

**A-MAC ENVIRONMENTAL LIMITED  
CONDITIONS OF SALE AND SUPPLY**

**1 Interpretation**

1.1 In these Conditions:

<b>“Buyer”</b>	means the person who accepts a quotation of the Seller for the sale of the Goods and/or Services or whose order for the Goods and/or Services is accepted by the Seller
<b>“Goods”</b>	means the goods (including any instalment of the Goods or any parts for them) which the Seller is to supply in accordance with these Conditions
<b>“Conditions”</b>	means the standard terms and conditions of sale and supply set out in this document
<b>“Contract”</b>	means the contract for the purchase and sale of the Goods and/or Services
<b>“Seller”</b>	means A-Mac Environmental Limited, a company registered in Scotland under number SC296037 and having its registered office at The Design House, 50 Seafield Road, Inverness IV1 1SG
<b>“Services”</b>	means the services which the Seller is to supply in accordance with these Conditions
<b>“Writing”</b>	includes telex, cable, facsimile transmission, e-mail and comparable means of communication.

1.2 Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

1.3 The headings in these Conditions are for convenience only and shall not affect their interpretation.

**2 Basis of the sale**

2.1 The Seller shall sell and the Buyer shall purchase the Goods and/or Services in accordance with any quotation in Writing of the Seller accepted by the Buyer or any written order of the Buyer accepted in Writing by the Seller, subject in either case to these Conditions, which shall govern the Contract to the exclusion of any other terms and conditions.

2.2 No variation to these Conditions shall be binding unless agreed in Writing between the authorised representatives of the Buyer and the Seller.

2.3 The Seller's employees or agents are not authorised to make any representations concerning the Goods and/or Services unless confirmed by the Seller in Writing.

- 2.4 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 the Seller shall be subject to correction without any liability on the part of the Seller.

### **3 Orders and specifications**

- 3.1 No order submitted by the Buyer shall be deemed to be accepted by the Seller unless and until confirmed in Writing by the Seller's authorised representative.
- 3.2 The quantity, quality and description of and any specification for the Goods and/or Services shall be those set out in the Seller's quotation (if accepted by the Buyer) or the Buyer's order (if accepted by the Seller).
- 3.3 No order may be cancelled by the Buyer except with the agreement in Writing of the Seller and the Buyer shall indemnify the Seller in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Seller as a result of such cancellation.

### **4 Price of the Goods/Services**

- 4.1 The price of the Goods and/or Services shall unless otherwise agreed in Writing be the Seller's quoted price. All prices quoted are valid for 30 days only or until earlier acceptance by the Buyer, after which time they may be altered by the Seller without giving notice to the Buyer.
- 4.2 The Seller reserves the right, by giving notice to the Buyer at any time before delivery, to increase the price of the Goods and/or Services to reflect any increase in the cost to the Seller which is due to any factor beyond the control of the Seller (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture).
- 4.3 Except as otherwise agreed in Writing all prices are given by the Seller on an ex-works basis and where the Seller agrees to deliver the Goods other than at the Seller's premises the Buyer shall be liable to pay the Seller's charges for transport, packaging and insurance.
- 4.4 The price is exclusive of any applicable value added tax, which the Buyer shall be liable to pay to the Seller.

### **5 Terms of payment**

- 5.1 Unless otherwise agreed in Writing, the Seller shall be entitled to invoice the Buyer for the price of the Goods and/or Services on or at any time after delivery of the Goods and/or performance of the Services.
- 5.2 The Buyer shall pay the price of the Goods and/or Services within 30 days of the date of the Seller's invoice, and the Seller shall be entitled to recover the price, notwithstanding that delivery may not have taken place and the property in the Goods has not passed to the Buyer. The time of payment of the price shall be of the essence of the Contract.

Receipts for payment will be issued only upon request.

- 5.3 If the Buyer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to:
- 5.3.1 cancel the Contract or suspend any further deliveries of the Goods and/or performance of Services;
  - 5.3.2 appropriate any payment made by the Buyer to such of the Goods and/or Services (or the goods and/or services supplied under any other contract between the Buyer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer); and
  - 5.3.3 charge the Buyer interest (both before and after any judgment) on the amount unpaid, at the rate of 4 per cent per annum above [The Royal Bank of Scotland] base rate from time to time, until payment in full is made.

## **6 Delivery and Performance**

- 6.1 Delivery shall be made by the Buyer collecting the Goods from the Seller's premises at any time after the Seller has notified the Buyer that the Goods are ready for collection or if some other place of delivery is agreed by the Seller, by the Seller delivering the Goods to that place.
- 6.2 Any dates quoted for delivery of the Goods and/or performance of the Services are approximate only and the Seller shall have no liability for any delay in delivery of the Goods and/or performance of the Services however caused.
- 6.3 If the Seller fails to deliver the Goods and/or perform the Services for any reason other than any cause beyond the Seller's reasonable control or the Buyer's fault, and the Seller is accordingly liable to the Buyer, the Seller's liability shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest available market) of similar goods and/or services to replace those not delivered over the price of the Goods and/or Services.
- 6.4 The Seller may deliver the Goods and/or perform the Services by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the Contract. Each instalment shall be a separate contract and no cancellation or termination of any one contract relating to an instalment shall entitle the Buyer to repudiate or cancel any other contract or instalment.
- 6.5 The Seller shall be obliged to carry out the provision of Services only during normal working hours. If the Buyer requests that overtime be worked and the Seller agrees, such overtime shall be paid by the Buyer at the rate stipulated by the Seller.
- 6.6 If the Services are to be provided at the Buyer's premises or on the Buyer's request at the premises of any other person, then the Buyer undertakes to provide or to procure the provision of
- 6.6.1 proper and safe storage and protection of all Goods, tools, plant, equipment and

materials on site;

- 6.6.2 free and safe access to the site and to the place at which the work is to be carried out;
- 6.6.3 all facilities and services necessary to enable such work to be carried out safely and expeditiously; and
- 6.6.4 if such work includes the installation of any Goods, all builders work, foundations, cutting away and making good required and the ready availability of all plant and equipment so as to permit the Goods to be tested forthwith or completion of such work.

## **7 Risk and property**

- 7.1 Risk of damage to or loss of the Goods shall pass to the Buyer:
  - 7.1.1 in the case of Goods to be delivered at the Seller's premises, at the time when the Seller notifies the Buyer that the Goods are available for collection; or
  - 7.1.2 in the case of Goods to be delivered otherwise than at the Seller's premises, at the time of delivery.
- 7.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, the property in the Goods shall not pass to the Buyer until the Seller has received in cash or cleared funds payment in full of the price of the Goods.
- 7.3 Until such time as the property in the Goods passes to the Buyer, the Buyer shall hold the Goods as the Seller's fiduciary agent and bailee, and shall keep the Goods separate from those of the Buyer and third parties and properly stored, protected and insured and identified as the Seller's property. On demand, the Buyer shall produce the relevant policy of insurance to the Seller.
- 7.4 The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Seller, but if the Buyer does so all moneys owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.

## **8 Warranties and liability**

- 8.1 Subject to the conditions set out below the Seller warrants:
  - 8.1.1 that the Goods will correspond with their specification at the time of delivery and will be free from defects in material and workmanship for a period of [6] months from the date of their initial use or [6] months from delivery, whichever is the first to expire and
  - 8.1.2 that the Services will be performed using reasonable care and skill in accordance with their specification.

- 8.2 The above warranties are given by the Seller subject to the Seller being under no liability in respect of:
- 8.2.1 any defect in the Goods and/or Services arising from any drawing, design, specification or equipment supplied by the Buyer;
  - 8.2.2 any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Seller's instructions and/or good trade practice (whether oral or in writing), misuse or alteration or repair of the Goods without the Seller's approval;
  - 8.2.3 parts, materials or equipment not manufactured by the Seller, in which case the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Seller.
- 8.3 Subject as expressly provided in these Conditions, and except where the Goods are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977), all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- 8.4 Any claim based on any defect in the quality or condition of the Goods and/or Services or their failure to correspond with specification shall be notified to the Seller within 7 days from the date of delivery or performance or (where the defect was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure.
- 8.5 Where any valid claim in respect of any of the Goods and/or Services based on any defect in the quality or condition of the Goods and/or Services is notified in accordance with these Conditions, the Seller shall be entitled to replace the Goods and/or Services (or the part in question) free of charge or, at the Seller's sole discretion, refund to the Buyer the price of the Goods and/or Services (or a proportionate part of the price), but the Seller shall have no further liability to the Buyer.
- 8.6 Except in respect of death or personal injury caused by the Seller's negligence, the Seller shall not be liable to the Buyer for any indirect, special or consequential loss or damage (whether for loss of profit or otherwise) or other claims for compensation whatsoever and the entire liability of the Seller under or in connection with the Contract shall not exceed the price of the Goods and/or Services.
- 8.7 The Seller shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing any of the Seller's obligations in relation to the Goods and/or Services, if the delay or failure was due to any cause beyond the Seller's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Seller's reasonable control:
- Act of God, explosion, flood, tempest, fire or accident; war or threat of war, sabotage, insurrection, civil disturbance or requisition; acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority; import or export regulations or embargoes; strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Seller or of a third party); difficulties in obtaining raw materials, labour, fuel, parts or machinery; power

failure or breakdown in machinery.

## **9 Insolvency of buyer**

9.1 This clause applies if:

9.1.1 the Buyer makes any voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction) or the Buyer does or is effected by anything similar to the foregoing under any jurisdiction; or

9.1.2 an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer or the Buyer does or is effected by anything similar to the foregoing under any jurisdiction; or

9.1.3 the Buyer ceases, or threatens to cease, to carry on business; or

9.1.4 the Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.

9.2 If this clause applies then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to cancel the Contract or suspend any further deliveries and/or performance under the Contract without any liability to the Buyer, and if the Goods have been delivered and/or Services performed but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

## **10 General**

10.1 Any notice required or permitted to be given by either party to the other under these Conditions shall be in Writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice. Notices shall be deemed to have been received (a) if sent by pre-paid first class post, two days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting); or (b) if delivered by hand, on the day of delivery; or (c) if sent by fax or e-mail on a working day prior to 4.00pm, on the day of transmission and otherwise on the next working day.

10.2 No waiver by the Seller of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.

10.3 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected.

10.4 The Seller may assign the Contract or any part of it to any person, firm or company. The Buyer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Company.

10.5 The Contract shall be governed by the laws of Scotland, and the Buyer agrees to submit to the non-exclusive jurisdiction of the Scottish courts.