



TC FLUID CONTROL LIMITED TERMS AND CONDITIONS OF SALE

1. DEFINITIONS

in these Conditions (and in any document in which reference is made to these Conditions) unless the context otherwise requires.

"**Company**" means TC Fluid Control Limited or its successors and assignee from time to time

"**Customer**" means any person whose order for purchase of the Products is accepted by the Company

"**Contract**" means the contract for the purchase and sale of the Products

"**Incoterms**" means the provisions of the latest International Chamber of Commerce publication number 560 "Incoterms 2000"

"**Price**" means the price of the Products

"**Products**" means products including any instalment of products or any part of them which the Company agrees to supply to the Customer

2. GENERAL CONDITIONS

Subject to paragraph 4 Company shall sell and the Customer shall purchase the Products in accordance with any oral or written order of the Customer which is accepted by the Company subject to these Conditions. To the exclusion of any other terms and conditions subject to which any quotation is accepted or purported to be accepted or any order is made or purported to be made by the customer and subject to any addition, variation or waiver accepted in writing by the Company.

2.1.1 where the Customer is situated in the United Kingdom these Conditions shall govern the Contract.

2.1.2 where the Customer is situated outside the United Kingdom, these Conditions and Incoterms shall govern the Contract. Where these Conditions and Incoterms are inconsistent, these Conditions shall apply. *

2.1.3 Samples supplied and advice or recommendations as to the storage, applications or use of the Products given by the Company or its employees or agents to the Customer or its employees or agents are for guidance only and any such matter which is not confirmed in writing by the Company is followed or acted upon entirely at the Customer's own risk without liability to the Company.

3. QUOTATIONS

3.1 Quotations issued by the Company are invitations to order Products from the Company. No contract will exist until the Company has accepted the Customer's order in accordance with clause 4.1.

3.2 Quotation prices given in foreign currency are based on the estimated sterling equivalent at the time of delivery.

3.3 Unless otherwise stated in the quotation, previously withdrawn or amended and agreed in writing all quotations are open for acceptance for 30 days only from the date of the quotation and are made subject to confirmation at the time of such acceptance. *

4. ORDERS

4.1 The Company shall not be bound by any order submitted by the Customer unless and until accepted by the Company in writing or by delivery of the Products. Orders rejected by the Company will normally be notified to the Customer within fourteen days.

4.2 No terms or conditions of the Customer's purchase order except those of a quantitative and descriptive nature shall apply to the Contract.

4.3 The Customer shall indemnify the Company on demand against all damages costs and expenses incurred by the Company resulting from any purported alteration or cancellation of the contract by the Customer made without the written consent of the Company.

4.4 Acceptance of the quotation or placement of an order must be accompanied by sufficient information to enable the Company to proceed with the order forthwith, otherwise the Company may amend the tender prices to cover any increase in costs which has taken place after acceptance.



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5. DESCRIPTIONS AND SPECIFICATIONS

- 5.1 All technical details, descriptive and forwarding specifications, illustrations, drawings and particulars of weights and dimensions issued by the Company are typical and approximate only and are intended to present a general idea only of the Products to which they refer, and none of them will form part of the Contract.
- 5.2 The Company reserves the right to make any changes in the specification of the Products which are required to conform with any applicable safety or other statutory requirements, or, where the Products are to be supplied to the Customer's specification, which do not materially affect their quality or performance.
- 5.3 If the Products are to be manufactured or any processes to be applied to the Products by the Company in accordance with the specification submitted by the Customer, the Customer shall indemnify against all losses, damages, costs and expenses awarded against or incurred by the Company in connection with or paid or agreed to be paid by the Company in settlement of any claim for infringement of any patent, copyright design, trademark or other industrial or intellectual property rights of any other person which results from the Company's use of the Customer's specification.
- 5.4 Any specification supplied by the Company to the Customer in connection with the contract of sales, together with the copyright, design rights or any other intellectual property rights in the specification shall be the Company's exclusive property. The Customer shall not disclose to any third party or use any such specification except to the extent that it is or becomes public knowledge through no fault of the Customer's, or as required for the purpose of the contract.

6. PRICES

- 6.1 Subject to the provisions regarding acceptance in clauses 3.1, 4.1 and 6.2, the Price shall be the Company's quoted price or where no price has been quoted the price listed in the Company's published price list current at the date of the despatch of the order by the Company.
- 6.2 All amounts payable under the contract are exclusive of value added tax, duties and any other sales, import or export taxes, which the customer shall pay in addition at the applicable rate.
- 6.2 Notwithstanding the provisions of clause 6.1, the Company reserves the right, by giving notice to the Customer at any time before delivery, to increase the Price to reflect any increase in the cost to the Company which is due to any factor beyond the control of the Company any change in delivery dates quantity quality or specification for the Products which is requested by the Customer or any delay caused by any instructions of the Customer or failure of the Customer to give the Company adequate information or instructions.
- 6.3 Unless stated otherwise prices do not include the cost of freight, packaging, or for the provision of materials, special testing or accessories which may be required for the installation of the Products which shall be payable by the Customer in addition to the price of the Products.
- 6.4 Where a charge for freight is made by the Company, the Company shall make reasonable endeavours to obtain the cheapest current rate available but no warranty is given by the Company in this respect. If, at the Customer's request the Products are sent at a higher rate or by a more expensive means of transport, the additional cost incurred thereby shall be borne by the Customer.
- 6.5 All packaging is non-returnable unless authorised in writing by the Company.
- 6.6 The price of the Products does not include the cost of alloy surcharges levied on or payable by the Company, and the Customer shall pay to the Company on demand the amount of any alloy surcharges levied on or payable by the Company in respect of any materials used in the Products or in connection with the supply of the Products.

7. DELIVERY AND COLLECTION

- 7.1 Where delivery of the Products is to be made by the Customer collecting the Products at the Company's premises the Customer shall agree the date and time of collection with the Company's sales office at least 48 hours before collection.
- 7.2 Where delivery of the Products is to be by the Company to the Customer any dates quoted for delivery of the Products are approximate only and the Company shall not be liable for any delay in delivery of the products through no fault of the Company and the Customer shall not be entitled to cancel the order by reason of such delay. Time for delivery shall not be of the essence. The Products may be delivered by the Company in advance of the quoted delivery date upon giving reasonable notice to the Customer.
- 7.3 The Customer shall ensure that vehicles and employees of the Company or the Company's carrier are given free and unhindered access to an appropriate entrance at the address designated for delivery of the Products.



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- 7.4 The Customer shall arrange for the Products to be unloaded promptly at the delivery point at its own cost and the Customer shall be responsible for any delay or damage to the Products during unloading.
- 7.5 The Company will invoice the Customer for Products which the Customer fails to accept when delivery of the Products is duly tendered by the Company.
- 7.6 Where applicable and unless otherwise agreed in writing the weights obtained at the station of departure shall be binding for invoicing.
- 7.7 If the Customer fails to collect or take delivery of the Products or fails to give the Company adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Customer's reasonable control or by reason of Company's fault) then without prejudice to any other right or remedy available to the Company the Company may:
 - 7.7.1 store the products until actual delivery and charge the Customer for the reasonable cost of storage (including insurance and interest payable on the delayed amount) or;
 - 7.7.2 sell the Products at the best price readily obtainable and charge the Customer for any shortfall below the price under the Contract.

8. INSPECTION & ACCEPTANCE

- 8.1 The Customer shall inspect the Products immediately on collection or receipt. The Company shall not be liable for loss of, damages to, or shortages of, the Products discoverable on reasonable inspection of the Products, or for total loss of the Products in transit unless the Customer notifies the Company within 3 days from the date of delivery of any of the Products to the Customer. If the Customer does not give any such notice, then the Products shall be considered to have been received in full and accepted by the Customer.
- 8.2 The Products are carefully inspected and, where practicable, submitted to standard tests at the factory before despatch. If special tests in the presence of the Customer or the Customer's representatives are required, these tests, unless otherwise agreed, will be charged for in addition to the contract price. In the event of any delay, on the part of the Customer or the Customer's representatives, on attending any test, after seven days notice of readiness for testing, the test will proceed in the absence of the Customer or the Customer's representative and should be deemed to have been made in the Customer's presence.

9. TITLE AND RISK

- 9.1 Until full payment has been received by the Company from the Customer for the Products the subject of this or any other contract for the time being outstanding between the Company and the Customer.
 - 9.1.1 Legal and beneficial ownership of the Products shall remain in the Company.
 - 9.1.2 Until used, the Customer shall store and label the Products in such manner that they shall at all times remain separate from other products in the Customer's possession and identifiable as the Products;
 - 9.1.3 the Company may recover the Products at any time from the Customer if in its possession and for that purpose the Company its servants and agents are hereby irrevocably authorised to enter upon any land or building upon or in which the Products are situated.
 - 9.1.4 notwithstanding sub-paragraph 9.1.1 above the Customer shall be entitled to dispose of Products supplied under these Conditions in the course of its business for the account of the Company and to pass good title in the Products to a purchaser provided that such purchaser shall buy or agree to buy the Products in good faith for valuable consideration and shall have no notice of the Company's rights herein.
 - 9.1.5 in the event of repossession and resale by the Company the Company will refund to the Customer any sums recovered upon resale which exceeds all unpaid sums and costs.
 - 9.1.6 in the event of a disposal under sub-paragraph 9.1.4 above the Customer shall account in a fiduciary capacity to the Company for the proceeds of sale but may retain for itself any excess therein over the Customer's total indebtedness to the Company whether in respect of this or any other contract.
 - 9.1.7 if the Customer shall not have received payment for the disposal under 9.1.4 above then the Customer shall upon notice in writing being given to it by the Company assign to the Company all its rights against its customer in respect of that disposal.
- 9.2 All risk including that of loss of or damage to or delay in delivery of the Products shall pass to the Customer.
 - 9.2.1 at the time when the Company has agreed that the Customer will collect the Products in the case of Products to be supplied at the Company's premises; or



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- 9.2.2 at the time of delivery but prior to unloading or if the Customer wrongfully fails to take delivery of the Products the time when the Company has tendered delivery of the Products in the case of Products to be supplied otherwise than at the Company's premises; or
- 9.2.3 at the time of delivery of the Products to a carrier for delivery to the Customer in the case of Products to be supplied in a manner otherwise than as set out in 9.2.1 or 9.2.2 above.

10. **INSURANCE**

The Customer shall fully insure the Products against all risk from the time stipulated for the passing of risk in 9.2 above up to the time the proprietary rights in such Products pass to the Customer.

11. **TERMS OF PAYMENT**

- 11.1 Unless otherwise agreed in writing, the Customer shall settle its account in pounds sterling in England or invoiced currency with the Company by the thirtieth (30) day following the date of the invoice.
- 11.2 The Customer shall pay the Price in accordance with paragraph 11.1 notwithstanding that the delivery may not have taken place and the property in the Products has not passed to the Customer. The time of payment of the Price shall be of the essence of the Contract.
Receipts for payment will be issued only upon request.
- 11.3 If the Customer fails to make any payment on the due date then without prejudice to any other right or remedy available to the Company the Company shall be entitled to.
- 11.3.1 (subject to Clause 17.1.1) cancel the Contract or suspend performance of the Contract or any further deliveries to the Customer.
- 11.3.2 appropriate any payment made by the Customer to such of the Products (or the Products supplied in any other Contract between the Customer and the Company) as the Company may think fit (notwithstanding any purported appropriation by the Customer); and
- 11.3.3 charge the Customer interest (both before and after any judgment) on the amount unpaid at the rate of 3% per annum above the National Westminster Bank plc base rate from time to time calculated on a daily basis until payment in full is made.
- 11.4 The Customer shall not be entitled to set off against or deduct from any payment due to the Company any sum claimed to be due from the Company to the Customer for any reason whatsoever.
- 11.5 Where the Company agrees to supply Products in instalments each instalment shall be paid for in full under this Condition and failure to pay in full for any instalment shall entitle the Company to refuse to deliver any further instalment of the Products due under this or any other contract between the Customer and the Company.

12. **INTELLECTUAL PROPERTY**

The Customer shall not infringe any patent, trade mark, registered design copyright industrial or other intellectual property right Belonging to the Company and relating to the Products or any other goods or matters supplied by the Company with or in relation to the Products.

13. **CONFIDENTIALITY**

All secret data and other confidential information of the Company shall remain the sole and exclusive property of the Company and shall not be used by the Customer or disclosed to any third party.

14. **LIMITATION OF LIABILITY**

- 14.1 Unless otherwise provided in writing by the Company, the Company does not warrant that the Products shall be fit for any particular purpose. The Customer's acceptance of particular Products for a specific purpose shall constitute the Customer's Acceptance of such Products as being fit for the purpose for which the Customer intends them.
- 14.2 The Company shall be under no liability.
- 14.2.1 In respect of any defect in the Products arising from any drawing design or specification supplied by the Customer.
- 14.2.2 in respect of anything resulting from fair deterioration or wear or tear of the Products, any modification or damage to the Products by other than the Company, incorrect or faulty handling, installation, maintenance, storage or use of the Products other than by the Company, or external environmental conditions (unless and to the extent that the



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specification of the Products includes a statement as to the tolerance of the Products to such conditions), wilful damage, negligence (other than death or personal injury resulting from negligence), abnormal or unspecified system conditions, failure to follow the Company's instructions (whether oral or in writing), misuse or alteration or repair of the Products without the Company's approval, .

- 14.2.3 under any implied or express warranty, implied or express condition, or guarantee if the total price for the Products has not been paid by the due date for payment.
- 14.2.4 in respect of Products not manufactured by the Company the Customer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Company.
- 14.3 Except as expressly provided in these Conditions the Company shall be under no liability to the Customer unless;
 - 14.3.1 written notice of the Customer's claim is received by the Company within ten days of the delivery of the Products to the Customer or to the Customer's order or where the claim is in respect of any failure to deliver the Products within twenty one days of the Company's invoice; and
 - 14.3.2 in respect of all claims arising out of any loss or damage to the Products in transit the Customer notifies the carrier and the Company in writing within three days of delivery.
- 14.4 Where the Customer makes a claim in accordance with paragraph 14.3 and the Products received are damaged defective or not of merchantable quality, then the Products in question shall at the written request of the Company be returned carriage paid to the Company in the condition in which they were received by the Customer. The Company will examine the Products and if in the Company's sole discretion, the Company decides that the complaint is justified in whole or in part the Company may elect
 - 14.4.1 to replace all or any of the Products; or
 - 14.4.2 to accept the return of all or any of the Products giving credit to the Customer for the price thereof; or
 - 14.4.3 make an allowance to the Customer of what in the Company's sole discretion it estimates to be the difference in value between the Products delivered and the Contract price.
- 14.5 Nothing in paragraph 14.4 shall place the Company under any liability or obligation to act in the above way or at all and if the Company elects so to act such election act shall not be taken as an admission of any liability or obligation to the Customer in respect of the customer's claim or for any loss or damage flowing therefrom howsoever caused.
- 14.6 Except in respect of death or personal injury caused by the Company's negligence or unless otherwise agreed in writing the Company shall not be liable to the Customer by reason of any representation or any implied or express warranty implied or express condition or other term or any duty at common law or under the express terms of the Contract for any consequential loss or damage (whether for loss of profit or otherwise) costs expenses or other claims for consequential compensation whatsoever (unless caused by the negligence of the Company its employees or agents) which arise out of or in connection with the sale and supply of the Products or their use or resale by the Customer except as expressly provided in these Conditions.

15. WARRANTY

- 15.1 Scope: Subject to Clause 15.2, the Company warrants that the Products will at the time of delivery to the Customer correspond with their specification and be free from materials' defects in construction or materials.
- 15.2 Conditions: The Company shall not be liable under the warranty in Clause 15.1 or under any other applicable warranty in relation to the Goods (the "Warranty"):-
 - 15.2.1. for breaches of the Warranty notified to the Company later than 12 months from the date of delivery of the Goods to the Customer, or such other period of time as shall otherwise be agreed in writing or set out in any notices or publications of the Company;
 - 15.2.2 for breaches of the Warranty notified to the Company later than 14 days from the date when the Customer becomes aware or ought to have been aware of the breach of the Warranty;
 - 15.2.3 unless the Customer gives adequate particulars of the circumstances alleged to be a breach of the Warranty, and the Customer permits the Company to inspect the Goods or returns the Goods to the Company at the Customer's cost and expense;
 - 15.2.4 in respect of any circumstance discoverable on inspection under Clause 8



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- 15.3 Exclusion of other warranties/remedies: The Customer acknowledges and agrees that in entering into the Contract, it does not rely on, and shall have no remedy in respect of any statement, representation, or warranty given by any person relating to the Products of their supply (including as to condition, quality and fitness for purpose) other than for the warranty set out in Clause 15.1 or any other warranties expressly agreed in writing by the Company. All warranties implied by statute, common law, custom or otherwise as to the condition or quality of the Products, or fitness for purpose of the Products, or correspondence with any sample are hereby excluded.
- 16. FORCE MAJEURE**
The Company shall not be liable for any failure to fulfil any obligation if prevented from so doing by any cause beyond its control which shall include but not be limited to any Act of God, strike, lock-out, labour dispute, riot or civil unrest, insurrection, war or other military action, fire, storm, flood, tempest, accident, mechanical failure, statutory intervention, governmental regulation, abnormal cost increase, embargo and/or delay of deliver) of materials. In the event of any such prevention hindrance delay or interference the Company may defer or determine the Contract or any part of it and any other contract between the Company and the Customer without any liability of the Company to the Customer and without prejudice to the Company's other rights.
- 17. INDEMNITY**
The Customer shall indemnify the Company in respect of all damage injury or loss occurring to any person or property and against all actions suits claims fines penalties demands charges or expenses in connection therewith arising from the condition sale resale or use of the Products in the event and to the extent that the damage, injury or loss shall have been occasioned partly or wholly by the carelessness of the Customer or his servants agents or employees or by any breach by the Customer of its obligations to the Company under these conditions.
- 18. TERMINATION**
- 18.1 The Company shall be entitled to terminate this and all other contracts with the Customer upon the happening of any of the following events;
- 18.1.1 failure by the Customer to pay any sum due to the Company under this or any other contract on the due date;
- 18.1.2 breach by the Customer of any other condition of this or any other contract with the Company and failure to remedy the breach within 30 days of the Company having given the Customer written notice of the breach;
- 18.1.3 the Customer being an individual dies or becomes bankrupt enters into receivership or a composition or arrangement for the benefit of his creditors or being a body corporate has an administrator or administrative receiver appointed over all or any of its assets or goes into liquidation either voluntary or compulsory (unless as part of a bona fide scheme of reconstruction or amalgamation).
- 18.2 No forbearance or indulgence by the Company shown or granted to the Customer whether in respect of these Conditions or otherwise shall in any way affect or prejudice the rights of the Company against the Customer or be taken as waiving any of these conditions or any liability thereunder.
- 18.3 In the event of termination the Customer shall forthwith pay to the Company all sums due to the Company under this and any other contract and the Company shall be entitled immediately to repossess all products in the possession of or under the control of the Customer or of any servant or agent of the Customer the Company being entitled to enter upon the premises belonging to the Customer or under the control of the Customer for such purposes.
- 19. MISCELLANEOUS**
- 19.1 The Company is a member of a group of companies whose holding company is Broughton Industries Ltd and accordingly the Company may perform any of its obligations or exercise any of its rights hereunder by itself or through any other member of the group, provided that any act or omission of such other member shall be deemed to be the act or omission of the Company.
- 19.2 Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time be notified to the party in notice.



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- 19.3 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provisions in question shall not be affected thereby.
- 19.4 These Conditions shall be governed by and construed in all respects in accordance with the laws of England and the parties hereby submit themselves, to the exclusive jurisdiction of the English Courts.
- 19.5 These Conditions shall where applicable survive termination of the Contract.
- 19.6 The Customer shall not assign any benefit under the Contract without the written consent of the Company, which may, if given, be on such terms as to guarantee or indemnify or otherwise as the Company thinks fit.

(Jan 2005)