

## **AMIAD WATER SYSTEMS LTD.**

### **Terms and Conditions of Sale**

These Terms and Conditions ("**Terms**") shall form an integral part of the Sale and Purchase Agreement entered into by Amiad Water Systems Ltd. of D.N. Galil Elyon 1 1233500, Israel (the "**Seller**") with the buyer (the "**Buyer**"), whose details are listed in the Agreement or relevant PO.

1. **AGREEMENT OF SALE:** Seller hereby agrees to sell the products and services specified in the purchase order (the "**PO**") or in any documentation attached to or referenced by the PO (the "**Products**") ordered and purchased by the Buyer, subject to issuance of an order confirmation by the Seller to the Buyer (the "**OC**").

Once the Seller has accepted the PO in writing by an OC, the Terms, together with the PO, the OC and any documents attached thereto or referred to therein (collectively, the "**Order Documents**") shall form the agreement pursuant to which Seller shall manufacture, sell and deliver to the Buyer the Products and the Buyer shall pay for and take delivery of the Products (the "**Agreement**"). Unless other terms and conditions are expressly accepted in writing by an authorized Seller's representative or unless the Seller and Buyer have entered into a separate written agreement governing the supply of the Products pursuant to the signed PO, no other terms shall be construed as part of the Agreement and neither a PO acceptance nor receipt of payment by the Seller shall be construed as acceptance of any other term.

If these Terms are attached to or referred to in a proposal issued by the Seller (the "**Proposal**") then these Terms shall also form an integral and inseparable part of the Proposal.

2. **DELIVERY OF PRODUCTS:** Except as otherwise specifically agreed in writing the Seller will execute delivery of the Products to the Buyer Ex Works Seller's location, as applicable (the "**Delivery**").

Following receipt of notice of the expected delivery date of the Products, the Buyer may request, at its sole discretion, for such delivery to be postponed for up to five (5) business days with no additional cost. The Buyer may request from the Seller to store the said Products for additional period and cost, which shall be mutually agreed in writing by both parties and the provisions of Article 3 below shall apply to such products.

3. **RISK:** Except where specifically agreed otherwise in writing, the Seller will assume risk for damage to the Products up to the time of Delivery. The Buyer will assume all risks regarding the Products from the time of Delivery onward. Even if for any reason the Buyer is not able to collect the Products when they are ready for delivery, or the Seller is unable to deliver the Products on time because the Buyer has not provided appropriate instructions, documents, licenses or authorizations: (a) risk in the Products will pass to the Buyer (including for loss or damage caused by the Seller's negligence); (b) the Products will be deemed to have been delivered; and (c) the Seller may store, at the Buyer's request, the Products until Buyer collects them whereupon the Buyer will be liable for all related costs and expenses (including, without limitation, storage and insurance).
4. **DOCUMENTATION:** All documentation delivered by the Seller to the Buyer in connection with the Agreement shall be in English, unless agreed otherwise in writing.
5. **PRICES:** The price of the Products is as specified in the applicable Proposal or, in the absence of a Proposal, in the PO. Unless otherwise specifically stated in the Proposal or PO, as relevant, the price is quoted per the delivery terms stated in these Terms and does not include the costs of shipment, storage, insurance and taxes, charges and duties all of which shall be borne by the Buyer.
6. **PAYMENT:** Except where specifically agreed otherwise in writing, the terms of payment will not exceed 14 days as from the date of issue of the invoice. Unless payment is an irrevocable letter of credit in a form acceptable to the Seller, the Buyer shall secure the payment by providing other appropriate security for payment acceptable to the Seller. Exercise of the Seller's rights under such security for payment shall be made only if the Buyer has defaulted on payment of any delivery and did not rectify such default within 5 days as of the Seller's written notice of default. If the Buyer fails to pay the Seller any sum due pursuant to the Agreement the Seller may, without prejudice to any of the Seller's other rights: (a) Suspend or cancel deliveries of any Products due to the Buyer and/or; (b) Retain any payment made by the Buyer to such Products as the Seller may in its sole discretion think fit.
7. **INTEREST:** In the event that payment is delayed for any reason whatsoever, Supplier shall be entitled to receive, at its sole discretion and without prior notice to Buyer, the interest that will accrue on the amount in default on the basis of the rate of Libor + 2% for every day of delay.

**ACCEPTANCE:** Upon receiving the Products to its possession, the Buyer shall inspect the Products to ensure that they conform with the applicable Proposal, or in the absence of a Proposal, in the PO and are free from non-conformity. In the event that, within seventy-two (72) hours from receiving the Products to its possession, the Buyer fails to notify the Seller in writing designating the number of the relevant invoice of the Seller of the existence of purported non-conformity or damage, the Buyer will be deemed as having accepted the Products. Upon acceptance of the Products, the Buyer will have no future claim as to non-conformity or damage except as provided under Article 9.

8. **WARRANTY AND DISCLAIMER:**

The warranty shall be in accordance with the terms of the Seller's Limited Standard Warranty attached to the Products and the operation manual. Except as provided in this Article, all warranties, implied or expressed, including without limitation any implied warranties of delivery, of conformity, of latent defects of merchantability or fitness of purpose, representations as to the functionalities or characteristics of the Products and other terms implied by law, to the fullest extent permitted by applicable law, are excluded from the Agreement. Subject to the Seller's promise to replace or repair the Products, at its sole discretion, in the event that such defect becomes apparent in the course of normal use during the first twelve (12) months after the date upon which the Products are delivered and is attached to the Products, the Products are sold as is. The Seller shall be given a reasonable opportunity after receiving the notice of examining such Products and the Buyer (if asked to do so by the Seller) returns such Products to the Seller's place of business at the Seller's cost for the examination to take place there.

To the extent permitted by applicable law, the Seller shall not be liable for a breach of any of the warranties, whether implied or expressed if:

- (a) the Buyer makes any further use of such Products after giving such notice; or
  - (b) the defect arises because the Buyer failed to follow the Seller's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Products; or
  - (c) the Buyer alters or repairs such Products without the written consent of the Seller.
  - (d) the defect arises as a result of the Seller following the Buyer's design requirements; or
  - (e) the use of the Products with any other products or raw materials not approved or supplied by the Seller;
  - (f) the defect is a result of any accident or misuse by the Buyer, or any breach by the Buyer of the Agreement.
9. **LIABILITY AND INDEMNITY:** The Seller will bear no liability toward the Buyer or toward any third party for direct, indirect, consequential or incidental damages to property, or for any intangible or economic loss, including loss of profits, loss of customers or damage to reputation, employees' and agents' services, or loss of business, howsoever caused, and arising out of the use of the Products. In no event shall Seller's aggregate liability to the Buyer for any losses or damages that arise out of the exercise, performance or breach of the Agreement, exceed the total price for the Products paid by the Buyer to the Seller under the relevant Agreement, except for its liability in case of bodily injury, death, willful misconduct or gross negligence. The limitations of liability are an inherent element of the economic balance of the Agreement and participate the setting of the prices at the agreed levels. In case of claim against the Seller relating to the events, damages or losses excluded here above by any third party, the Buyer will fully indemnify the Seller and hold him harmless from and against any and all claims, liabilities, judgments, settlement, losses, damages, expenses and any other costs.
10. **TRANSFER OF TITLE:** Title to Products will remain with the Seller until the receipt by the Seller of the entire purchase price for the Products; title will transfer to the Buyer only upon actual receipt by the Seller of the full purchase price. The Parties hereby acknowledge that the Seller retains a traceable ownership and/or security interest in the Goods subject to the receipt of the entire consideration for sale. Until ownership of the Products has passed to the Buyer, the Buyer must:
- (a) only hold the Products, their ownership remains with the Seller;
  - (b) store the Products (at no cost to the Seller) separately from all other Products of the Buyer or any third party in such a way that they remain readily identifiable as the Seller's property;
  - (c) not destroy, deface or obscure any identifying mark or packaging on or relating to the Products;
  - (d) maintain the Products in satisfactory condition and keep them insured on the Seller's behalf for their full price against all risks to the reasonable satisfaction of the Seller. On request the Buyer shall produce the policy of insurance to the Seller; and
  - (e) hold the proceeds of the above insurance on in the name and on behalf of the Seller and not mix them with any other money, nor pay the proceeds into an overdrawn bank account.
11. **TAXES AND COMPULSORY PAYMENTS:** The Buyer will pay all present and future duties, taxes, levies, governmental charges, or other compulsory payments, of whatever nature, arising out of or associated with the sale of the Products, and imposed by any country or territory through which the Products may pass.
12. **CANCELLATION:** The Agreement may be terminated by either party immediately in the event that the other Party (1) Breaches a provision of the Agreement and such breach is not corrected within fifteen (15) days after receipt of written notice specifying the breach; or (2) Becomes insolvent, or upon the filing by or against such other Party of a petition in bankruptcy, winding up, insolvency, dissolution, reorganization, reconstruction, or similar type action according to the bankruptcy or company laws in its respective state of business, or the appointment of a liquidator or receiver and if such petition is not discharged nor such liquidator or receiver withdrawn within thirty (30) days, or such similar action. In the event that Buyer breaches a provision of the Agreement, he shall be required to pay the Seller the full price for the Products, without prejudice to Seller's other rights.
- The Buyer acknowledges that the Products were not purchased from the shelf of the Seller but have been ordered and manufactured specifically in accordance with his requirements, needs, and specifications. Any cancellation of an order or delivery thereof, or breach of these Terms may cause the Seller extensive or even total loss regarding such Products. The Buyer agrees to compensate the Seller for the full extent of such loss, including, without limitation, loss of profits.
13. **CONFIDENTIALITY:** The Buyer shall treat as strictly confidential all documentation and other information provided to the Buyer in connection with the Products and the operations of the Seller, whether or not the same was provided in tangible or intangible form and regardless of when the same was provided (collectively, the "**Confidential Information**"). The Buyer shall not disclose any Confidential Information to any other party or use it in any manner other than as strictly permitted by Seller. If Seller and the Buyer have entered into a separate nondisclosure agreement that specifically relates to the sale of the Products as described herein, then such non-disclosure agreement shall continue to apply and shall prevail over any discrepancies contained with this Article.
14. **INTELLECTUAL PROPERTY:** Nothing herein shall be deemed to grant to the Buyer any rights in and to any of Seller's intellectual and other proprietary rights in and to the Products, whether or not such are registered or registerable. Unless specifically provided otherwise in the Agreement, the price does not include the costs related to any development of intellectual property required to comply with the PO, but only time and materials. Accordingly, no intellectual property developed by Seller in connection with the PO shall be considered work-made-for-hire and all rights therein shall remain vested solely in Seller. All specifications, patterns, drawings, photographs, samples and information provided by the Seller to the Buyer shall remain the exclusive property of the Seller and shall not be disclosed by the Buyer to any third party without the Seller's written consent.
15. **FORCE MAJEURE:** The Seller will be fully and totally excused, without liability to the Buyer from performance under the Agreement to the extent prevented or delayed by fire, explosion, unavoidable breakdown of machinery, government acts or regulations, war, strikes, or labor disputes, or any act of God, or by any similar circumstances of any character reasonably beyond its control and unforeseen at the time that the Agreement was made.

16. **ASSIGNABILITY:** The Buyer may not assign its rights and obligations hereunder without the prior written consent of the Seller; any assignment for which consent was not obtained will not be considered valid. The Agreement and these Terms will insure to the benefit of the Seller, its successors, and assigns.
17. **WAIVER:** The failure at any time of either Party to enforce any right or remedy under the Agreement will in no way be construed to be a waiver of such rights or remedy, or in any way to affect the validity of the Agreement. The acceptance by the Seller of any payment beyond the date on which it was due will not be construed as a waiver by the Seller of any rights which he may have, including the right to receive interest, or as a waiver of its right to receive from the Buyer future timely payments.
18. **LICENSES AND PERMITS:** This sale and the fulfilling of any order are contingent upon the receipt of all necessary licenses, permits, and standards approvals as required by any governmental or regulatory agency.
19. **SEVERABILITY:** Buyer shall accept partial delivery. In the event that the Seller fails to execute any Delivery or make a partial delivery this will not alter the Buyer's obligations regarding any other deliveries and will not suspend the Buyer's obligations regarding payment of deliveries already executed.
20. **DISPUTE:** The Parties will actively endeavor to amicably settle any dispute arising between them. In the event that the Parties are unable to reach an equitable settlement of such dispute, any claim or lawsuit related to the Agreement and these Terms, its validity execution, its performance be brought before only the Court of competent jurisdiction sitting in Israel. Israeli law will govern the Agreement and these Terms, without regard to conflict of law principles.
21. **HEADINGS:** All headings and/or numeration of articles, and the division of these Terms into paragraphs are for convenience purposes only and shall not have any legal meaning attributed thereto.
22. **AGREEMENT COMMENCES:** The Agreement will commence only upon either written confirmation of the PO by the Seller or written confirmation of a Proposal by the Buyer, as applicable. Prior to such time, the Seller will be under no obligation to supply any order. After such time, the Buyer may not cancel or modify any PO without the written consent of the Seller.
23. **NOTICES:** any notice authorized or required to be given in accordance with these Terms of the Agreement may be given by courier or by registered or certified mail with acknowledgement of receipt. Such notice shall be deemed properly received or at the date of first presentation by the postal services for registered or certified mail or by the courier to the address of the Parties as specified in the Purchase Order or Agreement.

Version dated January 2019