

## Definitions & Interpretation

1.1. In these Conditions, the following definitions apply:

**“Business Day”**: a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

**“Conditions”**: the terms and conditions set out in this document as amended from time to time in accordance with clause 11.6.

**“Contract”**: the contract between Tarn-Pure and the Customer for the sale and purchase of the Equipment in accordance with these Conditions.

**“Customer”**: the person or firm who purchases the Equipment from Tarn-Pure.

**“Equipment” or “Parts”**: the Tarn Pure water ionisation system or any part of the system as set out in the Order.

**“Force Majeure Event”**: has the meaning given in clause 10.

**“Order”**: the Customer’s order for the Equipment, as set out in the Customer’s purchase order form or in the Customer’s written acceptance of Tarn-Pure’s quotation.

**“Specification”**: any specification for the Equipment prepared by Tarn-Pure based on the Customer’s installation (including but not limited to water flows, water usage patterns, water chemistry and conductivity) that is agreed in writing by the Customer and Tarn-Pure.

**“Tarn-Pure”**: Tarn-Pure Limited (registered in England and Wales with company number 06799209) having its registered office at Castle Court, Cathedral Road, Cardiff CF11 9LJ, UK.

1.2. In these Conditions, the following rules apply:

- 1.2.1. A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.2.2. A reference to a party includes its personal representatives, successors or permitted assigns.
- 1.2.3. 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.

- 1.2.4. Any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- 1.2.5. A reference to **writing** or **written** includes faxes and e-mail except in relation to any notices to be served in accordance with clause 11.2.

## Basis of contract

- 2.1. These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.2. The Order constitutes an offer by the Customer to purchase the Equipment in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order and any applicable Specification are complete and accurate.
- 2.3. The Order shall only be deemed to be accepted when Tarn-Pure issues a written acceptance of the Order, at which point the Contract shall come into existence.
- 2.4. The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of Tarn-Pure which is not set out in the Contract.
- 2.5. Any samples, drawings, descriptive matter, or advertising produced by Tarn-Pure and any descriptions or illustrations contained in Tarn-Pure’s catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Equipment described in them. They shall not form part of the Contract or have any contractual force.
- 2.6. A quotation for the Equipment given by Tarn-Pure shall not constitute an offer. **A quotation shall only be valid for a period of 90 Days from its date of issue.**

## Equipment

- 3.1. The Equipment is as described in the Specification.
- 3.2. Tarn-Pure reserves the right to amend the Specification if required by any applicable statutory or regulatory requirements.

- 3.3. Tarn-Pure also reserves the right to amend the Specification for any other reason provided that the new Specification is equivalent to or improves upon the previous Specification.

## Delivery

- 4.1. Tarn-Pure shall ensure that each delivery of the Equipment is accompanied by a delivery note which shows the date of the Order, all relevant Customer and Tarn-Pure reference numbers, the type and quantity of the Equipment (including the part number of the Parts, where applicable), special storage instructions (if any) and, if the Order is being delivered by instalments, the outstanding balance of Parts remaining to be delivered.
- 4.2. Tarn-Pure shall deliver the Equipment "EXW" at the Tarn-Pure point of despatch (Incoterms 2010) (the "**Delivery Location**")
- 4.3. Tarn-Pure is willing to arrange transportation to an address designated by the customer, acting as agent for the customer without liability.
- 4.4. In every case risk and title in the Equipment passes to customer at the Delivery Location and the cost for delivery transportation and insurance when the goods are in transit shall be the responsibility of the customer.
- 4.5. Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. Tarn-Pure shall not be liable for any delay in delivery of the Equipment that is caused by a Force Majeure Event or the Customer's failure to collect the Equipment from the Delivery Location during Tarn-Pure's designated hours, details of which will be supplied with the Order acceptance.
- 4.6. The Customer shall have the right to inspect the Equipment for any physical damage on delivery.
- 4.7. If Tarn-Pure fails to deliver the Equipment or the Customer identifies any physical damage to the Equipment on delivery, Tarn-Pure's liability shall be limited (at the Customer's option) to replacing the damaged Equipment from Tarn-Pure's stock or the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Equipment. Tarn-Pure shall have no liability for any failure to deliver the Equipment to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide Tarn-Pure with adequate delivery instructions or any other instructions that are relevant to the supply of the Equipment.

- 4.8. Tarn-Pure may deliver the Equipment by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate Contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

## Warranty

- 5.1. Tarn-Pure warrants that on delivery, and for a period of 12 months from the date of delivery ("**Warranty Period**"), the Equipment shall:
- 5.1.1. conform with their description and any applicable Specification;
- 5.1.2. be free from material defects in design, material and workmanship; and
- 5.1.3. be fit for any purpose held out by Tarn-Pure.
- 5.2. Subject to clause 5.3, if:
- 5.2.1. the Customer gives notice in writing to Tarn-Pure during the Warranty Period within a reasonable time of discovery that some or all of the Equipment do not comply with the warranty set out in clause 5.1;
- 5.2.2. Tarn-Pure is given a reasonable opportunity of examining such Equipment; and
- 5.2.3. the Customer (if asked to do so by Tarn-Pure) returns such Equipment to Tarn-Pure's place of business at the Customer's cost,
- Tarn-Pure shall, at its option, repair or replace the defective Equipment, or refund the price of the defective Equipment in full.
- 5.3. Tarn-Pure shall not be liable for the Equipment's failure to comply with the warranty set out in clause 5.1 in any of the following events:
- 5.3.1. the defect would have been apparent to the Customer on a physical inspection of the Equipment in accordance with clause 6 which the Customer failed to notify Tarn-Pure of within two Business Days of delivery;
- 5.3.2. the Customer makes any further use of such Equipment after giving notice in accordance with clause 5.2;
- 5.3.3. the defect arises because the Customer failed to follow Tarn-Pure's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Equipment or (if there are none) good trade practice regarding the same;

- 5.3.4. the defect arises as a result of Tarn-Pure following any drawing, design or specification supplied by the Customer;
  - 5.3.5. the Customer alters or repairs such Equipment without the written consent of Tarn-Pure;
  - 5.3.6. the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
  - 5.3.7. the Equipment differs from their description or the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 5.4. Except as provided in this clause 5, Tarn-Pure shall have no liability to the Customer in respect of the Equipment's failure to comply with the warranty set out in clause 5.1.
- 5.5. The terms implied by sections 13 to 15 of the Sale of Equipment Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.
- 5.6. These Conditions shall apply to any repaired or replacement Equipment supplied by Tarn-Pure.
- 6.3.4. all risks for their full price from the date of delivery;
  - 6.3.5. notify Tarn-Pure immediately if it becomes subject to any of the events listed in clause 8.2; and
  - 6.3.6. give Tarn-Pure such information relating to the Equipment as Tarn-Pure may require from time to time, but the Customer may resell or use the Equipment in the ordinary course of its business.
- 6.4. If before title to the Equipment passes to the Customer the Customer becomes subject to any of the events listed in clause 8.2, or Tarn-Pure reasonably believes that any such event is about to happen and notifies the Customer accordingly, then, provided that the Equipment have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy Tarn-Pure may have, Tarn-Pure may at any time require the Customer to deliver up the Equipment and, if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Equipment are stored in order to recover them.

#### **Title and risk**

- 6.1. Title and risk in the Equipment shall pass to the Customer on completion of delivery, subject to receipt of 100% of the payment due in advance of delivery.
- 6.2. In the event that 100% of the payment due has not been received prior to delivery, risk in the Equipment shall pass at delivery but Title to the Equipment shall not pass to the Customer until Tarn-Pure has received payment in full (in cash or cleared funds) for:
- 6.2.1. the Equipment; and
  - 6.2.2. any other goods or services that Tarn-Pure has supplied to the Customer in respect of which payment has become due.
- 6.3. Until title to the Equipment has passed to the Customer, the Customer shall:
- 6.3.1. hold the Equipment on a fiduciary basis as Tarn-Pure's bailee;
  - 6.3.2. store the Equipment separately from all other goods held by the Customer so that they remain readily identifiable as Tarn-Pure's property;
  - 6.3.3. not remove, deface or obscure any identifying mark or packaging on or relating to the Equipment;
  - 6.3.4. maintain the Equipment in satisfactory condition and keep them insured against

#### **Price and payment**

- 7.1. The price of the Equipment shall be the price set out in the Order, or Quotation (as applicable, and subject to clause 2.6).
- 7.2. Tarn-Pure may, by giving notice to the Customer at any time before delivery, increase the price of the Equipment to reflect any increase in the cost of the Equipment that is due to:
- 7.2.1. any factor beyond Tarn-Pure's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
  - 7.2.2. any request by the Customer to change the delivery date(s), quantities or types of Equipment ordered, or the Specification; or
  - 7.2.3. any delay caused by any instructions of the Customer or failure of the Customer to give Tarn-Pure adequate or accurate information or instructions.
- 7.3. The price of the Equipment is exclusive of the costs and charges of insured transport of the Equipment, which shall be invoiced to the Customer.
- 7.4. The price of the Equipment is exclusive of amounts in respect of value added tax ("VAT"). The Customer shall, on receipt of a valid VAT invoice from Tarn-Pure, pay to Tarn-Pure such

additional amounts in respect of VAT as are chargeable on the supply of the Equipment.

- 7.5. Tarn-Pure shall require 50% of the price of the Equipment to be paid upon placing of and prior to acceptance of the Order, with the 50% balance of the Equipment price to be paid prior to delivery unless otherwise agreed, in advance and in writing, with the Customer. The payment terms for delivery, installation and commissioning shall be agreed at the time of the placing, and prior to acceptance, of the Order.
- 7.6. If Tarn-Pure agrees credit terms with the Customer for the supply of services, payment shall be made by electronic funds transfer(s) to the bank account nominated in writing by Tarn-Pure by 20th of the month following the month in which the invoice is published. Tarn-Pure reserves the right to add a 4% surcharge to any payment processed using a third party financial merchant or intermediary such as a credit card or PayPal. In all cases where credit is offered, timeliness of payment is of the essence.
- 7.7. If the Customer fails to make any payment due to Tarn-Pure under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 4% per annum above HSBC's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
- 7.8. The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). Tarn-Pure may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by Tarn-Pure to the Customer.

## Termination

- 8.1. If the Customer becomes subject to any of the events listed in clause 8.2, or Tarn-Pure reasonably believes that the Customer is about to become subject to any of them and notifies the Customer accordingly, then, without limiting any other right or remedy available to Tarn-Pure, Tarn-Pure may cancel or suspend all further deliveries under the Contract or under any other contract between the Customer and Tarn-Pure without incurring any liability to the Customer, and all outstanding sums in respect of

Equipment delivered to the Customer shall become immediately due.

- 8.2. For the purposes of clause 8.1, the relevant events are:
- 8.2.1. the Customer suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply;
- 8.2.2. the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where the Customer is a company) where these events take place for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;
- 8.2.3. (being a company) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Customer, other than for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;
- 8.2.4. (being an individual) the Customer is the subject of a bankruptcy petition or order;
- 8.2.5. a creditor or encumbrancer of the Customer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- 8.2.6. (being a company) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Customer;
- 8.2.7. (being a company) the holder of a qualifying charge over the Customer's assets has become entitled to appoint or has appointed an administrative receiver;

- 8.2.8. a person becomes entitled to appoint a receiver over the Customer's assets or a receiver is appointed over the Customer's assets;
  - 8.2.9. any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 8.2.1 to clause 8.2.8 (inclusive);
  - 8.2.10. the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business;
  - 8.2.11. the Customer's financial position deteriorates to such an extent that in Tarn-Pure's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; and
  - 8.2.12. (being an individual) the Customer dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.
- 8.3. Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination. Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

### Limitation of liability

- 9.1. Nothing in these Conditions shall limit or exclude Tarn-Pure's liability for:
  - 9.1.1. death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
  - 9.1.2. fraud or fraudulent misrepresentation;
  - 9.1.3. breach of the terms implied by section 12 of the Sale of Equipment Act 1979;
  - 9.1.4. defective products under the Consumer Protection Act 1987; or
  - 9.1.5. any matter in respect of which it would be unlawful for Tarn-Pure to exclude or restrict liability.
- 9.2. Subject to clause 9.1:
  - 9.2.1. Tarn-Pure shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any

indirect or consequential loss arising under or in connection with the Contract; and

- 9.2.2. Tarn-Pure's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the price of the Equipment.

### Force majeure

Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event. A "**Force Majeure Event**" means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of Tarn-Pure's subcontractors.

### General

- 11.1. Assignment and other dealings: Tarn-Pure may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract. The Customer may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of Tarn-Pure.
- 11.2. Notices
  - 11.2.1. Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the

other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service, commercial courier or fax.

- 11.2.2. A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 11.2.1; if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax, one Business Day after transmission.
- 11.2.3. The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.
- 11.3. Severance: If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
- 11.4. Waiver: A waiver of any right or remedy under the Contract or law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 11.5. Third party rights: A person who is not a party to the Contract shall not have any rights to enforce its terms.
- 11.6. Variation: Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is in writing and signed by Tarn-Pure.
- 11.7. Governing law: The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the law of England and Wales.
- 11.8. Jurisdiction: Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).