

Western Global Limited: Terms and Conditions of Sale (updated February 2020)

1. Definitions and interpretation

In these Conditions, unless the context otherwise requires, the following definitions shall apply:

"Ancillary Products" means any pipework, valves (internal or external), pumps or other ancillary items associated with the Goods, manufactured by a third party.

"Buyer" means the person whose order for the Goods is accepted by the Seller.

"Conditions" means the standard terms and conditions of sale set out in this document and (unless the context otherwise requires) including any special terms and conditions agreed in writing between the Buyer and the Seller in accordance with clause 2.2.

"Contract" means the Order Confirmation together with these Conditions.

"Default" means any act, statement, omission, breach of obligation (whether expressed or implied, condition or warranty) contained in, precedent or collateral to the Contract, breach of duty under statute or at common law or negligence by or on the part of the Seller in connection with or arising out of the subject matter of the Contract in respect of which the Seller is legally liable to the Buyer. A number of defaults which together result in or contribute to substantially the same loss or damage shall be treated as one Default occurring on the date of the occurrence of the last such default.

"Designs" means as defined in clause 10.1.

"Goods" means any Poly Tank, Steel Tank, UniChassis and Ancillary Product (including any instalment or any parts for them) which the Seller is to supply as detailed in the Order Confirmation.

"OEM" means, in relation to the Ancillary Products, the original manufacturer such equipment.

"Order Confirmation" means the written confirmation from the Seller detailing the Goods to be Sold to the Buyer.

"Poly Tanks" means water bowzers manufactured by Western Global Limited.

"Seller" means Western Global Limited (company number: 05425318) whose registered office is at Western House Broad Lane, Yate, Bristol, England, BS37 7LD.

"Steel Tanks" means steel tanks manufactured by Western Global Limited for the storage and transportation of fuel and other industrial liquids; and

"UniChassis" means highway-approved fuel storage trailers manufactured by Western Global Limited.

2. Basis of the sale

2.1 The Seller shall sell and the Buyer shall purchase the Goods in accordance with the Order Confirmation and subject to these Conditions which shall govern the Contract to the exclusion of any other terms and conditions. In the event of any conflict between these Conditions and an Order Confirmation, these Conditions will prevail unless the Order Confirmation specifically states variations to these Conditions.

2.2 No variation of these Conditions shall be binding unless agreed in writing between the authorised representative of the Seller and the Buyer.

2.3 Any advice or recommendation given by the Seller or its employees or agents to the Buyer, or its employees or agents, as to the storage, application or use of the Goods which is not confirmed within the Order Confirmation is followed or acted upon entirely at the Buyer's own risk, and accordingly the Seller shall not be liable for any such advice or recommendation which is not so confirmed.

2.4 Any samples, illustrations, estimate drawings or descriptive material including but not limited to information contained in the Seller's brochures, advertising material or elsewhere shall not form part of the Contract and shall be treated as approximate and for guidance only unless specifically stated otherwise within the Order Confirmation. The Seller may at its discretion from time to time vary the design of the Goods from that advertised without notice to the Buyer provided that any such variations do not constitute material alterations to the Goods.

3. Orders and specifications

3.1 The quantity, quality and description of, and/or any specification for, the Goods shall be those set out in the Order Confirmation. The Contract shall be binding upon the Seller confirming the Buyer's order with the issuing of an Order Confirmation.

3.2 No Order Confirmation may be cancelled by the Buyer except with the agreement in writing of the Seller.

3.3 The Seller reserves the right to terminate the Contract either in whole or in part on account of the unavailability of the Goods due to the refusal or inability of any third party to fulfil their obligations to the Seller. On such termination the Seller shall refund to the Buyer so much (or if part only of the Contract is terminated a proportionate part) of the price already paid by the Buyer to the Seller for or on account of the Goods.

4. Price

4.1 The price of the Goods shall be stated in the Order Confirmation, where no price is stated, the price listed in the Seller's published price list current at the date of the Order Confirmation.

4.2 Unless otherwise agreed in writing between the Buyer and the Seller all prices are given by the Seller on an ex works basis, and where the Seller agrees to deliver the Goods otherwise than at the Seller's premises they do so as the Buyer's agent and the

Buyer shall be liable for payment of the Seller's charges for transport, packaging and insurance and for any damage or loss either direct or consequential flowing therefrom.

5. Payment terms

5.1 Payment terms shall be as specified in the Order Confirmation, or where no terms are stated, the Buyer shall pay to the Seller the full price for all Goods within 28 days of notification from the Seller that the Goods are available for delivery. The time of payment shall be of the essence. All payments shall be made in full without deduction in respect of any set-off or counterclaim.

5.2 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:

- (a) cancel the Contract or suspend any further deliveries to the Buyer; and
- (b) charge the Buyer interest on the amount unpaid, at the rate of 3% per annum over the base rate for the time being of National Westminster Bank PLC until payment is made.

6. Delivery

6.1 Delivery of the Goods shall be made by the Buyer collecting the Goods at the Seller's premises once the Seller has notified the Buyer that the Goods are ready for collection or, if some other place for delivery is agreed by the Seller, by the Seller delivering the Goods to that place.

6.2 The Seller shall endeavour to deliver the Goods by the date stated within the Order Confirmation but such a date shall be approximate only and is not guaranteed, nor shall the time for delivery be of the essence. The date quoted for delivery shall be extended by a reasonable period if there is any delay caused by industrial dispute or by any cause beyond the reasonable control of the Seller.

6.3 If the Buyer fails to take delivery of the Goods within 15 days of the Seller notifying the Buyer that the Goods are ready for collection or fails to give the Seller adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of the Seller's fault) then without prejudice to any other right or remedy available to the Seller, the Seller may:

- (a) store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or
- (b) sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the price under the Contract and charge the Buyer for any shortfall below the price under the Contract.

7. Risk and property

7.1 Risk of damage to or loss of the Goods shall pass to the Buyer from the date at which the Seller has notified the Buyer that the Goods are ready for delivery.

7.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of the Contract, 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 and all other goods agreed to be sold by the Seller to the Buyer for which payment is then due.

7.3 Until such time as the property in the Goods passes to the Buyer, notwithstanding that the Buyer shall be entitled to use the Goods in the ordinary course of its business, the Buyer shall hold the Goods as the Seller's fiduciary agent and bailee and keep the Goods properly stored, protected, insured and identified as the Seller's property.

8. Warranties, liability and remedies

8.1 The Seller warrants that the Goods will correspond with their specification at the time of delivery and will be free from defects in material and workmanship for the following periods:

- (a) in the case of Steel Tanks, 3 years from the date of their initial use or 3 years from delivery, whichever is the first to expire;
- (b) in the case of Poly Tanks and UniChassis, 1 year from the date of their initial use or 1 year from delivery, whichever is the first to expire; and
- (c) in the case of Ancillary Products, as per the OEM manufacturer's warranty included in the applicable owner's manual.

8.2 The only remedy available in respect of any misrepresentation or untrue statement made by the Seller (other than those made fraudulently) shall be a claim for damages for breach of contract under the Contract and, to the extent that any such representation or statement is not contained or expressly referred to in the Contract, then it shall be deemed to be contained or expressly referred to for the purpose of applying this provision.

8.3 In relation to any Default the Seller will accept unlimited liability for:

- (a) death or personal injury caused by the negligence of the Seller;
- (b) any breach of its obligations implied by Section 12, Sale of Goods Act 1979 or Section 2, Supply of Goods and Services Act 1982 and
- (c) anything else for which the Seller cannot at law limit or exclude its liability.

8.4 The Seller will accept liability for physical damage to the Buyer's tangible property resulting from the negligence of the Seller.

8.5 Except as provided in sub-clauses 8.4 and 8.5, the Seller will not be liable for the following loss or damage however caused/arising directly or indirectly out of any Default and even if foreseeable by the Seller:

- (a) economic loss including administrative and overhead costs, loss of profits, business, contracts, revenues, goodwill, production and anticipated savings;
- (b) loss arising from any claim made against the Buyer by any other person; or
- (c) loss or damage arising from the Buyer's failure to fulfil its responsibilities or any matter under the control of the Buyer.

8.6 Except for the liabilities accepted by the Seller under sub-clauses 8.3 and 8.5, the Seller's total liability for any or all Defaults under the Contract shall be limited to an amount equal to the price of the Goods to which the relevant Default relates.

9. Force Majeure

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, or any failure to perform, any of the Seller's obligations in relation to the Goods, 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: natural disaster, explosion, flood, tempest, fire or accident; strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Seller or third parties); war or threat of war, sabotage, insurrection, civil disturbance or requisition; import or export regulations or embargos; difficulties in obtaining raw materials, labour, fuel, parts or machinery; and power failure or breakdown in machinery.

10. Intellectual Property

10.1 The Goods include intellectual property rights and designs (together the "**Designs**") which are and will remain the property of the Seller once property in the Goods has passed to the Buyer. The Seller owns the copyright, design rights and all other intellectual property rights in the Designs. Nothing in the Contract shall be construed as granting a right or licence for the Buyer to use the Designs other than in the ordinary use of the Goods as anticipated under these Conditions.

10.2 The Buyer agrees that the Goods may only be used for their intended use in the ordinary course of business and that the Designs may not be reproduced or used in any way except with the prior written consent of the Seller.

11. General

11.1 To the extent that any provision of these Conditions is found by any court or competent authority to be invalid, unlawful or unenforceable in any jurisdiction, that provision shall be deemed not to be a part of these Conditions, it shall not affect the enforceability

of the remainder of these Conditions nor shall it affect the validity, lawfulness or enforceability of that provision in any other jurisdiction.

11.2 This Contract sets out the entire agreement and understanding between the parties supersedes all prior agreements, understandings or arrangements (whether oral or written) in respect of the subject matter of this Contract (including, without limitation, any terms or conditions contained in the Buyer's order).

11.3 Unless expressly provided in this Contract, no term of this Contract is enforceable pursuant to the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to it.

11.4 This Contract shall be governed by and construed in accordance with English law.

11.5 Each of the parties irrevocably submits for all purposes in connection with this Contract to the exclusive jurisdiction of the courts of England.