

The Deeside Water Company Limited

Terms & Conditions

1. Terms and Conditions of Sale

These terms and conditions will apply to the sale of any Goods by The Deeside Water Company. Acceptance of delivery of the Goods will be deemed to effect acceptance by the Purchaser of these terms and conditions. They will apply to the exclusion of any other terms or conditions, notwithstanding the date or dates of issue of those other terms or conditions, except for any variation in quantity, price, date of delivery or specification of the Goods which has been agreed by Deeside.

2. Definitions

In these terms and conditions:-

“Deeside” - means The Deeside Water Company Limited, a private limited company incorporated in Scotland with registered number SC457187 and having its registered office at The Capitol, 431 Union Street, Aberdeen, United Kingdom, AB11 6DA and its principal place of business at The Stables, Pannanich Wells, Ballater, Aberdeenshire, AB35 5SJ;

"Delivery" means delivery of the Goods to such place as is agreed between Deeside and the Purchaser, and Delivery shall be completed when the Goods have been unloaded at such place;

“the Purchaser” - means the purchaser of the Goods and/or any person who orders Goods from Deeside;

“the Price” - the price of the Goods quoted by Deeside or, if no such price is quoted, the price of the Goods specified in Deeside’s most recent price list or such other price for the Goods agreed between Deeside and the Purchaser;

“the Goods” - means water and any other products that Deeside may supply, in whichever packaging or delivery format it is supplied, or any part thereof;

“in writing” - means, in relation to Deeside, signed by a director of Deeside.

Headings are given for convenience only and will not affect the interpretation of these conditions.

3. Price and Payment

(a) The Price is exclusive of VAT (if applicable).

(b) The Purchaser will pay the Price to Deeside without deduction or set off. The Price may be increased by Deeside at any time before Delivery to reflect any increase in cost beyond Deeside’s control (such as, but not limited to, foreign exchange fluctuation, currency regulation, significant increase in the cost of labour, materials and other costs of manufacture).

(c) All payments to Deeside are due 30 days after the date of invoice. If the Purchaser fails to make payment on the due date, then the Purchaser will pay Deeside interest on all sums due but unpaid at the rate of four percent over the base rate of the Governor and Company of the Bank of England from time to time from the due date until the actual date of payment. In addition, Deeside may, at its sole discretion, cancel or suspend any further supplies or deliveries to the Purchaser while any payments to Deeside are due but unpaid.

(d) Where VAT is chargeable on the Goods, the Purchaser shall pay such VAT to Deeside in addition to the Price.

(e) Transportation and delivery costs (including, without limitation, freight and insurance costs) are to be paid by the Purchaser as agreed with Deeside for each order, unless it is agreed between Deeside and the Purchaser that such costs are included in the Price.

(f) The costs of packaging (including, without limitation, the costs of renting any pallets and/or containers) are to be paid by the Purchaser as agreed with Deeside for each order, unless it is agreed between Deeside and the Purchaser that such costs are included in the Price.

4. Delivery

(a) Any date specified for Delivery of the Goods ("the Estimated Delivery Date") is an indication given by Deeside in good faith of the date upon which the Goods will be available for Delivery but is not binding on Deeside.

(b) Deeside will use reasonable endeavours to procure Delivery on the Estimated Delivery Date, but time of delivery will not be of the essence of the contract.

(c) If the Purchaser fails to take delivery of the Goods or fails to give Deeside adequate delivery instructions prior to the Estimated Delivery Date then, without prejudice to any other right or remedy available to it, Deeside may, at its sole discretion:-

(i) store the Goods until actual delivery and charge the Purchaser for the costs (including insurance) of storage; or

(ii) treat the order for the Goods as having been cancelled by the Purchaser.

5. Export Costs, Taxes and Duties

(a) The Purchaser will be responsible for paying all transportation / shipping costs to export markets.

(b) The Purchaser will be responsible for paying import duties, fees and taxes which are levied when the delivery reaches the specified destination. Deeside have no control over these charges and cannot predict their amount.

(c) The Purchaser should contact their local customs office for further information before placing an order and ensure the Goods will comply with all applicable laws and regulations of the country for which the Goods are destined. Deeside will not be liable for any breach of any such laws by the Purchaser.

6. Cancellation by the Purchaser

If after making an order to purchase Goods from Deeside, but before those Goods are Delivered, the Purchaser cancels that order in whole or part, then the Purchaser will pay to Deeside all costs incurred by Deeside as a result of such cancellation and any charges specified by Deeside.

7. Risk in and Title to the Goods

(a) Risk of damage to or loss of the Goods will pass to the Purchaser at the time of Delivery of the Goods to the Purchaser (where the Goods are so delivered in the United Kingdom) or at such time as shall be agreed between Deeside and the Purchaser (in all other cases). Sub sections (2) and (3) of Section 32 of the Sale of Goods Act 1979 shall apply subject to such agreement.

(b) Title to the Goods will remain with Deeside until such time as all sums due from the Purchaser to Deeside are paid in full, notwithstanding delivery and/or acceptance of the Goods.

(c) For the avoidance of doubt, any pallets and/or containers on or in which the Goods are supplied remain the property of Deeside or its contractors or suppliers (as the case may be) and the Purchaser shall acquire no right in or to such pallets and/or containers.

(d) Where the Purchaser retains any such pallets and/or containers referred to above after Delivery and does not return them to Deeside within 14 Business Days of Delivery, Deeside shall be entitled to recover from the Purchaser the full replacement value of such pallets and/or containers plus all other costs and expenses incurred by Deeside as a result of such failure to return such pallets and/or containers.

8. Deeside's Obligations

(a) Deeside will supply the Goods to the Purchaser in accordance with these terms and conditions.

(b) Deeside warrants that it has the right to sell the Goods, free from any charge or encumbrance.

(c) Deeside warrants that the Goods will comply with Deeside's specification for such Goods (which is subject to change by Deeside).

(d) Except as set out in paragraphs (a)-(c) above Deeside shall owe no further obligation to the Purchaser in relation to the supply of the Goods (except insofar as Deeside has otherwise agreed in writing).

(e) Except as set out in paragraphs (a)-(c) above any terms, conditions and/or warranties implied by law or otherwise into any contract for the sale of the Goods by Deeside to the Purchaser are excluded (save insofar as such exclusion is prohibited by law or has been waived by Deeside in writing).

(f) Without prejudice to the above the Purchaser acknowledges that Deeside makes no warranty or representation as to the quality or fitness of the Goods for any particular purpose, it being the Purchaser's responsibility to ensure that goods of the specification referred to in Clause 8(c) above are suitable for the purpose for which the Goods are used or to be used.

9. Storage and Use

(a) Deeside's advice and recommendation as to storage, application and use of the Goods which are set out in the technical specification sheets for the Goods published by Deeside, together with any other advice and recommendations made by Deeside in writing, must be followed by the Purchaser. Deeside shall not be liable for the consequences of the Purchaser's failure to do so.

(b) Any advice or recommendation given by Deeside or its employees or agents to the Purchaser or its employees or agents as to the storage, application or use of the Goods which is neither confirmed in writing by Deeside nor set out in the technical specification sheet in relation to the Goods published by Deeside, is followed or acted upon entirely at the Purchaser's own risk and accordingly Deeside shall not be liable for any such advice or recommendation which is not so confirmed.

(c) Deeside's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by Deeside in writing. The Purchaser acknowledges that it does not rely on any such representations which are not so confirmed.

(d) Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by Deeside shall be subject to correction without any liability on the part of Deeside.

10. Limitation of Liability

(a) Where any valid claim in respect of the Goods which is based on any defect in the quality or condition of the Goods or their failure to meet any specification provided by Deeside in writing is notified to Deeside, Deeside shall be entitled to replace the Goods (or the part of the Goods in question) free of charge or, at Deeside's sole discretion, refund to the Purchaser the price of the Goods (or a proportionate part of the price), but Deeside shall have no further liability to the Purchaser.

(b) Nothing in these terms and conditions shall limit any liability which cannot legally be limited, including but not limited to liability for fraud, fraudulent misrepresentation or death or personal injury caused by negligence.

(c) Subject to Clause 10(b), Deeside shall have no liability to the Purchaser in respect of the following types of loss, howsoever caused:

(i) loss of profits;

(ii) loss of sales or business;

(iii) loss of agreements or contracts;

(iv) loss of anticipated savings;

(v) loss of use or corruption of software, data or information;

(vi) loss of or damage to goodwill; or

(vii) indirect or consequential loss.

(d) Unless the Purchaser notifies Deeside that it intends to make a claim in respect of the Goods within one month following the best before date specified by Deeside in relation to the Goods, Deeside shall have no liability to the Purchaser in respect in respect of the Goods.

(e) Subject to Clause 10(b), the aggregate liability of Deeside under or in connection with the Goods shall be limited to the Price for such Goods.

11. Cancellation by Deeside

Deeside may cancel or suspend any further deliveries of the Goods if:-

(a) the Purchaser shall fail to pay any sums due to Deeside on their due dates;

(b) the Purchaser becomes apparently insolvent or bankrupt;

(c) any security holder or mortgagee takes steps to realise or enforce his security over any asset of the Purchaser;

(d) control (as defined in section 1124 of the Corporation Tax Act 2010) of the Purchaser shall change; or

(e) the Purchaser or any subsidiary or holding company of the Purchaser or any subsidiary of such holding company (a "Relevant Company") shall convene a meeting of its creditors or if a proposal shall be made for a voluntary arrangement within Part 1 of the Insolvency Act 1986 or a proposal for any other composition scheme or arrangement with its creditors or if a Relevant Company shall be unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 or if a trustee, receiver, administrative receiver or similar officer is appointed in respect of all or any part of the business or assets of a Relevant Company or if a petition is presented or a meeting is convened for the purpose of considering a resolution or other steps (including the presentation of a petition) are taken for the winding up of a Relevant Company or for the making of an administration order (otherwise than for the purpose of an amalgamation or reconstruction) (where the words "subsidiary" and "holding company" shall have the meaning given to them in the Companies Act 2006 as modified, supplemented or replaced from time to time);

12. Events Outside Our Control / Force Majeure

(a) Deeside reserve the right to defer the date of delivery, to cancel an order or reduce the volume of the Goods ordered by the Purchaser (without liability to the Purchaser) if prevented from or delayed in carrying on business by acts, events, omissions or accidents beyond our reasonable control.

(b) These include, without limitation, strikes, lock-outs, or other industrial disputes (whether involving the workforce of Deeside or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, snow, storm or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials ("Force

Majeure Event"), provided that, if the event in question continues for 30 days, the Purchaser shall be entitled to give notice in writing to Deeside to terminate the order.

(c) Deeside's performance under any Contract is deemed to be suspended for the period that the Force Majeure Event continues, and will have an extension of time for performance for the duration of that period. Deeside will use all reasonable endeavours to bring the Force Majeure Event to a close or to find a solution by which our obligations under the Contract may be performed despite the Force Majeure Event.

13. Intellectual Property Rights (IPR)

(a) The Purchaser acknowledges and agrees that all Intellectual Property Rights of whatever nature, including without limitation copyright, patent rights, rights to inventions, know-how, design rights, trade mark rights and database rights existing now or at any time in the future ("IPR") subsisting in the Goods, Deeside's products and processes or any information, samples, documentation or other items or materials provided by Deeside shall at all times remain Deeside's exclusive property.

(b) The Purchaser further agrees that all knowledge and IPR generated in the use, evaluation, testing or experimentation of the Goods in existing or new applications, processes and technologies, including without limitation any improvements to the same and any IPR subsisting in products, processes, deliverables, reports and test results, shall be Deeside's exclusive property.

(c) The Purchaser hereby assigns to Deeside (by way of a present assignation of future rights where legally competent) all right, title and interest in and to any such IPR arising out of or in connection with such evaluation, testing or experimentation of the Goods in existing or new applications, processes and technologies.

(d) The Purchaser shall promptly upon request by Deeside, provide full details of all applications, methods, formulas and processes which use the Goods and execute all documents required by Deeside to absolutely vest the IPR and knowledge in Deeside.

(e) Any data, including without limitation test results, trial observations, practical results, full scale operations and any other findings which are generated in the use of the Goods shall be deemed to be Deeside's confidential information and shall be treated as IPR for the purposes of the foregoing.

14. Data Protection Act

Deeside reserves the right to consult whomsoever it considers appropriate for the purpose of obtaining trade references and will record information in respect of such opinions which will be made available to other businesses for the continuing assessment of credit risk.

15. Notices

All communications will be deemed to have been served if sent by ordinary mail to the Purchaser's postal address or by email to the Purchaser's email address, as notified to Deeside by the Purchaser. Communications to the Deeside Water Company should be addressed to :

Deeside Water Company, The Stables, Pannanich Wells, Ballater, Aberdeenshire AB35 5SJ, Scotland
or by email to info@deesidewater.co.uk or by telephone at +44 (0)1339 755 000.

16. Changes

Deeside reserve the right to amend or replace the Terms and Conditions at any time. If any substantial changes are made, they will be notified by posting on a prominent position on our website.

17. Errors and Omissions

Every care is taken to ensure that all prices, quotations, descriptions and information are correct. Upon the discovery of an inadvertent error or omission by either party, appropriate adjustments shall be made as soon as practicable, in good faith, to restore the Parties to the fullest extent possible to the position they would have been in had no such inadvertent error or omission occurred.

18. Law

The Terms and Conditions shall be governed by and construed in accordance with Scots law and any disputes that may arise will be subject to the jurisdiction of the Scottish courts.
