

1.

DEFINITION

In these Conditions, unless the context requires otherwise, the following expressions shall have the following meanings:

“**Agreement**” the agreements (including any software licence), warranties, conditions, representations and other terms set out in these Conditions and in the Order Acknowledgement;
“**Conditions**” these Conditions of Sale;
“**Customer**” the party, named as Customer in the Order Acknowledgement;
“**HWL**” means Honeyman Water Limited of Harmire Enterprise Park, Barnard Castle, Co. Durham, UK. Registered in England and Wales no. 14002965.
“**Goods**” the goods and equipment (and installation of) which are the subject of the Order Acknowledgement;
“**Services**” the services, support and site works which are the subject of the Order Acknowledgement
“**Order Acknowledgement**” HWL’s official written order acknowledgement of Customers order or HWL’s invoice whichever of these documents is first issued to the Customer by HWL;
“**Price**” the price charged to the Customer for the Goods and/or Services which shall be exclusive of VAT;
“**Sale**” includes manufacture and supply;
“**Site**” means the location to which the Goods or Services are to be delivered pursuant to the terms of the contract
“**Contract**” means the sale of Goods or Services resulting from a HWL quotation or offer as the case may be and include HWL’s Specification, these terms and conditions additionally stated within the specification.

2.

APPLICATION AND VARIATION OF THESE CONDITIONS

2.1. These Conditions together with any special conditions set out in the Order Acknowledgement shall be deemed to be incorporated in all agreements for the sale of any Goods and Services by HWL to Customer and shall apply in place of and prevail over any terms or conditions contained or referred to elsewhere or implied by trade custom, practice or course of dealing. In the event of a conflict between these Conditions and special conditions in an Order Acknowledgement the Order Acknowledgement will prevail.

3. FORMATION OF CONTRACT AND CANCELLATION

3.1. HWL’s catalogues, price lists and quotations do not constitute offers made by HWL unless they are expressed to be fixed quotations remaining open for a specified period and HWL reserves the right to withdraw or revise the same at any time prior to the Order Acknowledgement.

3.2. Customer shall not cancel any order without HWL’s prior consent in writing. Such consent may be made conditional on payment by Customer of an appropriate Charge (See 3.4). No other obligation or agreement relating to the sale of the Goods and Services is binding on HWL unless set out in the Agreement or in an amendment or addition to it agreed in writing by HWL.

3.3. Representations, warranties or other statements made by HWL, other than those expressly set out in the Agreement, shall not be binding upon HWL unless they are expressly stated to have a contractual effect.

3.4. The contract commences when HWL Group receives a Purchase Order. Cancellations at anytime over 31 days prior to the works commencing, incurs a 20% charge of the contract price, plus 100% charge for all preparation time, parts, materials and travel/accommodation reservations. Cancellations between 31 working days to 5 working days will incur a 50% charge of the contract price plus charges for associated expenses. Cancellations within 5 working days before the commencement date will incur the full 100% of the contract price and associated expenses

Re-scheduling visits that are greater than 31 working days prior to the commencement date do not incur any costs, with the exception of preparation costs. Re-scheduling within 31 working days to 5 working days incurs 50% charge of the planned visit. No refund will be made for cancellations within 5 working days of the work commencement date. In the event that work is continually rescheduled, i.e. more than 3 times, a rescheduling fee will be applied of 10% of the contract value. If a project is put on hold or rescheduled for a longer period of time, a project fee will be charged of 2% per week of the total order value.

4. DOCUMENTATION AND SPECIFICATION

All drawings, designs, specifications and particulars submitted by HWL remain the property of HWL and are intended merely to describe the Goods and Services generally. They are not to be regarded as a warranty, representation of contractual term unless it is expressly so stated in the Order Acknowledgement. Customer shall ensure timely supply of information and free issue material as appropriate to enable HWL to meet delivery dates.

5.

PRICE AND VARIATION OF PRICE

5.1. The Prices for the Goods and Services shall be as set out in the Order Acknowledgement. All Value Added Tax, Customs and Excise duties, import and export duties and all other taxes, tariffs and surcharges of any nature whatsoever now or hereafter levied or imposed in any country or territory either directly or indirectly in respect of the sale, supply, delivery or use of the Goods or payments for them or upon freight or other charges shall be borne by Customer and except as stated in the Order Acknowledgement are additional to the Prices in the Order Acknowledgement stated.

5.2. Where quoted prices are stated to be based in whole or in part on a conversion into Pounds Sterling of any other currency the Customer shall, subject to any applicable law relating to the regulation of prices, fully indemnify HWL against any loss incurred by HWL which arises or results from any variation in the rates of exchange between the date of the quotation and the date upon which payment shall become due by HWL in relation to its relevant transaction in such other currency.

5.3. Should HWL incur extra cost at anytime during HWL’s performance of its obligation under Contract including as a result of (but not limited to) suspension of the work by the Purchaser’s instructions or lack of instructions, interruption, delays, unusual hours worked at the request of the Purchaser, mistakes or work for which HWL Group Limited is not responsible, storage charges for the Equipment after failure by the Purchaser to allow HWL Group Limited access to the Site to deliver the Equipment, such extra cost as well as a reasonable allowance for profits and the cost incurred by keeping any of HWL’s employees on the Site after completion of erection shall be added to the Contract Price.

Projects that are delayed on-site will be charged at the standard rate plus the expenses incurred. Standard rate schedule is available on request.

5.4

The Contract Price shall be varied as follows:

5.6.1 Labour

For every 1% difference between the Labour Cost Index of The British Electrotechnical and Allied Manufacturers’ Association Limited last published before the date of HWL’s quotation and the average of such index’s figures published for the last two-thirds of the delivery period, the Contract Price shall be adjusted at a rate of 0.475% of the Contract Price, and pro rata for other charges.

5.6.2 Materials

For every 1% difference between the Price Index Figure of Materials used in the Electrical Machinery Industry last published in the Trade and Industry Journal before the date of HWL’s quotation the average of indices relating to two-fifths and four-fifths of the delivery period, the Contract Price shall be adjusted at a rate 0.475% of the Contract Price, and pro rata for other charges.

5.5

Goods, Materials and Equipment supplied by HWL will be charged at standard HWL rates unless otherwise agreed in the quotation. Prices for parts are available on request. Cancellation of purchases of parts will be 20% of the parts cost plus any expenses incurred by HWL.

5.9

For Service Contracts, HWL’s standard labour rates and breakdown charges apply. These are available from HWL on request.

6.

INVOICING AND PAYMENT

6.1

Subject to HWL’s approval of Customer’s current credit rating, full payment for all invoiced items shall be made in the invoice currency within 30 days of invoice date unless otherwise stated in the Order Acknowledgement. HWL shall be entitled to issue its invoice to the Customer upon despatch of the Goods and Services.

6.2

If Customer fails to make payments on the due date, HWL may, in addition to taking any other action provided by these Conditions:

6.2.1 Claim statutory interest at 8% above the Bank of England reference rate in force on the date the debt becomes overdue and at any subsequent rate where the reference rate changes and the debt remains unpaid in accordance with Late Payment of Commercial Debts (Interest) Act 1998 as amended and supplemented by the Late Payment of Commercial Debts Regulations 2002.

6.2.2 Suspend all further delivery of Goods & Services to be made under the Agreement or further performance of any other contract with Customer, in which event Customer shall not be released in any respect from its obligations to HWL under the Agreement or any such other contract.

6.3

Any queries relating to invoiced charges must be received in writing by HWL within 21 days of the invoice date.

6.4

HWL reserves the right at its discretion at any time to withdraw any credit terms and substitute “Payment with Order” or “Payment on Delivery” terms.

7.

DELIVERY AND COURIER COLLECTIONS

7.1

Unless otherwise expressly provided in the Order Acknowledgement, all sales are ex-works (Incoterms 2000). Where any special condition in the Order Acknowledgement provides that the Goods are sold on the basis of any other international trade term listed by the International Chamber of Commerce in Incoterms 2000, the meaning of such term shall be as set out in Incoterms 2000 as revised from time to time save where inconsistent with the provisions contained in these Conditions.

7.2

Customer shall inspect the Goods on receipt. HWL shall be under no liability in respect of damages to Goods or incomplete delivery unless Customer’s written claim is received by HWL within 7 days of receipt of the Goods (or in the case of missing or undelivered Goods, within 14 days of due date of receipt), followed within 21 days of HWL’s request for such evidence of defect or shortage as HWL may reasonably request. Section 32(3) of the Sale of Goods Act 1979 shall not apply to the Agreement.

7.3

Any period or date for despatch of the Goods/Services from HWL stated in the Agreement is intended as an estimate only and is not a contractual commitment. HWL may deliver the Goods in one or more instalments. Where delivery is affected by instalment each instalment shall be treated as a separate contract. Failure by HWL to make any delivery or part delivery in accordance with the Agreement or any claim by Customer in respect of such delivery or part delivery shall not entitle Customer to reject the balance of the Goods agreed to be purchased by Customer. At Customer’s request, HWL may consent to postponement of despatch beyond the despatch date, subject to Customer assuming the risk in the Goods and paying storage charges.

7.4

Section 32(2) of the Sale of Goods Act 1979 shall not apply to the Agreement. At the request of Customer, HWL shall as agents for Customer arrange for carriage and transport insurance to the destination specified in Customer’s order on such terms as to carriage and insurance as HWL considers appropriate, unless Customer specifies otherwise, and HWL shall invoice Customer all carriage and insurance costs incurred plus an administration charge. Customers shall meet the cost of any special packaging requested by Customer or any packaging rendered necessary by delivery by any means other than HWL’s normal means of delivery.

8.

ERECTION

8.1

When Goods or Equipment are of too greater size to manually handle, the Customer shall at its expense provide suitable access to and possession of the Site, proper foundations ready to receive the Equipment as and when it is delivered, adequate lifting facilities and scaffolding, all skilled and unskilled labour, all building and civil engineering work, suitable protection for the Equipment from the time of delivery, any lighting and heating necessary on the Site during erection and all necessary facilities and adequate assistance.

9.

WARRANTY

HWL warrants:

9.1.1 All goods and services that have a specified warranty period detailed in the Order Acknowledgement.

9.2

Customer shall promptly provide written particulars to HWL on becoming aware of a defect in the Goods and Services during the Warranty Period, and shall use its best endeavours to provide HWL with all necessary access, facilities and information to enable HWL to ascertain or verify the nature and cause of the defect and to carry out its warranty obligations.

9.3

HWL’s obligations under this Condition 9 are limited to, at its option:

9.3.1 repairing, replacing, or refunding the cost of defective Goods, or parts of the Goods, provided Customer has returned the defective Goods or parts of the Goods carriage paid to HWL; or

9.3.2 sending engineer(s) to effect repairs at Customer’s premises, in which case customer shall be liable for the travelling and subsistence expenses of HWL’s engineers. HWL warrant that any repairs carried out by HWL during the Warranty Period shall be performed with reasonable skill and care.

9.4

If Goods are found not to be defective or if any defect is attributable to Customer’s design or materials or operation of the Goods or Services, HWL will levy a testing charge (together with VAT if appropriate), and where relevant will return the Goods to Customer at Customer’s expense, and shall be entitled to payment in advance of the whole testing and transport charge before such return.

9.5

The warranty provisions of this Condition in respect of repaired or replaced Goods shall apply to such Goods for the unexpired balance of the Warranty Period. Notwithstanding the warranties set out in this Condition 9 where it is apparent from the Agreement or any specification or other document supplied by HWL to Customer prior to the date of the Agreement that any item or component of the Goods was not manufactured by HWL or any associated company of HWL the Warranty Period shall in relation to such item or component of the Goods expire at the end of the period of the express warranty given to HWL in respect thereof by the relevant supplier if shorter than the Warranty Period except if such shortened warranty period is unreasonable.

9.6

HWL accepts no liability for defects caused by Customer’s design or installation of the goods; or if the Goods have been modified or repaired otherwise than as authorised in writing by HWL; or if the Goods have not been operated, stored, or maintained as recommended by HWL; or if the defect arises because of the fitting of the Goods to unsuitable equipment; or where the Customer has supplied free issue equipment upon which the defect is apparent; or where Customer has failed to observe the terms of payment for the Goods or any other obligation imposed by the Agreement.

9.7

HWL warrants that the Services shall be performed with reasonable skill and care. Any element of the Services not so performed must be notified by the Customer to HWL within three (3) months of the particular element of the Services having been carried out in which case HWL’s obligations under this Condition 9.7 are limited at its option to reperforming those parts of the Services free of charge or repaying the relevant part of the Price.

10.

LIMITATION AND EXCLUSION

10.1

Subject to Condition 9, HWL shall be under no liability to Customer for any damages or losses, direct or indirect, resulting from the Services provided, defects in design, materials or workmanship, or from delays in delivery of

Goods and Services. HWL shall have no liability for any indirect or consequential losses, damages or expenses suffered by Customer, however caused.

10.2.

Except as specifically set out in the Agreement, any term, representation, condition or warranty in respect of the quality, fitness for purpose, condition, or description of the Goods/Services or that the Goods/Services are of satisfactory quality, whether implied by statute, common law, trade usage, custom or otherwise, is hereby expressly excluded.

10.3.

Nothing in these Conditions shall be interpreted as excluding or restricting any legal liability of HWL for death or personal injury resulting from the negligence of HWL, its employees, agents or sub-contractors or restricting any of HWL's legal obligations arising under Section 12 of the Sale of Goods Act 1979 or under the Consumer Protection Act 1987.

10.4.

In the event that any exclusion of liability under this Agreement shall be held to be invalid for any reason and HWL becomes liable for loss or damage that it may otherwise have been lawful to limit, such liability shall be limited to the Price as set out in the Order of Acknowledgement.

10.5.

HWL shall not in any circumstances be liable to the Customer for loss of profit or of contracts or for other economic loss or except as provided in this Contract for any loss, damage or injury of any kind whatsoever.

11.

INSURANCE

HWL's total liability in respect of public liability for accidental injury to third parties or for the loss or damage of third party property arising out of activities of the insured's business for any one incident is £5,000,000.00.

HWL's total liability in respect of Professional Indemnity cover is £500,000.

11.1

As in Clause 10, HWL shall not be liable for any damage or injuries occurring after the Goods or Services have been accepted to the extent that such exclusion is permitted by law. If HWL or its sub-contractors are on SITE after acceptance for the purpose of remedying defects pursuant to the next following Condition or for any other purpose of the Contract, the provisions of this Condition shall apply as though the equipment had not been accepted. HWL shall not be liable for any damage or injury after completion of such work on Site.

12.

HEALTH AND SAFETY AT WORK

Customer undertakes that it will comply and will procure that its employees, customers, and every other person working with, on or near or using the Goods or Services comply in full with the instructions and recommendations made in any manual or handbook provided by HWL or other manufacturer of the Goods or Services and that they will comply with all other instructions given in connection with the use or operation of the Goods or Services. The Goods or Services are designed to operate without danger to health and safety where correctly installed by competent personnel and used in accordance with the relevant standards, the designed rating, and accepted good industrial practice. Customer shall first obtain HWL's written approval before operation or use of the Goods under unusual conditions.

13.

INTELLECTUAL PROPERTY

13.1.

HWL warrants that to the best of its knowledge and belief the Goods do not infringe any patents, designs, copyright or other such intellectual property rights in the UK.

13.2

In the event that it is alleged that the use or possession of the Goods by Customer infringes any third party intellectual property rights then:

13.2.1 Customer shall promptly notify HWL in writing of any alleged infringement of which it has notice;

13.2.2 Customer shall not make any admission without HWL's consent; and

13.2.3 HWL shall have sole control of any related negotiations or litigation, and any costs incurred or recovered shall be for HWL's account.

13.3

If at any time any allegation of infringement of patents, design or copyright is made in respect of the Goods or in HWL's reasonable opinion is likely to be made, HWL may at its option and at its own expense either:

13.3.1 modify or replace the Goods without detracting from overall performance thereof, so as to avoid the infringement; or

13.3.2 procure for Customer the right to continue to use the Goods; or

13.3.3 repurchase the Goods at the price paid by Customer less depreciation at such rate as is applied by HWL to its own equipment.

13.4

Customer shall indemnify HWL against any and all liabilities claims and costs incurred by or made against it as a direct or indirect result of the carrying out of any work required to be done on or to the Goods in accordance with the requirements or specifications of Customer involving any infringement or alleged infringement of any rights of any third party.

14.

PASSING OF PROPERTY

14.1

The Goods shall remain the property of HWL as legal and equitable owner and no property in or title to the Goods shall pass to Customer until their full price has been duly paid to HWL. Until such time as the Customer becomes fully entitled to ownership of the Goods Customer shall keep the Goods in good condition and fully insured in their full replacement value against all risks insured against.

14.2

Failure to pay the price for the Goods and that of such other goods under this Agreement when due shall, without prejudice to any other remedies HWL may have, entitle HWL to repossess the Goods or as much of the Goods as HWL may determine from any premises where they may be.

14.3

For the purposes of repossessing the Goods or any part thereof Customer hereby grants an irrevocable licence to HWL, its employees or agents, to enter upon such premises and Customer shall pay to HWL the cost of removal and transport of the Goods or any part of the Goods. Customer may in its ordinary course of its business sell and deliver the Goods in which the property remains with HWL to any third party as HWL's agent, in a fiduciary capacity and for the account of HWL. Customer shall upon request assign to HWL the legal title of any right against any third party arising out of such sale. Customer shall be entitled to receive from HWL by way of commission the excess of the proceeds of sale over the amounts due to HWL from Customer.

14.4

Notwithstanding the provisions of this Condition, HWL shall be entitled to bring an action against Customer for the price of the Goods in the event of non-payment by Customer by the due date as if the property in the Goods had already passed to Customer and/or shall have the right by notice in writing to Customer at any time after the agreed delivery date to pass the property in the Goods to Customer as from the date of such notice.

15.

INSOLVENCY AND DEFAULT

15.1

HWL may by notice in writing to Customer terminate this Agreement or in its absolute discretion any other contracts with Customer so far as unperformed by HWL immediately if:

15.1.1 Customer commits any breach of any of the terms (including, without limitation, terms concerning the time for payment of the purchase price) of this Agreement or any other contract with HWL;

15.1.2 Customer compounds with or negotiates for any composition with its creditors generally; or

15.1.3 or being an individual, Customer shall die or have a receiving order made against him or commit any act of insolvency;

15.1.4 the appointment of an administrator, the filing of documents with the court for the appointment of an administrator and the giving of a notice intention to appoint an administrator by the company of its directors or by qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986).

15.2

In the event of such termination: Customer shall immediately on HWL's request deliver to HWL any Goods which are in the possession or control of Customer but in which the property remains with HWL; and, if Customer fails to do so HWL shall be entitled to repossess the same and for such purpose to enter into and upon the premises of Customer without being liable for any damage caused thereby and Customer shall indemnify HWL from and against any liability to any third party in respect of any such damage and from and against all actions, proceedings, claims, demands, costs, damages and expenses howsoever arising; and HWL shall be entitled by

notice in writing to Customer to declare immediately due and payable any amounts outstanding from Customer to HWL under this or any other contract (such sums thereby becoming immediately due and payable); and HWL may claim damages from Customer for breach of the Agreement. The provisions of this Condition and the exercise by HWL of its rights under it are without prejudice to any other rights of HWL.

16.

FORCE MAJEURE

Neither party shall be liable for breach of the Agreement other than payment if and to the extent that fulfilment of a term or condition hereof has been prevented, hindered or delayed by force majeure as defined in this Condition and in such event the time for fulfilment of such a term shall be extended for such period as is reasonable in all the circumstances. The expression "force majeure" shall mean any event of circumstances beyond the immediate control of either party, including without prejudice to the generality of the foregoing, strikes, lock-outs, trade disputes, accident to plant or machinery, shortage of any material, riots, civil commotion, epidemic, accident, quarantines or regional medical crisis, war national or international, emergency, destruction or damage due to natural forces, fire, flood, explosion, and compliance with orders or requests of any national or local authority.

17.

EXPORT

17.1

In the case of Goods for delivery outside UK and Ireland, the following conditions shall have effect and, in case of inconsistency with other Conditions herein, shall prevail:

17.1.1 Payment shall be made in by credit transfer at the date of the Order Acknowledgement.

17.1.2 The risk of loss or damage to Goods shall pass to Customer immediately on appropriation to Customer's order.

17.1.3 Customer shall satisfy himself and be entirely responsible for ensuring compliance with all customs, import, export and/or trans-shipment regulations applicable to the importation of the Goods.

17.1.4 HWL will assist Customer by supplying all non-confidential or non-secret information reasonably required by Customer, but giving of such information shall not constitute a representation nor be regarded as having contractual effect.

18.

GOODS CONTROLLED BY EXPORT LICENCES

18.1.

Customer agrees to comply in full with UK export licensing requirements and restrictions with regard to export of Goods

19

EMPLOYEE RETENTION

19.1

The Customer agrees not to employ any HWL personnel for a period of twelve (12) months after such personnel leave the employment of HWL except with the written permission of HWL. In the event that a Customer engages any HWL personnel (either directly or indirectly) the Customer shall pay an introduction fee of fifty two weeks, or the equivalent, of the engaged person's remuneration.

20.

ASSIGNMENT

20.1

Customer shall not assign or otherwise transfer all or any of its rights, interests or obligations under the Agreement without the prior written consent of HWL. Any or all of the HWL's rights or obligations under this Agreement or other contract may be assigned by HWL and Customer shall not assert against an assignee any defence (other than actual payment) set-off or counterclaim which the Customer may have against HWL.

21.

SET-OFF

20.1

Customer undertakes to make any payment due hereunder in full without any deduction, offset or counterclaim whatsoever.

22.

NOTICES

22.1

Any notice required under these Conditions shall be deemed to have been given if delivered by hand or sent by prepaid first class post, facsimile or electronic mail (confirmed by telephone and followed by notice by post) to the party concerned at its last known address, and deemed to have been received on the date of despatch, if delivered by hand or sent by facsimile or electronic mail, and on the third day after posting, if sent by post.

23.

THIRD PARTY RIGHTS

23.1

It is the intention of the parties that no term of this Agreement may be enforced by any person who is not a party to this Agreement ("Third Party") notwithstanding that any such term of this Agreement may purport to confer, or may be construed as conferring, any benefit on such Third Party and irrespective of whether such Third Party is identified in this Agreement. The Contracts (Rights of Third Parties) Act 1999 shall not apply to any provisions of this Agreement.

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DATA PROTECTION ACT

24.1

The Customer consents to and understands that, for all account applications, a credit search will take place with a credit reference agency. This information will not be passed onto any third parties.

25

CONFIDENTIALITY

25.1

It is agreed that the Customer shall not communicate, disclose or make available all or any part of the Confidential Information to any third party without prior written consent. All correspondence, including quotations, scopes of work and Training course manuals is regarded as Confidential Information

26.

INTERPRETATION AND LAW

26.1.

Headings are included in these Conditions for convenience and identification only, and are not to be taken to limit the meaning of any part of these Conditions. If any provision or part of a provision of the Agreement should be held unenforceable or in conflict with the law of any relevant jurisdiction, any part so held unenforceable or invalid shall be severed from the remainder of the Agreement which shall not be affected by such severance.

26.2.

The Agreement represents the complete agreement between HWL and Customer with regard to the Goods and Services and contains all agreements, warranties, conditions, representations and other terms agreed, made or relied upon by either party in connection with the Goods and Services.

The rights of HWL shall not be prejudiced or restricted by any indulgence or forbearance extended to Customer and no waiver of any breach shall operate as a waiver of any subsequent breach. These Conditions and every contract connected therewith shall be governed exclusively by English law, and any claim or dispute arising shall be submitted to the English courts.

27

GENERAL

27.1

The headings in these Terms and Conditions are for convenience and do not affect their interpretation.

27.2

Variations to these Terms and Conditions will be ineffective unless expressly written on the Order Acknowledgement