



## **General Conditions of Sale**

### **APPLICATION**

1 (1) In these Conditions, unless the context otherwise requires:-

"Company" means BAC Corrosion Control Limited (Company registration no.1394643)

"Contract" means the contract for the sale and/or supply and purchase of the Goods hereunder

"Customer" means the person so described overleaf

"Event" means any one occurrence or all occurrences of a series consequent on or attributable to one source or original cause

"Goods" means the goods, works and/or services described overleaf and includes any or any part of them

"Group Policy" means any insurance policy for public and product liability maintained for the group of which the Company is a member under which the Company is insured

"Local Policy" means any insurance policy for public and product liability maintained by the Company (excluding any cover available to it under any Group Policy)

"person" includes any body corporate or unincorporate

"Product Liability" means legal liability for accidental loss of or damage to any material property and/or accidental death of or personal injury to any person (except for any Company employee where it arises out of and in the course of employment) caused by any defect in the Equipment or any other item supplied or hired by the Company

"Pollution" means pollution or contamination of any building or other structure, land or water or the atmosphere caused by a sudden, identifiable, unintended and unexpected incident which takes place in its entirety at a specific time and place other than in the United States of America or Canada

"Property Damage" means damage to or loss of any material property but excluding any Pollution

"writing" includes facsimile transmission

Words denoting the singular only include the plural and vice versa

(2) These Conditions, the terms overleaf and any special conditions agreed to in writing by the Company constitute the entire agreement for the sale and/or supply and purchase of the Goods and supersede any terms or representations referred to in the Company's sales literature or elsewhere. If any terms overleaf and/or any special conditions conflict with these Conditions of Sale, the former will prevail



## **ORDERS AND SPECIFICATIONS**

2 (1) Orders (including any acceptance of any estimate or quotation of the Company) will only bind the Company when it accepts them in writing

(2) The Customer must provide any information and free issue materials which it is to provide under the Contract within sufficient time for the Company to perform its obligations

(3) The Goods may be changed to conform with product development (but without materially adversely affecting quality or performance) or any applicable safety or statutory requirements

(4) If the Company ceases to manufacture any Goods or proposes to do so, it will notify the Customer of that fact but will not be liable for any loss, damage or liability incurred by the Customer as a result. In that event the Customer will have the option (exercisable by written notice served on the Company within 10 days of the date of the Company's notice) either to purchase from the Company goods which are equivalent to the Goods concerned (if available) on the terms of the Contract or to terminate the Contract in respect of the Goods concerned (but not otherwise) without further liability on either party. If the Customer fails to exercise that option and to the extent that equivalent goods are available from the Company, the Contract will continue in respect of those goods but will terminate as regards the other Goods concerned

(5) The Customer will indemnify the Company against all loss, damage, proceedings, liabilities, costs and expenses incurred by the Company in connection with any claim for infringement of any intellectual property rights, or for unlawful use or disclosure of any confidential information, of any third party arising from the Company's use of any specification or other material provided by the Customer in relation to the Contract

## **PRICE**

3 (1) Unless the Company otherwise agrees in writing, the price of the Goods will be that specified overleaf. Subject to paragraph 2(1), all prices quoted and quotations are valid for 30 days only. All prices will be subject to any applicable value added tax and other taxes or duties which will be payable at the same time as the price of the Goods

(2) Unless the Company otherwise specifies or delivery is ex works, the Customer will pay the Company's charges for transport and insurance at the Company's rates prevailing at the time of delivery. Unless the Company otherwise specifies, the price of the Goods includes packing them in accordance with the Company's standard practice

## **PAYMENT**

4 (1) The Company may invoice the Customer for all sums payable under the Contract on or at any time after delivery or, if the Customer wrongfully fails to collect or take delivery of the Goods or fails to give proper delivery instructions, at any time after it has notified the Customer that they are ready for collection or it has tendered delivery of them. The time for payment will be of the essence



CORROSION CONTROL

(2) Unless payment is to be made on delivery, the Company's invoices will be payable within thirty days of their date. The Company may withhold delivery of the Goods for so long as any sum due to the Company from the Customer under the Contract or any other contract remains unpaid

(3) If the Customer fails to make any payment on the due date then, without prejudice to any of its other rights, the Company may terminate the Contract or suspend any further deliveries, appropriate any payment by the Customer to such of the Goods as the Company decides despite any purported appropriation by the Customer and/or charge the Customer interest on the amount for the time being unpaid at a rate equivalent to 4% per annum above the base rate (or if it is replaced, its successor) from time to time of Lloyds TSB Bank Plc until payment in full is made. Such interest shall accrue on a daily basis and be payable both before and after judgment

(4) All sums payable by the Customer must be paid in sterling without any deduction and regardless of any set-off, counterclaim or other claim or right

(5) If any sum due from the Customer pursuant to the Contract or any order or judgment relating to it has to be converted from the currency ("the first currency") in which the same is payable into another currency ("the second currency") to make any claim or obtain or enforce any order or judgment against the Customer, it will indemnify the Company against any loss suffered as a result of any discrepancy between (a) the rate of exchange used for such conversion and (b) the rate(s) of exchange at which the Company may in the ordinary course of business purchase the first currency with the second currency on receipt of a sum paid to it in or towards satisfaction of any such order, judgment or claim

(6) Without prejudice to its other rights, if the Company has serious doubts about the Customer's ability to pay any sum under the Contract on the due date the Customer will within seven days of written notice from the Company pay the balance of all sums payable under the Contract (including any sum held or to be held by way of retention)

## **DELIVERY**

5 (1) The Company will use its reasonable endeavours to supply the Goods in accordance with any estimated delivery or completion date but the time for delivery or completion will not be of the essence of the Contract

(2) The Goods will be delivered where stipulated by the Company

(3) Provided it has given at least 7 days' notice, the Company may deliver the Goods by instalments as and when they are available. Where the Goods are or are to be delivered by instalments, each delivery will constitute a separate contract

(4) If the Customer fails to collect or accept delivery of the Goods or give proper delivery instructions (unless due to the Company's default), without prejudice to its other rights, the Company may :-

(a) arrange for storage of the Goods at the Customer's risk and expense until they are delivered or collected, including if applicable storage charges at the Company's then prevailing rates and the cost of any redelivery; or



(b) if the Company terminates the Contract, sell the Goods in its discretion and, after deducting from the sale proceeds all sale costs and other sums owing to the Company, retain any surplus for its own benefit

### **TESTING OF GOODS**

6. If the Company is required to carry out tests other than its normal ones or in the presence of the Customer the Company may charge for those tests at its then prevailing rates. The Company may carry out and charge for the tests if the Customer fails to attend on the notified dates

### **INSPECTION AND ACCEPTANCE OF GOODS**

7 The Customer will notify in writing (otherwise that on a delivery document) (a) the Company and any carrier of any claim regarding the quantity or condition of Goods delivered or any damage to them within 5 days of delivery and (b) the Company of any claim regarding any defect which should be apparent on reasonable inspection within 15 days of delivery, time being of the essence. Paragraph 9 will apply to any such defect or damage. If no such notice is given, so far as concerns those matters the Customer will be deemed to have accepted the Goods and that they conform with the Contract

### **TITLE AND RISK**

8 (1) Notwithstanding delivery and the passing of risk or any other provision of these Conditions, the legal and beneficial ownership of the Goods will remain with the Company, which retains the right of disposal, until the Company has received payment in full of all sums payable to the Company in relation to the Contract and all other sums then due from the Customer to the Company

(2) Until the Customer becomes the owner of the Goods it will :-

(a) hold the Goods as fiduciary agent and bailee for the Company who may, at any time and without prior notice, require the Customer to deliver up the Goods to the Company (whether or not they form part of or are affixed to any other item) and, if it fails to do so forthwith, enter upon any premises where the Goods may be situated with its representatives and appropriate transport and repossess the same;

(b) not sell, part with possession of, use (except in the ordinary and proper course of business of the Customer) or do anything else inconsistent with the Company's ownership of any of the Goods and will ensure that they are not affixed to any land or building, are kept separate from any other item, properly stored and protected and clearly identified as the Company's property and are insured to their full replacement value against all normal comprehensive risks

(3) After the Company has repossessed any Goods it may sell them and the sale proceeds will belong to the Company absolutely. If the net proceeds received by the Company are less than the amount payable to it under the Contract it may recover the balance from the Customer



CORROSION CONTROL

(4) Risk in the Goods will pass on delivery. All insurance proceeds receivable by the Customer in respect of the Goods shall be held in trust by the Customer for the Company in a separate account and first be applied in or towards discharging any sums payable under the Contract

(5) Notwithstanding that the Customer has not become the owner of the Goods, the Company may recover all sums payable to it in relation to the Contract

## **WARRANTY**

9 (1) The following warranty will apply to the Goods :-

The Goods will correspond with their specification and description and sample (if any) at the time of delivery and if within twelve calendar months of the Goods being delivered by the Company or, as the case may be, completion of the supply of any services (or such other period as the Company may agree in writing) any defect in the Goods is discovered under normal use which is directly attributable to the Goods not so corresponding or faulty design, materials or workmanship, or a valid claim is made under paragraph 7, the Company will at its option and expense remedy the defect or damage by replacement or repair or refund the purchase price of the defective or damaged Goods

(2) The warranty will be subject to the following conditions :-

(a) it will not apply to any defect or damage resulting from any:-

(i) alteration of the Goods without the Company's prior written consent, incorrect installation (except by the Company), incorrect storage, overloading, normal wear and tear, misuse or use not for their intended purpose, accident, abnormal conditions of use or maintenance, repair or use which is not in accordance with the Company's or manufacturer's instructions or procedures issued from time to time; or

(ii) any act or omission of the Customer or any third party (excluding the Company's agents or sub-contractors involved in the supply of the Goods) or any fault in any other goods

(b) the Company will not be liable for any defect in the Goods arising from any document, information or materials supplied by or for the Customer

(c) warranty work will be carried out during the Company's normal business hours so far as is practicable at the Company's premises and/or elsewhere at its option. The Customer will procure that the Company's personnel will have such access to the Goods as they may require to investigate alleged defects or damage and carry out any warranty work

(d) Goods must be returned carriage paid to the Company's trading premises as required by the Company. Repaired or replacement Goods will be delivered to the Customer's premises within the United Kingdom or, in the case of exports, FOB UK port or airport at the cost and discretion of the Company. The Company will reimburse the Customer the reasonable carriage costs incurred by it in returning by road from the Customer's premises in Great Britain or by other agreed mode of transport Goods which are repaired or replaced under the warranty or whose purchase price is refunded. Replaced Goods will belong to the Company



(e) the Customer must give to the Company in writing full particulars of any alleged defect or damage within the period stated in paragraph 7 or, in the case of a warranty claim, within 7 days after it becomes aware of the same and in any event within 7 days of the end of the warranty period (time being of the essence)

(f) no sum shall be due and unpaid under the Contract when the Company is to fulfil its obligations under the warranty

(g) if the Customer makes any claim falling outside the terms of the warranty the Company may charge for examining the Goods and any work done or goods supplied by it in respect of that claim at its then prevailing rates and any cost or expense incurred by the Company

(h) this paragraph 9 and paragraph 10 will apply to goods replaced or repaired under the warranty for the balance of the original warranty period

## **LIABILITY**

10 (1) The warranty will be in substitution for all other terms, warranties,

and conditions, express or implied, statutory or otherwise in relation to the Goods (except for the Company's title to them) which are hereby excluded to the fullest extent permitted by law

(2) The Company will not be liable in contract or in tort (including negligence) or in any other way for any consequential or indirect loss, liability or damage nor for any other claim for consequential compensation whatsoever (including loss of profit, costs or expenses) arising howsoever from or in connection with the Contract or the Goods

(3) The Company's liability for all compensation for Property Damage or Pollution resulting from any act or omission or negligence on the part of the Company arising in connection with the Contract shall be limited in aggregate to damages of an amount equal to:-

(a) , in the case of all and any Property Damage caused by the Equipment in any one period of the Company's insurance for Product Liability under the Local Policy, £500,000, less the Company's total liabilities in relation to all other claims for Product Liability made in respect of that period and which are covered by such insurance

(b) , in all and any other cases for Property Damage, £500,000 in relation to any Event occurring in any one period of the Company's insurance for such Property Damage under the Local Policy, less the Company's total liabilities in relation to all other claims arising from or attributable to that Event made in respect of that period and which are covered by such insurance

(c) , in the case of all and any Pollution (including all loss or damage directly or indirectly caused by Pollution), £500,000, in relation to any Event occurring in any one period of the Company's insurance for such Pollution under the Local Policy, less the Company's total liabilities in relation to all other claims for Pollution arising from or attributable to that Event made in respect of that period and which are covered by such insurance. The Company shall have no liability for any other pollution or contamination which may occur



CORROSION CONTROL

(4) Excluding its liability referred to in paragraph 10(3) or under paragraph 9 the Company's aggregate liability whether arising in contract or tort (including negligence) or otherwise howsoever for any loss, cost, damage, injury or liability (whether consequential or indirect or otherwise) resulting from or in connection with this Agreement will be limited to damages of an amount equal to the net invoice value of the Goods

(5) The limits on the Company's liability in paragraphs 10(3) (a) – (c) shall be exclusive of its legal liability to the Customer for legal costs and expenses relating to the liability concerned, to the extent they are covered by the Company's insurance and shall be increased by the amount of the sums received by the Company under the Group Policy for all claims made by the Customer in respect of the liabilities referred to in the relevant paragraph. The limit on liability in paragraph 10(4) shall be inclusive of such costs and expenses

(6) Provided that the insurance is available to it generally in the market on reasonable commercial terms, the Company will maintain during the continuance of this Agreement and for at least 6 calendar months after it has come to an end insurance cover a Local Policy for public and product liability insurance in respect of the liabilities referred to in paragraph 10(3) for not less than the respective amounts stated in that paragraph

(7) The limitations on and exclusions from liability in these Conditions will be subject to section 2(1) Unfair Contract Terms Act 1977 and will not apply to any liability for fraud

(8) The Customer undertakes to indemnify the Company from and against all claims and proceedings brought against the Company by any third party arising from any act or omission (including negligence) on the part of the Customer (or any other person for whom it is vicariously liable) in relation to the Goods or their supply or use together with all expenses, costs (including legal costs on a full indemnity basis), damage, losses and liabilities incurred by the Company in connection with any such claims or proceedings

(9) The Customer agrees that it accepts the limitations on and exclusion from liability contained in these Conditions as reasonable and that if they had not been included the price of the Goods would have been materially increased and warrants that in purchasing the Goods it is not dealing as a consumer (as defined in the Unfair Contract Terms Act 1977)

(10) Any weights, measures, means or ratings or references to the capacity, output power or performance contained in the Company's sales literature or quotation or in the Contract (other than the Specification relating to the Goods applicable to the Contract) are approximate only and do not form part of the description of the Goods or constitute any representation or warranty in respect of them

(11) If any of the Company's personnel provide any services under the Contract at any site of the Customer or any third party, the Customer will procure that each site and the working conditions there are safe and in compliance with all applicable legislation, rules and regulations

## **FORCE MAJEURE**

11 The Company will not be deemed to be in breach of the Contract or otherwise be liable to the Customer for any delay or failure in performing any of its obligations under the Contract by reason of any cause or event beyond the Company's reasonable control (including breakdown of plant or



machinery, strike or industrial dispute, shortage of materials or failure of or delay in receiving supplies)

## **TERMINATION**

12 (1) If the Customer :-

(a) makes any arrangement or composition with its creditors generally or (being an individual) has an interim order (within the meaning of the Insolvency Act 1986) or any other order under any legislation relating to bankruptcy or insolvency or their equivalent made against him or becomes bankrupt or its equivalent or (being a firm or body corporate or unincorporate) enters into compulsory liquidation or voluntary liquidation or the equivalent is dissolved; or

(b) has a receiver and/or manager, administrative receiver, supervisor or administrator or any other person having similar powers or function appointed over or in relation to the Customer or any part of its assets or undertaking; or

(c) is unable to pay its debts within the meaning of sections 123 or 268 Insolvency Act 1986 or ceases to carry on business or threatens to do so; or

(d) commits any breach of any of the provisions of the Contract (express or implied) without prejudice to its other rights (including its accrued rights) the Company may terminate the Contract or the balance of the Contract or suspend deliveries forthwith by written notice to the Customer without any liability whatsoever

(2) The Customer will indemnify the Company against all claims, proceedings, loss, damage, liabilities, costs and expenses incurred by the Company in connection with any breach by the Customer of, or any act or omission of the Customer in relation to the Contract

## **GOVERNING LAW AND JURISDICTION**

13 The Contract will be governed by the laws of England and all claims and proceedings relating to it will be subject to the non-exclusive jurisdiction of the Courts of England

## **INTELLECTUAL PROPERTY**

14 All drawings, designs, specifications and any other documents in any medium relating to the Contract produced by or on behalf of the Company and all rights in them will belong to the Company and will not be disclosed to any third party or (except to the extent necessary for the proper use of the Goods) used by the Customer and all copies under the control of the Customer will be returned to the Company on request



## **MISCELLANEOUS**

15 (1) If any provision of the Contract or part of it is held to be invalid or unenforceable by any court or other body of competent jurisdiction that will not affect the other provisions or the remainder of the relevant provision

(2) Any variation of the Contract or waiver of any breach by the Customer must be agreed to in writing by the Company's authorised representative. Any time or indulgence given by the Company will not in any way prejudice any of its rights in respect of the Contract

(3) The Customer may not assign, sub-contract or otherwise deal with all or any of its rights or obligations in relation to the Contract without the Company's prior written consent but the Company will be free to do so

(4) Any notice or claim under the Contract must be in writing and will be effectively served if it is personally delivered or sent by pre-paid first class post or facsimile transmission to the addressee at its address overleaf or any other address for service notified to the other in accordance with this paragraph.