, the other provisions of this Contract and the remainder of the affected provisions shall continue to be valid

10 Warranties

- 10.1 KEE warrants that the Product is produced in accordance with the specifications stated in KEE's official literature subject to clause 2.3 above. Save as aforesaid, all other conditions, guarantees, or warranties whether express or implied by statute, common law or otherwise including (but without prejudice to the generality of the foregoing) conditions, guarantees or warranties as to quality fitness for purpose or description of the Product or their life or wear or use under any conditions whether known or made known to KEE or not are hereby excluded.
- 10.2 All warranty claims must be accompanied by a Customer purchase order to cover potential costs of any non-warranty work discovered or required.
- 10.3 Where a design warranty is offered this is strictly on the basis that daily maximum and instantaneous flows and daily maximum and concentration

loads that the plant received are not varied from. KEE assumes that the plant is receiving no inhibitory substances, has been regularly serviced to the standards and timescales set out in KEE O+M by suitable qualified and trained personnel that the plant has been operating at all times and that the influent has adequate/appropriate alkalinity. The Customer is responsible for proving the design flows and loads in the event of a dispute in this regard.

- 10.4 KEE's liability for any and all direct loss or damage resulting to the Customer directly or indirectly from the provision of services and/or defects in the Product or any other case shall be limited to the purchase price of the Product or alternatively the cost of the provision of Services in respect of or in relation to which such loss or damage is claimed. Subject as aforesaid KEE shall be under no liability in contract or in tort for any loss or damage or personal injury arising directly or indirectly out of the supply, installation or use of the Product other than death or personal injury resulting from the negligence of KEE within the meaning of Section 1 of the Unfair Contract Terms Act 1977.

11 Supply & Delivery

- 11.1 KEE shall use its reasonable endeavours to deliver the Products and/or supply the Services on the dates agreed or specified, but any such date is approximate only. If no dates are specified, delivery of the Products or supply of Services shall take place within a reasonable time of acceptance of any order.
- 11.1.1 Time is not of the essence as to delivery of the Products and/or supply of the Services and KEE is not liable for any such delay, howsoever caused.
- 11.2 If KEE is unable to deliver the Product due to the actions or any failure to act by the Customer, KEE shall be entitled, at the Customer's expense, to place the Product in storage until such time as the Product may be delivered.
- 11.3 Where the price is stated to be "Ex-works" KEE shall be entitled to make such additional charge as may be appropriate for transport of the Product to the Customer's premises if arranged by KEE.
- 11.4 Where the price quoted is stated to be "Ex-works" delivery shall be deemed to be effected on collection or seven days after KEE notifies the Customer that the Product is available for collection, whichever date shall be the earlier. If the Customer fails to collect the Product within seven days KEE shall be entitled, in addition to any other remedy available, to make an appropriate charge for storage.
- 11.5 Except where otherwise specifically agreed in writing by KEE any price quoted is based on the cost of materials, parts, labour, transport, fuel and other costs ruling at the date of delivery and KEE reserves the right to increase any price at any time to take account of increases in such costs prior to delivery. Any duties, taxes, or other charges applicable to the Product or the Services as a result of legislation or regulations in the United Kingdom and/or the country in which the Customer is resident will be charged to the Customer.
- 11.6 Specifically, and for the avoidance of doubt, the price quoted is net of value added tax, which will be added at the appropriate rate in force at the date of invoice.
- 11.7 Where the price is stated to include delivery, then delivery shall be deemed to have been effected upon the date the Product is delivered to the nearest hard standing, adjacent to the public highway at the address for delivery notified by the Customer to KEE. In the event that the Customer notifies KEE that he wishes to collect the Product from KEE's premises (despite the price being inclusive of delivery) then delivery shall be deemed to have been effected on the date when KEE notifies the Customer that the Product is available for collection. In all cases, offloading the product shall be the responsibility of the Customer.
- 11.8 All risk in the Product shall pass to the Customer at the time delivery is deemed to have occurred pursuant to these Conditions.
- 11.9 Unless the Order Confirmation specifies to the contrary, the price quoted does not include installation or commissioning of the Product and any notes, procedures or methods, relating to installation referred to in KEE brochures, price lists or other literature are for guidance only. As KEE has no control of the circumstances under which installation of the Product may be made KEE shall have no responsibility or liability in respect of any defects or other damage, loss or expense arising directly or indirectly out of the installation of the Product by the Customer or its agents. Any agreement by KEE to be responsible for installation or commission will be carried out by KEE under separate contractual conditions.

12 Payment

- 12.1 Unless otherwise agreed in writing, payment in full shall become due prior to the supply of the Product Where the Product is unique or requires manufacturing to order, a deposit equal to 50% of the order value is required.
- 12.2 All amounts due are subject to VAT at the statutory rate applicable

- from time to time.
- 12.3 Credit facilities may be withdrawn at any time at KEE's sole discretion, in which case all amounts and charges due shall become immediately due and payable.
- 12.3.1 Notwithstanding KEE's agreement to grant credit, KEE reserves the right to refuse to provide the Product and/ or the Service if the arrangements for payment or the Customer's credit rating are not satisfactory to KEE
- 12.4 Prompt payment in full by the Customer for previous deliveries of any Product and/or the provision of the Services to the Customer shall be a condition precedent of the supply of the Product and/or the Services to the Customer.
- 12.5 KEE shall be entitled to charge interest on all overdue accounts due from the Customer at the rate of 5 per cent above the base rate of Lloyds TSB Bank PLC from time to time in force.
- 12.6 Where KEE effects delivery of the Product and/or supply of the Services before payment:
- 12.6.1 For the purpose of securing to KEE payment of all outstanding amounts due to KEE from the Customer any Product delivered to the Customer shall remain the absolute property of KEE until KEE shall give notice of the transfer of property in the Product to the Customer or until payment of all amounts due to KEE from the Customer whichever is the earlier, but the risk in the Product shall pass to the Customer on delivery;
- 12.6.2 The Customer shall store and use the Product in such a way that it is readily identifiable as the property of KEE;
- 12.6.3 KEE shall be entitled at any time by its servants or agents with or without transport to enter upon any premises where the Product may be, whether being the Customer's premises or other premises to which the Product has been delivered, and to repossess the Product to which it has title hereunder;
- 12.6.4 KEE hereby authorises the Customer to use sell or otherwise dispose of the Product in the ordinary course of the Customer's business provided that if the Product is resold by the Customer before payment of all amounts due to KEE, the Customer shall hold the proceeds of such sales upon trust for KEE absolutely.
- 12.7 In the event of KEE accepting in writing cancellation of the Contract by the Customer any deposit paid shall be forfeited to KEE and KEE reserves the right to charge for work carried out to the Product ordered prior to KEE accepting a cancellation of the Contract.
- 12.8 KEE shall in respect of all unpaid debts due from the Customer under the Contract have a general lien on all goods and property of the Customer in its possession (although such goods or some of them may have been paid for) and shall after the expiration of fourteen days written notice to the Customer be entitled to dispose of such Goods and property as it deems fit and apply the proceeds towards such debts.
- 13 Set-off and withholding**
- 13.1 The Customer may not set-off any amounts payable or deemed payable from KEE for whatever reason against any amounts due to KEE hereunder, unless KEE expressly agrees to such set-off in writing.
- 13.2 KEE may off-set any amount due or deemed due to KEE against any amount due to the Customer.
- 13.3 The Customer may not withhold payment of any amounts due to KEE hereunder for any reason.
- 14 Insolvency and remedies for non-payment**
- 14.1 KEE shall be entitled to terminate the Contract forthwith by notice in writing if the Customer becomes bankrupt or an interim receiver is appointed in respect of the Customer's property or a bankruptcy order is made against the Customer or in the case of the Customer being a limited company a receiver is appointed of all or any part of its undertaking or assets or it enters into any arrangement or composition with its creditors or goes into liquidation (other than a voluntary liquidation for the purposes of amalgamation or reconstruction) or an administration order is made in respect of it and any person becomes entitled to exercise the powers conferred on an administrative receiver. On termination of the Contract by KEE payment in full for any Product and/or the Services to the Customer delivered prior to the termination shall be immediately due.
- 14.2 In the event of a failure to pay any amount due to KEE by the deadline for payment, KEE reserves the right to do any or all of the following, without prejudice to any other remedy at its disposal:
- 14.2.1 Withdraw any credit terms agreed with the Customer, rendering any outstanding charges immediately due and payable;
- 14.2.2 Register the debt with one or more credit reference agencies, without liability on our part, which may affect the Customer's credit rating and adversely affect its business;
- 14.2.3 Impose late fees and interest on any overdue amount in accordance with the Late Payment of Commercial Debts Regulations 2013; save that the remedies set out therein shall also apply to consumers;
- 14.2.4 Appoint a debt recovery agency to recover any amount due to KEE and charge the Customer the costs of such recovery amounting to 10% of the amount due, which the Customer hereby acknowledges to be reasonable,

- including for the purposes of the Late Payment of Commercial Debts Regulations 2013, as amended;
- 14.2.5 Levy a charge of £50.00 for any dishonoured cheque or defaulted instalment payment to cover administration and bank fees;
- 14.2.6 Terminate the Contract.

15 Claims

- 15.1 If it shall be demonstrated to the satisfaction of KEE that any Product is defective on delivery or does not correspond to the specification ordered by the Customer (claims for such matters being made in writing within seven days of delivery), or if any Product, shall prove to be defective within 12 months as a result of faulty manufacture, then KEE shall at its absolute discretion refund the purchase price thereof or repair or replace the Product.
- 15.2 If it shall be demonstrated to the satisfaction of KEE that any workmanship carried out in the course of supplying Services was defective then KEE will, at its option, re-perform the Services which are the subject of the breach, or refund to the Customer the price paid for the Services.
- 15.3 Any item whether damaged, faulty when received or just not suitable for your requirements should be returned suitably packaged and sanitized to KEE offices or a KEE nominated address, within 7 days of receipt with a copy of the invoice and / or delivery ticket for reference.
- 15.4 Shipping/insurance costs are non-refundable in any case and buyers are responsible for the returning cost under any circumstances. Where a buyer requests KEE arrange collection of the goods KEE will make a charge to cover the costs associated with arranging collection.
- 15.5 KEE operates a restocking policy, Products not suitable for your requirements will be subject to a 30% charge.
- 15.6 Products returned which are not in the original condition will involve an additional charge to dependent on the rework required to put them in a saleable condition.
- 15.7 Notwithstanding any other provision in the Contract:
- 15.7.1 KEE shall have no liability to the Customer for loss of use, loss of revenue, profit or anticipated profit, delay and business interruption and other similar losses, whether direct or indirect, and any indirect or consequential losses whatsoever;
- 15.7.2 The Customer shall have no recourse against KEE or KEE's personnel and shall indemnify KEE and KEE's personnel from and against any and all claims howsoever arising from or in connection with defects in the supply of Products and/or Services;
- 15.7.3 The indemnities and agreement contained in this clause 15 shall apply whether or not any claim is asserted to have arisen by virtue of tort, negligence, breach of statutory duty, contract, quasi-contract, strict liability, breach of representation or warranty (express or implied), the laws, regulations, rules or orders of any government or other authority having jurisdiction or otherwise;
- 15.7.4 Nothing in this Contract shall be deemed to exclude liability for death or personal injury caused by KEE's negligence.
- 15.8 KEE shall be entitled to examine any Product which is the subject of a claim by a Customer and to remove such Product or any part thereof for testing.
- 15.9 No tests by the Customer will be recognised by KEE unless carried out strictly in accordance with a method agreed by KEE as being suitable for the purpose.
- 15.10 The Customer shall be responsible to KEE for ensuring the accuracy of the terms of the order for the Product (including any specification or drawing supplied by the Customer with such order or subsequently) given by the Customer to KEE and for giving in due time any other relevant information necessary to enable KEE to perform its obligations under the Contract. The Customer shall indemnify KEE against any loss, proceedings, actions, damages, compensation and costs and expenses arising whether directly out of the Customer's breach of this Condition.

16 Force Majeure

KEE shall not be liable to the Customer for any failure to perform its obligations to the extent that such performance is prevented or hindered by acts of God, war, riot, sabotage, explosions, epidemic, strikes, lockouts, disputes, or differences with workmen, shortages of labour or materials, compliance with rules, regulations or order of any Governmental Office department or agency, fire, storm, flood, earthquake or other natural catastrophe or any other circumstances of any kind whatsoever outside the reasonable control of KEE.

17 Notices

All notices shall be given by post, e-mail or facsimile transmission in the case of those to KEE to its office at College Road North, Aston Clinton, Aylesbury and in case of the Customer to the address specified in the order or such other address as may have been notified to KEE. Notices shall be deemed to have been given, if sent by

e-mail or facsimile transmission, immediately after being sent and, if sent by post, at the expiration of two days after the same shall have been posted.

18 Resale by Customer

The Customer shall not make any statement or representation or give any warranty to any third party in respect of any Product other than in the terms made or given by KEE to the Customer hereunder, nor shall the Customer have any authority to commit KEE in any way to provide service in relation to the Product. The Customer shall indemnify KEE against all costs, claims, demands, liabilities and expenses incurred or suffered by KEE in respect of any such statement representation or warranty made or given by the Customer in respect of the Product.

19 Governing Law

These Conditions and the Contract between the parties shall be construed and applied in accordance with the law of England and the English Courts shall have sole jurisdiction in any dispute relating thereto.