

Envirotec Limited (“Envirotec”)
TERMS AND CONDITIONS OF SALE

1. Definitions and Applicable Conditions

1.1 In these terms and conditions: “Buyer” means the person whose order for the Goods is accepted in writing by a director of Envirotec; “Conditions” means these terms and conditions of sale, subject to any variations agreed in writing by Envirotec and the Buyer; “Contract” means the contract between Envirotec and the Buyer for the sale and purchase of the Goods; and “Goods” means the goods including units, products, parts, and services including on-site assembly and installation, refurbishment, servicing, maintenance, commissioning or instalments supplied pursuant to the Contract.

1.2 Unless otherwise agreed by an Envirotec director in writing, Goods are supplied only on these Conditions which alone shall govern and be incorporated in every Contract.

2. Representations and Orders

2.1 Any representation made by Envirotec or anyone acting on its behalf as to the suitability or use of the Goods which is not confirmed in writing by an Envirotec director is intended for guidance only and is followed entirely at the Buyer’s own risk.

2.2 Orders are only accepted when acknowledged by a director of Envirotec in writing. The Buyer must ensure the accuracy of any order. Envirotec’s specifications, dimensions and weights are approximate and it may, without notice, alter the Goods’ specification to conform with statutory requirements or make changes which do not materially affect installation, quality or performance.

2.3 Orders once accepted, may not be cancelled by the Buyer except with the written agreement of an Envirotec director. The Buyer shall indemnify Envirotec in full against all losses (including loss of profit), costs (including labour and materials), damages, charges and expenses incurred by Envirotec as a result of the cancellation.

2.4 Any samples, illustrations, descriptive material or other information contained in Envirotec’s brochures, website, advertising material, quotations, drawings or elsewhere shall not form part of the Contract and shall be treated as approximate and for guidance only unless specifically stated otherwise. Envirotec may at its discretion from time to time vary the design of the Goods from that advertised without notice to the Buyer provided that any such variations do not constitute material alterations to the Goods.

3. Prices and Terms of Payment

3.1 Quotations are open for acceptance by the Buyer within 30 days from the date of issue. They are subject to confirmation by Envirotec at the time of acceptance and may be varied by Envirotec to meet any variation beyond its control or caused by any instructions or delay on the part of the Buyer.

3.2 Unless otherwise stated, all prices are ex-works.

3.3 Where a credit account is granted by Envirotec, the Buyer shall pay for the Goods in full (without deduction) in cleared funds no later than 30 days from date of invoice (“the Due Date”). Where a credit account has not been granted by Envirotec, payment terms shall be on a proforma basis, cleared funds to be received prior to commencement by Envirotec of any procurement, survey, work or mobilization in connection with the contract.

3.4 Invoices will be issued to the Buyer on Delivery, subject to Clause 4.6.

3.5 Time shall be of the essence for payment of the Goods.

3.6 Customer credit accounts are under daily review and may be changed or withdrawn without notice at any time. In this event, works will pause immediately until new account terms are agreed or failing that proforma payments will be required prior to recommencement of the works.

3.7 Goods delivered in defined instalments shall be paid for as stated on the order acknowledgement to cover subsequent variations to programme of works / deliveries.

3.8 Envirotec reserves the right to charge interest at 4% above Bank of England base rate on overdue payments and to add that charge when issuing Past Due payments of invoices directly to their nominated debt collection agency without notification to the Buyer.

3.9 The Buyer shall not be entitled to make any deduction from the price of the Goods in respect of any set-off or counter-claim unless both the validity and the amount have been admitted by Envirotec in writing.

4. Delivery of the Goods, Risk and Title

4.1 Delivery shall take place either on Envirotec delivering the Goods to the place agreed by the parties prior to acceptance of an order or, by agreement, on collection of the Goods by the Buyer (or its agent) from Envirotec’s premises (“Delivery”).

4.2 Any initial Delivery date is an estimate from the time required for manufacture and/or mobilisation and is given in good faith for guidance only. A confirmed Delivery date will be notified to the Buyer at least 2 days before Delivery.

4.3 Delivery delays do not entitle the Buyer to cancel the order or claim damages for resulting losses. Section 32(2) of the Sale of Goods Act 1979 shall not apply. Envirotec is not required to give the Buyer the notice specified in section 32(3) of the Act.

4.4 Where the Goods are delivered in instalments, each delivery shall constitute a separate contract and any claim for payment by Envirotec in respect of any instalment(s) shall not entitle the Buyer to treat the Contract as a whole as repudiated.

4.5 If the Buyer fails to take Delivery (unless for causes beyond its reasonable control) within 3 days of the confirmed Delivery date then without limiting any other right or remedy, Envirotec may:

(a) issue an invoice to the Buyer, payable in accordance with clause 3.3; and/or

(b) store the Goods until actual delivery and charge the Buyer reasonable storage costs (including insurance).

4.6 The Goods shall be at the Buyer’s risk from the time of Delivery. Off-loading the Goods and any damage caused thereby shall be the sole responsibility of the Buyer.

4.7 Notwithstanding delivery and the passing of risk, legal title to the Goods shall not pass to the Buyer until Envirotec has received in cleared funds payment in full (including interest where appropriate) of the price of the Goods and all other Goods agreed to be sold by Envirotec to the Buyer for which payment is then due.

5. Warranties and Liability

5.1 Envirotec guarantees the Goods against defects in material and workmanship for a period of 12 months from the Delivery date, however, Envirotec shall not be liable in respect of any defect in the Goods:

(a) arising from any drawing, design or specification supplied by the Buyer;

(b) arising from fair wear and tear, willful damage, negligence of the Buyer or any third party, carrying and handling, faulty installation, failure to follow Envirotec’s instructions, misuse, lack of proper maintenance or storage, use beyond Envirotec’s recommended capacity, alteration, or repair of the Goods without Envirotec’s written approval;

(c) arising from parts, materials or equipment not supplied by Envirotec; or

(d) where the total price of Goods and additional charges has not been paid by the Due Date.

5.2 Envirotec shall, in respect of any valid claim relating to the Goods, at its sole discretion, replace or repair the Goods (or the part in question) or refund to the Buyer the price of such Goods but Envirotec shall have no further liability to the Buyer. Save for death or personal injury caused by Envirotec’s negligence, Envirotec’s aggregate liability under the Contract howsoever arising (be it by negligence, breach of contract, misrepresentation or otherwise) shall not exceed the price of the Goods.

5.3 Envirotec shall not be liable to the Buyer for any indirect or consequential loss or damage (whether for liquidated damages, loss of profit, loss of business, depletion of goodwill or otherwise), costs expenses or other claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

5.4 Except as set out in these Conditions all warranties, conditions or representations, express or implied by statute or otherwise, as to quality or fitness for any particular purpose of the Goods are hereby expressly excluded.

6. Notification of Claims

Claims for non-delivery of Goods shall be notified in writing to Envirotec within 3 days of the acceptance of delivery via a signed delivery note. Claims based on defects in the quality, condition or specification of the Goods shall be notified to Envirotec within 3 days after delivery. If the Buyer fails to so notify, it shall not be entitled to reject the Goods, Envirotec shall not be liable for such defects, and the Buyer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.

7. Force Majeure

Envirotec shall not be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of its obligations in relation to the Goods, if the delay or failure was due to any cause beyond Envirotec’s reasonable control.

8. Intellectual Property

8.1 The Goods include “Designs” which are owned by Envirotec. The Designs may not be reproduced or used in any way except with an Envirotec director’s prior written consent. Envirotec has not knowingly infringed any intellectual property rights (“IP”) of any third party but does not warrant or give assurance to the Buyer that any Design does not infringe the IP of any third party.

8.2 Survey reports, designs samples, illustrations, descriptive material and other information contained in Envirotec’s brochures, website, advertising material, quotations & drawings are owned by Envirotec and may not be shared, copied or reproduced in any way or by any media including visually, orally, in writing, either whole, in part or in summary unless agreed in writing by an Envirotec director

9. Indemnity

9.1 The Buyer shall indemnify Envirotec against all costs, damages and demands incurred by Envirotec for any alleged infringement of IP used by Envirotec at the Buyer’s request and claims arising under the Consumer Protection Act 1987 concerning defects in the Goods attributable to the Buyer’s instructions or to the Buyer’s design or modification of the Goods.

10. Insolvency of Buyer

If the Buyer compounds with its creditors; goes bankrupt or into liquidation; an administrator, administrative receiver or receiver is appointed over its assets; it ceases business; or it becomes apparent that such an event is likely, Envirotec may, without limitation or liability, cancel the Contract or suspend deliveries of Goods (the price for delivered Goods becoming immediately due and payable).

11. General

11.1 Persons with the authority to issue and take instructions, accept deliveries, sign off work, agree payments, and all other aspects of the contract are to be agreed in writing prior to commencement of work at the onset of the contract.

11.2 Notices shall be in writing signed by or on behalf of the party giving notice and shall, unless delivered personally, be left at or sent by prepaid post, recorded delivery or email to the persons agreed in clause 11.1 at their address.

11.3 If any provision of these Conditions is found to be invalid, unlawful or unenforceable that provision shall be severed from these Conditions. It shall not affect the enforceability of the remainder of these Conditions.

11.4 Any failure or delay by Envirotec in exercising a right or remedy provided by a Contract or by law does not constitute a waiver of such right or remedy or a waiver

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of other rights or remedies.

- 115 Unless expressly provided in this Contract, no term of this Contract is enforceable pursuant to the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to it.
- 116 These Conditions shall be governed by and construed in accordance with English law and subject to the exclusive jurisdiction of the English Courts. The Goods shall not be required to comply with any provisions of any other law.