

APPENDIX I – STANDARD TERMS AND CONDITIONS

1) INTERPRETATION

In these conditions of sale (unless the context otherwise requires) the following words will have the following meanings:

"**Conditions**" means the conditions set out below and overleaf. "**Contract**" means any contract between the Company and the Customer for the sale and purchase of any Works.

"**Customer**" means the company, firm, body or person purchasing the Works.

"**Customer's Property**" means any patterns, drawings, specifications, designs and any other equipment, goods, materials or information supplied by or on behalf of the Customer to the Company in connection with the Works. "**Goods**" means any goods agreed in the Contract to be provided by the Company to the Customer.

"**IPR**" means patents, trade marks and service marks, rights in designs, trade or business names, copyright (including rights in computer software), database rights and topography rights (whether or not any of these is registered and including applications for registration of any such thing) and all rights or forms of protection of a similar nature or having equivalent or similar effect to any of these which may subsist anywhere in the world.

"**Services**" means any work and/or services agreed to be provided by the Company to the Customer.

"**Works**" means the Services and/or the Goods (as appropriate).

2) QUOTATIONS

2.1) Any quotation is given on the basis that no contract will come into existence otherwise than in accordance with the provisions of clauses 3.5 and 3.6.

2.2) Unless otherwise agreed in writing any quotation is valid only for a period of 90 days from its date of issue provided that the Company has not previously withdrawn it by written or oral notice to the Customer.

2.3) Each quotation clearly sets out the scope of the Works and is based on the instructions and information provided by the Customer. The Company reserves the right (in its absolute discretion) to amend the quotation to cover any increase in cost which may arise as a result of additional Works being requested and agreed or additional or incomplete instructions or information being provided.

3) APPLICATION OF TERMS

3.1) (Subject to clause 3.4) these Conditions are the only conditions on which the Company is prepared to deal with the Customer and they will apply to all Contracts to the exclusion of any other terms and conditions including but not limited to those which the Customer purports to apply.

3.2) No terms or conditions endorsed upon, delivered with, referred to or contained in any purchase order or other similar document delivered to or sent by the Customer to the Company will form part of the Contract.

3.3) Any reference overleaf to the Customer's purchase order or other similar document will not be deemed to imply that any terms or conditions endorsed upon, delivered with, referred to or contained in such purchase order or other similar document will have effect to the exclusion or amendment of these Conditions.

3.4) Any variation to these Conditions and any representation about the Works will only be effective if it is agreed in writing, contains a specific reference to these Conditions and is signed by a duly authorised officer of both parties.

3.5) Each purchase order for Works issued by the Customer will be deemed to be an offer by the Customer to purchase Works subject to these Conditions.

3.6) No purchase order placed by the Customer will be deemed to be accepted by the Company until the Customer issues a written acknowledgement of order or (if earlier) the Company supplies the Works to the Customer.

3.7) The Customer must ensure that the terms of its order and any applicable specification are complete and accurate.

3.8) All drawings, descriptive matter, specifications, technical data, advertising and other similar information issued by the Company or contained in the Company's catalogues, brochures, trade literature or other similar published materials are issued or published only for the purpose of giving an approximate idea of the Works described in them and will not form part of the Contract.

3.9) Any purchase order which has been accepted by the Company in accordance with clause 3.5 and 3.6 may only be cancelled or varied by the Customer with the prior written consent of the Company and on terms that the Customer will indemnify the Company in full against all losses (including but not limited to loss of profit), costs, damages, charges and expenses incurred (directly or indirectly) by the Company as a result of such cancellation or variation.

4) PERFORMANCE

4.1) Any times specified or agreed by the Company for the performance of the Works are given in good faith but are an estimate only. If no time is specified or agreed by the Company performance will take place within a reasonable time. Unless otherwise agreed in writing time for the performance of the Works will not be of the essence of the Contract.

4.2) Delivery of the Goods will be deemed to take place when the Goods are delivered to the Customer at the place stated in the Company acknowledgement of order or such other place as the parties may agree except that delivery to a carrier for the purpose of transmission to the Customer will be deemed to be delivery to the Customer and sections 32(2) and (3) of the Sale of Goods Act 1979 will not apply.

4.3) The Company may perform the Works in stages or instalments. Performance of further stages or instalments may be withheld until the Works comprised in earlier stages or instalments have been paid for in full. Default by the Company (howsoever caused) in respect of one or more stages or instalments will not entitle the Customer to terminate the relevant Contract as a whole.

4.4) In the event of any delay in the performance of any Services and/or the delivery of any Goods which are attributable to the Customers actions or failure to act then performance of the Services and/or delivery of the Goods will be deemed to have taken place at the time at which but for such delay or delays such performance or delivery would have taken place and any extra costs incurred as a result of such delay or delays will be added to the Contract price and will be payable by the Customer.

4.5) On performance all Works should be examined. The Company will not be liable for any shortages in or non-performance of the Works (even if caused by the Company's negligence) unless the same is notified in writing by the Customer to the Company (together with all relevant details) within 60 days (in relation to shortages) and 28 days (in relation to non-performance) of the actual or anticipated date of performance (as appropriate). Subject to such notice being provided the Company will, if it is reasonably satisfied that any Works have not been performed as a result of the Company's fault (in its sole discretion) either arrange for performance as soon as reasonably possible or give credit (at the pro rata Contract price) to the Customer for such Works. Any shortages in or non-performance of part of the Works will not affect the Contract in respect of the other parts of the Works.

4.6) The Customer (at its own expense) will ensure that the place where the performance of the Services and the delivery of the Goods is to take place is adequate and appropriate for such performance and delivery and will promptly provide such access, assistance, equipment, facilities, protection and information as may be required to enable the Company to perform its obligations under this Contract.

5) RISK AND OWNERSHIP

5.1) Unless otherwise agreed in writing the Goods are at the risk of the Customer from the time of delivery or deemed delivery to the Customer (as appropriate) and loading and off loading (as appropriate) will be at the Customer's risk. Section 20(2) of the Sale of Goods Act 1979 will not apply.

5.2) (Notwithstanding that risk in the Goods will pass to the Customer in accordance with the provisions of clause 5.1) ownership of the Goods (both legal and equitable) will only pass to the Customer when the Company has received in full (in cash or cleared funds) all monies due to it from the Customer whether in respect of the Goods or otherwise or ownership is properly vested in some other person by the operation of any statute.

5.3) Until ownership of the Goods has passed under clause 5.2, the Customer will hold the Goods on a fiduciary basis as the Company's bailee, keep the Goods free from any charge, lien or other encumbrance, store the Goods (at no cost to the Company) separately from all other materials of the Customer or any third party, in such a way that they remain readily identifiable as the Company's property, not destroy, deface or obscure any identifying mark on the Goods or their packaging and insure the Goods on the Company behalf for their full price against all usual risks to the reasonable satisfaction of the Company and on request produce such policy of insurance to the Company.

5.4) Until ownership in the Goods has passed in accordance with clause 5.2 the Company may recover such Goods and to assist the Company in exercising this right the Customer grants to the Company, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be

stored.

5.5) The Company will be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Company.

6) PRICE AND PAYMENT

6.1) Where the Works are sold by reference to the Company's published schedule of rates, the price payable for the Works will be the price as published in the schedule of rates current at the date of performance of the Works.

6.2) Where the Works are not sold by reference to the Company's published schedule of rates the price stated in the Contract is based on the cost to the Company of or associated with raw materials, fuel, power, transport, taxes, duties, regulations, laws, bylaws, labour and all other costs at the date of the Company's quotation or acknowledgement of order (whichever is earlier). If at the date of performance of the Works there has been any increase in all or any of such costs, the price payable for the Works may at the request of the Company be increased accordingly.

6.3) Quotations given in a currency other than sterling are based on the rate of exchange at the time of quoting and (unless otherwise agreed in writing between the parties) the price may be subject to revision if any different rate of exchange is ruling at the date of invoice.

6.4) (Unless otherwise agreed in writing) the price for the Works is exclusive of any value added tax (and any other tax or duty relating to the performance or the manufacture of the Works). Such costs will be paid by the Customer when it is due to pay or the Works.

6.5) Where the Company agrees (in its discretion) to bring forward the date for performance of the Works at the Customers request any overtime or other additional costs reasonably incurred by the Company will be charged to the Customer in addition to the Contract price.

6.6) (Unless otherwise agreed in writing) the Company may invoice the Customer monthly against progress of the Works.

6.7) Customers who have been granted by the Company (in its sole discretion) a credit account facility will pay the price within 30 days of the date of invoice. The Company may (in its sole discretion) amend the terms of or withdraw such credit account facility at any time without notice with immediate effect and on such withdrawal all amounts due or accruing to the Company under the Contract will become immediately payable despite any other provision of these Conditions.

6.8) Customers who have not been granted a credit account facility will pay the price prior to the commencement of the Works.

6.9) Time for payment will be of the essence of the Contract. No payment will be deemed to have been received until the Company has received cleared funds.

6.10) All payments payable to the Company under the Contract will become due immediately on termination of this Contract despite any other provision of these Conditions.

6.11) The Customer will make all payments due under the Contract without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Customer has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Customer.

6.12) If the Customer fails to pay the Company any sum due pursuant to the Contract the Customer will be liable to pay interest to the Company on such sum from the due date for payment at an annual rate of 4% above the base lending rate of National Westminster Bank Plc from time to time accruing on a daily basis until payment is made in full (whether before or after any judgement). The Company reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.

6.13) Without prejudice to the provision of clause 6.12 if the Customer fails to pay for the Work when due the Company may treat the Contract as repudiated by the Customer or suspend any future performance of the Contract until all overdue sums have been paid.

7) QUALITY

7.1) Where the Company is not the performer of the Services or the manufacturer of the Goods the Company will use all reasonable endeavours to transfer to the Customer the benefit of any warranty or guarantee given to the Company.

7.2) The Company warrants (subject to the provisions of this clause 7) that:

(a) The Services will be performed with reasonable skill and care by properly qualified and experienced persons; and

(b) on delivery of the Goods and for a period of 6 months from the date of delivery, the Goods will

be of satisfactory quality, the meaning of the Sale of Goods Act 1979 (as amended) and be reasonably fit for any particular purpose for which the Goods are [commonly supplied or are] being brought (if the Customer has made known that purpose to the Company in writing and the Company has confirmed in writing that it is reasonable for the Customer to rely on the skill and judgement of the Company).

7.3) The Company will not be liable for any breach of any of the warranties in clause 7.2 unless:

- (a) the Customer gives written notice of the defect to the Company within [60] days of the date when the Customer discovers or ought reasonably to have discovered the defect;
- (b) the Customer gives written notice of the defect; and
- (c) the Company is given a reasonable opportunity after receiving such notice to examine such Works and the Customer (if requested to do so by the Company) returns such Works to the Company's place of business (at the Customer's cost) for the examination to take place there.

7.4) The Company will not be liable for a breach of any of the warranties in clause 7.2 where and to the extent that:

- (a) the defect arises from the Customer's Property or as a result of the Customer's negligence;
- (b) the defect arises as a result of fair wear and tear, misuse, willful damage, or abnormal working conditions;
- (c) the defect arises as a result of any workmanship not performed or parts, materials or equipment not manufactured by the Company;
- (d) the Customer makes any further use of such Works after giving written notice of the defect;
- (e) the defect arises because the Customer has failed to follow the Company's instructions (whether oral or in writing) as to the storage, assembly, installation, commissioning, use, processing, handling or maintenance of the Works or (if there are none) good trade practice; or
- (f) the defect arises as a result of any alteration or repair of the Works not made by the Company and without the written consent of the Company.

7.5) (Subject to clauses 7.3 and 7.4) if any of the Works do not conform with any of the warranties set out in clause 7.2 the Company will at its option and cost re-perform such Services, repair or replace such Goods (or the defective part) or refund the price of such Works at the pro rata Contract rate.

7.6) If the Company complies with clause 7.5 it will (subject to the provisions of clause 8.2) have no further liability (in contract, tort (including but not limited to negligence) or otherwise) for breach of any of the warranties in clause 7.2 in respect of such Works.

7.7) Any Goods replaced by the Company in accordance with the provisions of clause 7.5 will belong to the Company and any repaired or replacement Goods will be guaranteed on these terms for the unexpired portion of the 6 month period.

8) LIMITATION OF LIABILITY

8.1) All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

8.2) Nothing in these Conditions excludes or limits the liability of the Company for fraudulent misrepresentation or for any death or personal injury caused by the Company's negligence.

THE CUSTOMER'S ATTENTION IS IN PARTICULAR DRAWN TO THE PROVISIONS OF CLAUSES 8.3 AND 8.4

8.3) (Subject to clause 8.1 and 8.2) the Company will not be liable to the Customer in contract, tort (including but not limited to negligence), misrepresentation or otherwise for any economic loss of any kind (including but not limited to loss of use, profit, anticipated profit, business, contracts, overhead recovery, revenue or anticipated savings), any damage to the Customer's reputation or goodwill, any business interruptions or any other special, indirect or consequential loss or damage (even if the Company has been advised of such loss or damage) arising out of or in connection with the Contract.

8.4) Nalco Water and its insurers are not liable for losses caused by the Customer's or its employees' or representatives' acts or omissions, (ii) Nalco Water's program does not cover and it makes no guarantees with respect to waterborne pathogens including Legionella or against health risks relating thereto, (iii) except for death or bodily injury, in no event shall either party be liable for consequential or indirect damages and (iv) in any event, except for death or bodily injury or where prohibited by applicable law, Nalco Water's liability will not exceed \$100,000. Customer and Nalco Water agree the terms herein are binding and no contrary terms, including in any future Customer purchase order, shall govern.

8.5) The provisions of this clause 8 shall survive the termination or expiry (for whatever reason) of this

Contract.

9) THE CUSTOMER'S PROPERTY

9.1) While the Company will take reasonable care of the Customer's Property whilst it is in the Company's possession, control or custody the Customer's Property will (unless otherwise agreed in writing) remain at the Customer's risk and all replacements and alterations of and repairs to the Customer's Property will be the Customer's responsibility.

9.2) The Company will not be liable for any loss or damage to the Customer's Property unless such loss or damage arises as a direct result of the Company's negligence. Where the Company is liable under this clause 9.2 the Company's liability to the Customer will be limited to the actual cost of the replacement or repair of the loss or damage to the Customer's Property.

9.3) The Customer will ensure that the Customer's Property is in good condition and suitable for use by the Company in the performance of the Contract and while the Company will use reasonable endeavours to verify any relevant aspects of the Customer's Property no responsibility is accepted by the Company for its accuracy.

9.4) Any defect in the Works which is due in whole or in part to the Customer's Property will not entitle the Customer to terminate the Contract, reject the Works, make any deductions from the Contract price or claim damages in respect of such defect.

9.5) The Customer will keep the Company indemnified in full against all liability, loss, damage, injury, claim, action, demand, expense or proceeding awarded against or incurred by the Company as a result of or in connection with the use by the Company of the Customer's Property.

9.6) The Company (without prejudice to any other remedy it may have) has a general lien on all of the Customer's Property in its possession (for any reason) in respect of all sums owed to the Company by the Customer.

10) CONFIDENTIALITY

10.1) Both the Company and the Customer will each keep confidential and will not without the prior written consent of the other disclose to any third party any technical or commercial information that it has acquired from the other as a result of any discussions, negotiations and other communications between them as a result of this Contract.

11) IPR

11.1) The Customer will keep the Company indemnified in full against all liability, loss, damage, injury, claim, action, demand, expense or proceeding in respect of any infringement or alleged infringement of any IPR resulting from any use by the Company of the Customer's Property or any compliance by the Company with the Customer's instructions, whether express or implied.

11.2) The IPR in all works owned by the Company prior to the date of the Contract ("Existing IPR") will remain vested in the Company.

11.3) Provided that the Customer is not in default of any payment obligation arising under the Contract:

- (a) the IPR in all Works provided by the Company pursuant to this Contract (excluding all Existing IPR) is hereby assigned to the Customer; and
- (b) the Company grants to the Customer a non-exclusive, royalty free licence to make use of such Existing IPR for the purposes envisaged in the Contract.

11.4) Where the Works are not manufactured or performed by the Company the Customer gives no assurance or guarantee that the use or sale of the Works will not infringe any third party intellectual property rights.

12) TERMINATION

12.1) The Company may terminate the Contract immediately if:

- (a) the Customer fails to pay the price on the due date;
- (b) the Customer is in breach of any term of the Contract and has failed to remedy such breach within 28 days of receipt of written notice specifying the breach and requiring it to be remedied;
- (c) there is a material change in the ownership or control of the Customer; or
- (d) the Customer is wound up or becomes insolvent or has a receiver or administrative receiver appointed or suffers the appointment or the presentation of a petition for the appointment of an administration or any equivalent or analogous event occurs in any other jurisdiction.

12.2) The termination of the Contract (howsoever arising) will be without prejudice to any rights and remedies that may have accrued to either party.

12.3) Any Conditions which impliedly have effect after termination or expiry will continue to be enforceable notwithstanding termination or expiry.

13) EXPORT SALES

13.1) Where the Works are supplied for export from the United Kingdom the provisions of this clause 13 will (subject to any special terms agreed in writing between the parties) apply despite any other provision of these Conditions.

13.2) The Uniform Laws on International Sales Act 1967 will not apply.

13.3) Unless otherwise agreed in writing the currency will be pounds sterling. The Customer will establish and maintain in favour of the Company an irrevocable and confirmed letter of credit in English with a UK clearing bank payable on drafts drawn at sight on presentation to the bank by the Company of a certified copy of the Company's invoice. All bank charges and other expenses in relation to the letter of credit will be borne by the Customer.

13.4) The Customer will be responsible for complying with any legislation or regulation governing the export of the Works from the United Kingdom and the importation of the Works into the country of destination and for payment of any relevant duties or taxes.

14) SOLICITATION OF PERSONNEL

14.1) The Customer shall not, during the period of execution of the Contract nor during a period of 6 months from the date of completion of the Contract, directly or indirectly solicit, entice or endeavour to solicit or entice any employees of the Company or any party associated with the Company engaged in the provision of the Services in connection with the Contract.

14.2) In the event that an existing employee of the Company is solicited to take employment with the Customer or any associated Company of the Customer, the Customer shall pay to the Company a fee equal to four months remuneration of the employee at the date of termination of the relevant employment contract.

15) LIEN

15.1) The Company will have in respect of unpaid debts due to it from the Customer a general lien on all property of the Customer which is in the Company's possession for whatever reason and whether worked upon or not.

16) FORCE MAJEURE

16.1) The Company will not be liable to the Customer or be deemed to be in breach of these Conditions by reason of any delay in performing or failure to perform any of its obligations under these Conditions if such delay or failure was beyond the Company's reasonable control.

16.2) If the Company is unable to perform its obligations under these Conditions in accordance with clause 16.1 it will promptly notify the Customer of the nature and extent of the circumstances in question.

17) ASSIGNMENT AND SUBCONTRACTING

17.1) Neither party will without the prior written consent of the other assign or transfer the Contract or any part of it to any other person.

18) GENERAL

18.1) Each right or remedy of the Company under these Conditions is without prejudice to any other right or remedy which the Company may have under these Conditions or otherwise.

18.2) Any notice or document shall be deemed served, if delivered at the time of delivery, if posted, 48 hours after posting and if sent by facsimile transmission, at the time of transmission.

18.3) The illegality, invalidity or unenforceability of any provision of these Conditions will not affect the legality, validity or unenforceability of any other provisions of these Conditions.

18.4) Failure or delay by either party in exercising any right or remedy provided by the Contract or by law will not be construed as a waiver of such right or remedy or a waiver of any other right or remedy.

18.5) A person who is not a party to the Contract will have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract. This clause 18.5 does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

18.6) The Customer agrees that it will have no remedy in respect of any untrue statement innocently or negligently made by or on behalf of the Company prior to the Contract upon which the Customer relied in entering into the Contract whether such statement was made orally or in writing.

18.7) The Contract will be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.