

TERMS AND CONDITIONS OF SALE

EMICON SYSTEMS LIMITED



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1. Definition

1.1 In these Conditions, the following expressions will have the following meanings unless inconsistent with the context

“Business Day”	means any day, other than Saturday, Sunday or a public holiday in England, when banks in London are open for business;
“Buyer”	means the person(s), firm or company who orders the Goods;
“Conditions”	means these terms and conditions of sale together with any special terms agreed in writing between the Buyer and the Seller;
“Confidential Information”	means all secret or confidential commercial, financial and technical information, know how, trade secrets, inventions, computer software and other information whatsoever and in whatever form or medium and whether disclosed orally or in writing, together with all reproductions in whatsoever form or medium and any part or parts of it;
“Contract”	means any contract between the Seller and the Buyer for the sale and purchase of Goods formed in accordance with Condition 2;
“Goods”	means any goods which the Seller supplies to the Buyer (including any of them or any part of them) under a Contract;
“Incoterms”	means the Incoterms 2010 as published by the International Chamber of Commerce;
“Insolvency Event”	means the Buyer becoming insolvent or bankrupt or going into liquidation, receivership or administration or being wound up or entering into a composition or arrangement with its creditors or ceasing, or threatening to cease, to carry on business or taking or suffering any similar or analogous action in any jurisdiction;
“Intellectual Property Right”	means all copyrights, patents, database rights, design rights, designs, databases and domain names, trade and service marks, trade secrets, know-how protected by obligations of confidence, together with all rights to the grant of and applications for the same and all similar or analogous rights throughout the world, whether or not registered or capable of being registered;
“Order”	means the Buyer’s purchase order incorporating these Conditions and “Ordered” will be construed accordingly;
“Party”	means either the Seller or the Buyer and “Parties” will be construed accordingly;
“Seller”	means Emicon Systems Aps (limited), V.Kolbyesvej 13, DK- 4830 Maribo, Denmark; and

1.2 The headings in these Conditions are for convenience only and do not affect the Contract’s interpretation.

1.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.4 A reference to a Party includes its personal representatives, successors or permitted assigns.

1.5 A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.

1.6 Any trade term defined in the Incoterms will import the respective obligations of seller and buyer there set



out upon the Seller and the Buyer but, in the event of a conflict, these Conditions will prevail.

- 1.7 Any phrase introduced by the terms including, include, in particular or any similar expression will be construed as illustrative and will not limit the sense of the words preceding those terms.
- 1.8 A reference to writing or written includes faxes and emails].
- 1.9 Words in the singular will include the plural and vice versa.
- 1.10 A reference to one gender will include a reference to the other gender.
- 1.11 Any obligation in these Conditions not to do something includes an undertaking not to permit that thing to be done.

2. Basis of Contract

- 2.1 The Seller may give the Buyer quotations for the purchase of Goods. A quotation given by the Seller will be valid for a maximum period of 30 Business Days from its date of issue. Quotations are not binding, do not constitute an offer and are not open to acceptance by the Buyer.
- 2.2 These Conditions form the Contract's terms and conditions and apply to the exclusion of all other terms or conditions, whether put forward by or on behalf of the Buyer, in or on its order or whether implied by law, custom, trade, practice or course of dealing (insofar as the exclusion of the same is lawful).
- 2.3 The Seller may, from time to time, offer Goods to the Buyer for purchase. Such offers are valid for 30 days from the date of such offer and will automatically cease thereafter and take effect as an invitation to treat.
- 2.4 A Contract will only come into existence where the Seller accepts, in writing, an Order from the Buyer.
- 2.5 No alteration to these Conditions will be effective unless expressly agreed to in writing by the Seller.

3. Orders

- 3.1 The Buyer is responsible for ensuring the accuracy and sufficiency of its Order. The Seller may charge the Buyer for all costs (and a reasonable proportion of any loss of profit) it incurs as a result of the Buyer requesting a variation to an Order where such request is accepted by the Seller.

4. Delivery

- 4.1 Time will not be of the essence in relation to delivery. Where delivery is more than 14 days later than the time agreed, the Buyer will be entitled to cancel its agreement to purchase the Goods and to receive a full refund. However, the Seller will have no further liability for any delay howsoever caused, nor for any loss of any nature resulting directly or indirectly from such delay.
- 4.2 Delivery will be Ex-Works Victor Kolbyesvej 13, 4930 Maribo, Denmark or such other location as the Seller may specify, at any time after the Seller notifies the Buyer that the Goods are ready for delivery.
- 4.3 The Seller may deliver the Goods by instalments and each such delivery constitutes a separate Contract save that Goods relating to one filter system to be suitable or destined for a single vehicle will not be capable of being broken down into separate instalments or contracts. Subject thereto, failure by the Seller to deliver any one or more of such instalments or any claim by the Buyer in respect of any one or more instalments does not constitute a breach by the Seller of any other Contracts.
- 4.4 If the Buyer fails to take delivery of the Goods, the Seller may (without prejudice to its other rights and remedies):
 - 4.4.1 store the Goods and charge the Buyer for its costs of doing so (including VAT, costs of storage, carriage and insurance); and/or
 - 4.4.2 sell the Goods at any time and, account to the Buyer the amount if any by which the proceeds of such sale exceeds the price of those Goods and all costs and expenses, incurred by the Buyer in relation to such sale subject to deduction of any part of the price for the Goods sold which is unpaid.
- 4.5 Notification of any short delivery (measured by weight or number) or damage in transit must be made in writing to the Seller within 3 days of the receipt of the Goods.
- 4.6 Notification of any non-delivery must be made in writing to the Seller within 3 days of the date of the Seller's invoice.



4.7 The Seller will, at its option, either refund the whole or such part of the price as may be relevant to compensate the Buyer for any such non-delivery, short delivery or damage notified in accordance with Condition 4.5 or 4.6 or, in the case of damaged Goods only, repair or replace such Goods.

4.8 Save as provided in Condition 4.7, the Seller will not be liable for any non-delivery, short delivery or damage of Goods in transit, including liability for any loss, resulting directly or indirectly therefrom. In no event will the Seller be liable to the Buyer in connection with any damage or loss in transit where Goods are collected from the Seller's premises.

5. Description

All descriptive and technical specifications, drawings, catalogues, illustrations and particulars of weight and dimensions supplied by the Seller are approximate only and the Seller may, without notice to the Buyer, make alterations thereto and supply the Goods so altered in performance of the Contract provided that such alterations do not materially affect the Goods' characteristics and performance.

6. Cancellation

Following the formation of a Contract in accordance with Condition 2.4, the Buyer will not cancel and/or suspend such Contract, either in whole or in part, without the Seller's consent and upon terms that the Buyer will indemnify the Seller in full against all loss (including loss of profit), damages, costs, expenses and all other liabilities awarded against or incurred by the Seller as a result of or in connection with such cancellation.

7. Price

7.1 The Seller may invoice the Buyer for the price of the Goods on or at any time after the Seller has notified the Buyer that the Goods are ready for collection or the Seller has tendered delivery of the Goods.

7.2 All prices are exclusive of VAT which will be charged, where appropriate, at the rate prevailing at the relevant tax point.

7.3 The Buyer will make payment in full; net 10 days unless otherwise defined in the quotation, whether or not delivery has taken place or title in the Goods has passed to the Buyer. Interest at the annual rate of 6% over the base rate of Lloyds TSB Bank Plc will be charged on a daily basis on all monies outstanding after the due date until the actual date of payment (both before and after judgment).

7.4 Where payment is to be made by instalments (which is only permitted with the Seller's prior written consent), any delay or default by the Buyer in making payment in respect of any one instalment will render all remaining instalments due immediately, and interest will be charged on all unpaid instalments in accordance with Condition 7.3 with immediate effect until the date of actual payment.

7.5 The Seller may apply any payment by the Buyer to such of the Goods (or any goods supplied under any other contract between the Parties) as the Seller considers appropriate.

7.6 The Distributor may not withhold payment of any amount due to ESA because of any set-off, counter-claim, abatement or other similar deduction.

8. Risk and title

8.1 Risk in the Goods will pass to the Buyer immediately on delivery to the Buyer or when the Goods come into the possession of a third party on the Buyer's behalf, whichever is the sooner.

8.2 Title to the Goods will remain with the Seller until the Seller has received payment for the full price of:

8.2.1 all Goods the subject of the Contract; and

8.2.2 all packaging, insurance and transport of such Goods.

8.3 Until property in and title to the Goods passes to the Buyer:

8.3.1 the Buyer will hold the Goods on a fiduciary basis as the Seller's bailee;

8.3.2 the Buyer will keep the Goods properly stored, protected and insured and separate from all or any other goods whether belonging to the Seller, the Buyer or any third party to ensure that the Goods are clearly identifiable as the Seller's property;

8.3.3 the Seller may, at any time, revoke the Buyer's power to deal with the Goods; but, in any event, it will automatically cease if an Insolvency Event occurs or the Seller believes that such an



Insolvency Event is about to occur; and

8.3.4 the Buyer will not make any modification to the Goods or their packaging or alter remove or tamper with any marks, numbers or other means of identification used on or in relation to the Goods.

8.4 Upon termination of the Buyer's power to deal with the Goods in accordance with Condition 8.3.3, the Buyer will place the Goods at the Seller's disposal and the Seller and its servants and agents are hereby irrevocably authorised, without the need for consent from any third party but using only such force as may be necessary, to enter upon any of the Buyer's premises, or those of any third party, for the purpose of removing the Goods.

9. Termination and suspension

9.1 Without prejudice to any rights and remedies available to it, the Seller may immediately, on notice to the Buyer, either terminate the Contract wholly or in part and/or terminate any other contract with the Buyer or withhold performance of all or any of its obligations under the Contract and/or any other contract with the Buyer (and on the giving of such notice all monies outstanding from the Buyer to the Seller will become immediately due and payable) if:

9.1.1 any sum owing to the Seller from the Buyer on any account whatsoever remains unpaid after the due date for payment (in which case, the Seller will have a general lien for any such sum on all and any of the Buyer's property in its possession);

9.1.2 an Insolvency Event occurs;

9.1.3 the Buyer persistently breaches any term of the Contract; or

9.1.4 the Buyer commits a material breach of any contract (including the Contract) with the Seller and (if such a breach is capable of remedy) fails to remedy that breach within 20 days of being notified in writing of the breach by the Seller.

9.2 If the Seller suspends performance in accordance with Condition 9.1, the Seller may, as a condition of resuming performance, require pre-payment or such other security as it considers appropriate.

10. Liability

10.1 Nothing in these Conditions will operate to:

10.1.1 exclude the Seller's liability in respect of death or personal injury caused by the negligence of the Seller, its servants or agents;

10.1.2 affect the Buyer's statutory rights where Goods are sold to a Buyer dealing as a consumer within the meaning of Unfair Contract Terms Act 1977;

10.1.3 exclude the application of Section 12 of the Sale of Goods Act 1979; or

10.1.4 exclude liability for fraud, fraudulent misrepresentation or other dishonesty.

10.2 Subject only to clause 10.1, the Seller will not be liable to the Buyer, whether in contract, tort (including negligence) and/or breach of statutory duty or otherwise for loss of revenue, profit, business opportunity, goodwill, reputation, business interruption or other economic loss, whether direct or indirect, and whether arising under or in connection with the Contract or the use or re sale of the Goods by the Buyer or otherwise.

10.3 Subject to Conditions 10.1 and 10.2, the Seller's total liability to the Buyer in respect of all losses arising under or in connection with the Contract, whether in contract, tort (including negligence) and/or breach of statutory duty or otherwise (including where such loss is caused by the acts or omissions of its employees, agents or subcontractors), will not exceed the price of the Goods which are the subject of such claim.

10.4 The Buyer will be entitled to return any Goods which are materially incapable of operating correctly in accordance with their specification:

10.4.1 and those Goods are shown to be materially defective; or

10.4.2 on the vehicle or vehicle type for which the Seller specifically provided them having advised upon or recommended the use of those particular Goods for that purpose unless the Buyer failed



to fully, promptly and accurately provide the Seller with all relevant information including all information requested by the Seller

provided that this clause 10.4 will not apply (a) where the failure of any Goods is due to a failure by the Buyer correctly to store, handle or install the affected Goods or (b) to any Goods, which would operate correctly if components were provided or replaced and where the Seller has agreed to provide such components and does so within 14 days of learning of the fault. This clause 10.4 will not apply and the Seller will have no responsibility thereunder unless issues under clauses 10.4.1 and 10.4.2 are notified to it within 14 days of delivery of the Goods to which they relate.

10.5 The Seller will reimburse the Buyer's reasonable and properly incurred costs of returning any Goods which it is entitled to return pursuant to clause 10.4.

Health and safety

11. The Buyer will comply with all of the Seller's instructions relating to the Goods and take such other steps as are required to ensure, so far as is reasonably practicable, that the Goods will at all times be safe and without risk to health when being properly used, cleaned or maintained.

12. Intellectual property rights

12.1 If any claim is made against the Buyer that the Goods infringe, or that their use or resale infringes, any other person's Intellectual Property Right or any claim is made in respect of passing off or unauthorised use of Confidential Information in relation to the Goods and/or their use or resale, the Buyer will immediately notify the Seller in writing and give it full control of any proceedings or negotiations in connection with any such claim.

12.2 The Buyer will give the Seller all reasonable assistance for the purposes of any proceedings or negotiations specified in Condition 12.1 and, except pursuant to a final award, the Buyer will not pay or accept any such claim, or compromise any such proceedings without the Seller's consent (which will not be unreasonably withheld). The Buyer will not do anything which may vitiate any insurance policy or cover which the Seller may have in relation to such infringement.

12.3 If the Goods are to be manufactured, or any process is to be applied to the Goods, by the Seller in accordance with a specification submitted by the Buyer, the Buyer will (without prejudice to the Seller's other rights and remedies) indemnify the Seller in full against all losses, costs, damages, charges, expenses, proceedings, awards, demands, payments, claims, compensation, fines, judgments and other liabilities awarded against or incurred by the Seller as a result of, or in connection with,:

12.3.1 any claim for infringement of any other person's Intellectual Property Right and/or for passing off and/or unauthorised use of Confidential Information which results from the Seller's use of the Buyer's specifications; or

12.3.2 any other liability of any kind to any third party, including liability for defective Goods, personal injury or death to the extent that it arises from the specification or any act or omission of the Seller.

13. General

13.1 It will be the Buyer's responsibility to ensure that all requirements applicable to the Contract, whether statutory, regulatory, municipal and/or otherwise howsoever, (including any relating to the Goods' use or importation in the country of destination and for the payment of duties thereon) are duly complied with. It will be a condition precedent to the performance by the Seller of its obligations under the Contract that all necessary licences, permits and consents will have been obtained by the Buyer.

13.2 Without prejudice to the generality of Condition 13.1, the obtaining of any relevant exchange control consents will be a condition precedent to the Seller's performance of any of its obligations under the Contract.

13.3 Neither Party will have any liability for any failure to perform or for any delay in the performance (other than as to payment) of any of its obligations under the Contract caused by any factor beyond its reasonable control.

13.4 The Buyer's rights and remedies in respect of the Contract will not be diminished, waived or extinguished by the granting of any indulgence, forbearance or extension of time by the Seller to the Buyer nor by any failure of or delay by the Seller in ascertaining or exercising any such rights or remedies. Any release, waiver or compromise or any other arrangement of any kind (a release) by the Seller will not affect its rights



and remedies as regards any third party nor its rights and remedies against the Buyer in whose favour it is granted or made except to the extent of the release's express terms and no such release will have effect unless granted or made in writing. The rights and remedies in this Contract are cumulative and not exclusive of any rights and/or remedies provided by law.

- 13.5 The Contract is personal to the Buyer. The Buyer will not assign, transfer or charge its rights and responsibilities under this Contract or any of them, nor appoint any sub-contractor or agent without the Seller's prior written consent not to be unreasonably withheld.
- 13.6 The provisions of these Conditions are severable and distinct from one another, and, if at any time any of the provisions is or becomes invalid, illegal or unenforceable, the validity, legality or enforceability of the other provisions will not in any way be affected or impaired.
- 13.7 The headings in these Conditions are for convenience only and do not affect the Contract's interpretation.
- 13.8 These Conditions and the Contract will not constitute and will not be deemed to constitute a partnership between the Seller and the Buyer and the Buyer will not act nor purport to act as agent for the Seller but solely as an independent contractor.
- 13.9 All notices under this Contract will be in writing and may be served by post or facsimile transmission addressed to the other Party at the address given in this Contract or at such other address as the other Party will from time to time by notice in writing give to such Party for the purpose of service of notices under this Contract and every such notice will be deemed to have been served by post at the expiration of 5 days after despatch of the same or if sent by facsimile transmission at ten hours local time on the recipient's next normal Business Day following despatch and in proving service it will be sufficient to show in the case of a letter that the same was duly addressed prepaid and posted in the manner provided and in the case of a facsimile transmission a transmission report that it was transmitted to the correct telephone number. Saturdays, Sundays and Bank Holidays will not in any event be treated as days on which service is effected, and service will be deemed to take place on the recipient's next normal Business Day.
- 13.10 The Contract and all disputes arising thereunder will be governed in accordance with the laws of England and Wales.
- 13.11 Any dispute arising under this Contract will be subject to the non-exclusive jurisdiction of the English courts and the Parties waive any objection to proceedings in such courts on the grounds of venue or on the grounds that proceedings have been brought in an inappropriate forum.

14. **Third Party Rights**

For the avoidance of doubt nothing in these Conditions will confer on any third party any benefit or the right to enforce any provision of these Conditions.