

PROMINENT FLUID CONTROLS (UK) LIMITED (PFC) CONDITIONS OF BUSINESS

1. DEFINITIONS The following words have the following meanings unless the context requires otherwise. **“Contract”** any contract between PFC and You incorporating these conditions for the sale of Products and/or the provision of the Services; **“Customer”** the person whose order for Products/Services is accepted by PFC; **“Liability”** liability for any and all damages, claims, proceedings, actions, awards, expenses, costs and any other losses and/or liabilities; **“Products”** any goods, products, materials, programs, manuals, equipment and packaging ordered from PFC by You or supplied by PFC to You and/or utilised in the performance of the Services and in which title is intended to pass to You once the Services have been completed. **“PFC”** PFC Fluid Controls (UK) Limited trading from Flagstaff 42, Resolution Road, Ashby de la Zouch, Leicestershire, LE65 1DW, registered company number 01252395; **“Services”** the services and/or work to be performed by PFC for You.

2. BASIS OF CONTRACT 2.1 These conditions shall govern the agreement between PFC and You to the exclusion of any other terms or conditions and shall supersede any terms previously notified. **2.2** orders placed by You shall be subject to these conditions. **2.3** No variation to these conditions shall be binding on PFC unless agreed in writing between You and a Director of PFC. **2.4** No oral warranties or representations shall bind PFC (unless given by a Director of PFC) and You shall not rely on any representation/warranty which has not been made in accordance with these conditions.

3. ORDERS AND CONTRACT 3.1 “Quotations” are not binding or capable of acceptance and are estimates only and shall be available for acceptance for 28 days. Quotations may be withdrawn by PFC at any time. **3.2** PFC has the right to refuse to accept any orders placed. **3.3** You shall be responsible for the accuracy of an order and for giving PFC any information necessary for PFC to perform the Contract. **3.4** The Contract between PFC and You shall come into effect on PFC’s written acceptance of Your order. **3.5** If You requires any amendment to an order which has been accepted by PFC, PFC shall be entitled to adjust the price of the Products and/or Services as a result of such amendment.

4. DELIVERY AND SITE ACCESS 4.1 Dates for delivery and/or performance are estimates only and are not guaranteed. Time is not of the essence in relation to such dates and they are subject to any matter beyond PFC’s reasonable control. **4.2** PFC will use its reasonable endeavours to ensure delivery and/or performance on the dates specified. **4.3** Where Products are to be delivered in instalments and/or the Services are to be performed in stages, each delivery/stage shall constitute a separate and distinct contract and failure by PFC to deliver, or any claim by You in respect of, any instalment shall not entitle You to repudiate and/or terminate this Contract as a whole. **4.4** You shall have no right to reject Products/Services and shall have no right to rescind for late delivery/performance unless the due date has passed and has served on PFC a written notice requiring performance and giving PFC not less than 14 days in which to do so and the notice has not been complied with. **4.5** PFC shall not be required to fulfil orders for Products/Services in the sequence in which they are placed. **4.6** You shall be responsible at its own cost for all arrangements to unload the Products upon delivery. Delivery will be made between 9.00 am and 5.00 pm on working days. **4.7** If You refuse to allow delivery of any Products/performance of the Services then PFC shall be entitled to withhold delivery/performance of any other Products/Services, to treat this Contract as repudiated by You and rescind this Contract. **4.8** You will allow and/or procure sufficient access to PFC’s employees, sub-contractors and/or agents to allow them to deliver the Products, carry out the Services and ensure the area is clear and prepared. **4.9** You will allow and/or procure sufficient unloading space, facilities, equipment and access to power supplies to allow the Services to be carried out.

4.10 If the Products are to be collected from PFC’s premises then You shall collect the Products within 5 days of being notified that the Products are ready for collection. If they are not collected by You within 5 days PFC may despatch the Products to You at Your expense and risk or store the Products at Your expense and risk until despatch/collection.

5. POSTPONEMENT 5.1 PFC may comply with reasonable requests by You for postponement of delivery of the Products and/or performance of the Services but shall be under no obligation to do so. **5.2** You shall pay all costs and expenses of PFC incurred as a result of such postponement and shall pay for the Products/Services as if delivery/performance had not been postponed.

6. PRICE AND PAYMENT 6.1 The price of the Products/Services shall be as at the date order acceptance. **6.2** You shall be entitled to discount for bulk purchase and/or volume of purchase customarily granted by PFC in accordance with PFC’s discount structure at PFC’s sole discretion. **6.3** Except as otherwise stated, prices are ex-works. **6.4** PFC may increase its prices where the increase is to take account of increases in costs, expenses and/or materials suffered by PFC. **6.5** You will be informed in writing by PFC of any such increases in prices not less than 30 days before such increase takes effect. **6.6** PFC will increase its prices where such increase is to incorporate amendments to the specifications made by You after PFC has accepted an order. **6.7** Subject to clause 6.8 below, You may cancel any Contract the price is to be increased provided that the written notice of cancellation is received by PFC 21 days before the scheduled date for delivery/performance. **6.8** If PFC agrees to manufacture and supply bespoke Products for Customer, then PFC reserves the right to extend the Notice of Cancellation period specified in clause 6.7 required from You at its sole discretion. **6.9** If You do not cancel the Contract within the specified time period then the price increase shall take effect. **6.10** PFC’s prices are exclusive of any applicable VAT. **6.11** PFC’s terms of payment are net cash or cleared funds within 30 days of the date of invoice. Time for payment shall be of the essence. **6.12** If You fails to make any payment in full on the due date PFC may charge You any reasonable additional administration costs and/or interest (both before and after judgment) on the amount unpaid at the rate of 2% per calendar month and for the purposes of this clause and part of a calendar month shall be treated as a full month. Such interest shall be compounded with monthly rests. **6.13** Any monies received by PFC from You may be applied by PFC at its option against any additional administrative costs and/or interest charged prior to application against any principal sums due from You against which it may be applied in any order. **6.14** PFC shall be entitled to invoice each delivery of Products and/or stage of the Services separately. **6.15** You shall pay all sums due to PFC under this Contract without any set-off, deduction, counterclaim and/or any other withholding of monies. **6.16** Payment shall not be deemed to be made until PFC has received either cash or cleared funds in respect of the full amount outstanding. **6.17** PFC shall be entitled to render an invoice to You at any time after You have ordered Products/Services. **6.18** If payment in full is not made to PFC when due then PFC may withhold or suspend future or current deliveries of the Products/performance of the Services under this or any other agreement with You. **6.19** If any Services are cancelled or this Contract terminated or delivery/performance is suspended before completion of the Services You shall pay PFC on a quantum meruit basis the Services performed. PFC may invoice You accordingly and such monies shall be immediately due for payment.

7. SPECIFICATION 7.1 Any specification supplied by PFC shall only be approximate unless stated on PFC’s quotation or agreed in writing. **7.2** You are solely responsible for checking the quotation and satisfying itself that any specification given is accurate and adequate. **7.3** If there is an error in the specification made by PFC for You then, where that error is material and it has been relied upon by You, You may cancel that part of this Contract which is affected by the error without Liability. **7.4** PFC shall have no Liability for errors in any specification or details supplied by You. **7.5** Details and/or specifications in brochures and price lists are a guide only and PFC shall not be bound by them. **7.6** PFC reserves the right to make changes to the specification of the Products and/or Services as required from time to time by law, applicable safety or manufacturing requirements provided that they do not have a material adverse effect on the quality of the Products/Services. **7.7** If PFC does make changes to the Products/Service specifications which have a material adverse effect then You shall have the right to cancel the Contract without Liability.

8. INTELLECTUAL PROPERTY RIGHTS AND CONFIDENTIALITY 8.1 All intellectual property rights of any nature and whether registered or not in the Products/Services shall be owned by the PFC absolutely. **8.2** PFC shall be free to utilise for the benefit of its other customers any skill and/or know-how that it may develop or acquire in the performance of the Services. **8.3** You agree that You will keep confidential and not use except for purposes contemplated by this Contract, all information relating to the Products/Services and all confidential business information regarding PFC, which may be disclosed to You or which You may learn except where such information is public knowledge or is required to be disclosed by law.

9. PROPERTY AND RISK 9.1 Risk in the Products shall pass to You at the time of delivery. Delivery shall be deemed to occur at the time when the Products arrive at the place of delivery. **9.2** Risk of damage to or loss of the Products utilised in the Services shall pass to You upon completion of the Services. PFC will replace any Products in which risk has passed to You if they are damaged or lost due to the neglect or default of PFC, its employees or other representatives. **9.3** PFC shall retain title and ownership of the Products until it has received payment in full in cash or cleared funds of all sums due for all Products/Services under this Contract and any other agreement between PFC and You.

9.4 Until payment in full for all Products supplied the Products shall be stored separately from Your goods or any 3rd party and must be clearly marked and identified as being PFC’s property. You agrees that PFC’s employees and/or agents shall be entitled to enter Your premises to check compliance with this clause. **9.5** Until title has passed to You, You shall keep the Products insured for the price at which the Products were sold to You against all normal risks and shall procure that PFC’s interest is noted on such policy of insurance. You shall account to PFC for any proceeds of such policy of insurance upon receipt of the same. Any monies received from You by PFC in accordance with this clause shall not discharge Your liability to pay the price for the Product/Services plus interest accrued in accordance with clause 6.12 but shall be set off against any such liability.

10. DEFAULT 10.1 If You: **10.1.1** fail to make any payment to PFC when due; **10.1.2** breach a term which is capable of remedy and fails to remedy within 14 days of receiving notice to remedy. **10.1.3** persistently breach any one or more terms of this Contract; **10.1.4** pledge or charge any Products which are the property of PFC; cease or threaten to cease to carry on business; or proposes to compound with its creditors; apply for an interim order under Section 252 Insolvency Act 1986 or have a Bankruptcy Petition presented against You; enter into voluntary or compulsory liquidation; have a receiver, administrator or administrative receiver appointed over all or any of Your assets, or take or suffer any similar action in any jurisdiction; **10.1.5** exceed the credit limit set by PFC; **10.1.6** appear to be financially inadequate to meet Your obligations under the Contract; and/or appear to PFC to be about to suffer any of the above events; then PFC shall have the right, without prejudice to any other remedies, to exercise any or all of the rights set out in clause 11.2 below. **10.2** PFC may: **10.2.1** enter, without notice, any premises of You (or of third parties with their consent) where Products owned by PFC may be, repossess and dispose of or sell any Products found which are owned by PFC so as to discharge any sums due to PFC under this or any other Contract. **10.2.2** require You not to re-sell or part with the possession of any Products owned by PFC until You has paid in full all sums due to PFC under this Contract or any other agreement with You; **10.2.3** withhold delivery of any undelivered Products and stop any Products in transit; **10.2.4** withhold the performance of any Services and cease any Services in progress; **10.2.5** cancel, terminate and/or suspend without Liability to You any Contract with You. **10.3** All monies owned by You to PFC shall forthwith become due and payable. **10.4** PFC shall have a lien over all property or goods belonging to You which may be in PFC’s possession in respect of all sums due from You to PFC. **10.5** Upon termination of the Contract if any monies due from You have not been paid within 14 days of such termination PFC may sell any property or goods over which it has a lien pursuant to clause 10.3 (and You agrees that PFC may give good title for such property) and shall apply the proceeds of sale firstly in discharging any costs of sale, secondly in repaying any interest owed by You, thirdly in payment of any principal sums owed to PFC and fourthly PFC shall account to You for the remainder (if any).

11. GUARANTEE AND REPAIR/REPLACEMENT 11.1 PFC guarantees that the Products/ Services will be free from defects in materials and/or workmanship for the period of time specified on the documentation accompanying the Products/Services, from: **11.1.1** The date of completion of the performance of the Services; and/or **11.1.2** the date of delivery of the Products to You. **11.2** The Guarantee in clause 12.1 is given by PFC subject to PFC being under no Liability for any:- **11.2.1** defect from any drawing, design or specification supplied by You; **11.2.2** faults arising after risk in the Products has passed caused by any subsequent mechanical, chemical, electrolytic or other damage not due to a defect in the Products/Services as appropriate; and/or **11.2.3** faults or defects caused by wilful damage, abnormal working conditions, failure to follow PFC’s instructions, misuse, alteration or repair of Products/Services without PFC’s approval, improper maintenance or negligence on the part of You or a 3rd party. **11.3** If any Products/Services prove to be defective and are covered by the guarantee in clause 11.1 PFC shall at its sole option either repair or replace such Products or re-perform such Services. **11.4** Any work carried out by PFC which is not covered by the guarantee in clause 11.1 will be charged for. **11.5** PFC shall have no Liability to You under the guarantee in clause 11.1 unless any defect is notified to PFC within 7 days of the defect becoming or should reasonably have become apparent or suspected by You. **11.6** Products (including but not limited to glass sensors and buffers) which are labelled as SL (Short Life) on PFC’s invoices are Products with a short life and accordingly do not carry a guarantee pursuant to this clause 11. **11.7** Any defective Products must be returned to PFC for inspection if requested by PFC before PFC will have any Liability. **11.8** PFC will at its option either refund the price of or replace free of charge any Products missing from a delivery provided that the missing items are notified to PFC within 7 days of delivery or, in the event of total non-delivery, PFC are notified within 7 days of receipt of the invoice by You. **11.9** The guarantee in clause 11.1 will not apply if You has not paid in full for the relevant Products/Services on the due date for payment.

12. LIMITATIONS ON LIABILITY 12.1 PFC shall have no Liability for. **12.1.1** any defect in the Products caused or contributed to by the Products being used for display or demonstration purposes or being handled by Your customers. **12.1.2** defective Products/Services where the defect has been caused or contributed to by You to the extent so contributed; **12.1.3** circumstances where price of the Products/Services has not been paid in full by the due date; **12.1.4** defective Products/Services, Products not despatched or Products damaged or lost in transit unless the event is notified to PFC within the time limit set out in this Contract; **12.1.5** damage, loss, liability, claims, costs or expenses caused or contributed to by You continued use of defective Products/Services after a defect has become apparent or suspected or should reasonably have become apparent. **12.2** You shall give PFC a reasonable opportunity to remedy any matter for which PFC is liable before incurring any costs and/or expenses in remedying the matter itself and if You fail to do so PFC shall have no Liability to You. **12.3** PFC shall have no Liability to You to the extent that You are covered by any policy of insurance and You shall ensure that Your insurers waive any and all rights of subrogation they may have against PFC. **12.4** PFC shall have no Liability for any matters which are outside its reasonable control. **12.4** PFC shall have no Liability to You for any:- **12.4.1** consequential losses; **12.4.2** loss of profits and/or damage to goodwill; **12.4.3** economic and/or other similar losses; **12.4.4** special damages and indirect losses; and/or **12.4.5** business interruption, loss of business, contracts, opportunity and/or production. **12.5** You shall be under a duty to mitigate any loss, damage, costs or expenses that You may suffer. **12.6** PFC’s total Liability to You shall not exceed £150,000.00. To the extent that any Liability of PFC to You would be met by any insurance of PFC then the Liability of PFC shall be extended to the extent that such Liability is met by such insurance. **12.7** Each of the limitations and/or exclusions in this Contract shall be deemed to be repeated and apply as a separate provision for each of: **12.7.1** breach of contract; **12.7.2** tort (including negligence); **12.7.3** breach of statutory duty; and **12.7.4** breach of Common Law except clause 13.11 above which shall apply once only in respect of all the said types of Liability. **12.8** Nothing in this Contract shall exclude or limit the Liability of either party for death or personal injury or fraud or any other liability which cannot be excluded or limited as a matter of law. **12.9** All warranties, terms, conditions and duties implied by law relating to fitness, quality or adequacy are excluded to the fullest extent permitted by law. **12.10** Nothing in this Contract shall exclude or limit any statutory rights of You which may not be excluded or limited due to You acting as a consumer, and shall to that extent, have no force or effect.

13. GENERAL 13.1 You agree to indemnify and keep indemnified PFC against any and all losses, proceedings, lost profits, damages, awards, expenses, claims, costs (including increased administration costs and legal costs on a full indemnity basis), actions and any other losses and/or liabilities suffered by PFC and arising from or due to any: **13.1.1** breach of contract; **13.1.2** tortious act and/or omission; **13.1.3** any breach of statutory duty by You; **13.1.4** cancellation of this Contract other than pursuant to clauses 6.7 and/or 6.8; **13.1.5** refusal to accept delivery of the Products and/or performance of the Services; **13.1.6** PFC’s use of specifications, details and/or drawings supplied by You. **13.2** No waiver by PFC of any breach of this Contract shall be considered as a waiver of any subsequent breach of the same or any other provision. **13.3** If any provision of this Contract is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the remainder of this Contract and the affected provision shall be unaffected and shall remain in full force and effect. **13.4** PFC shall have no Liability to You for any delay in performance of this Contract (other than in relation to payment) to the extent that such delay is due to any events outside PFC’s reasonable control including but not limited to acts of God, war, flood, fire, labour disputes, subcontractor delays, strikes, lock-outs, riots, civil commotion, malicious damage, explosion, governmental actions and any other similar events. If PFC is affected by any such event then time for performance shall be extended for a period equal to the period that such event or events delayed such performance. **13.5** You shall not assign its interest in the Contract (or any part) without the written consent of PFC. **13.6** All 3rd party rights are excluded and no 3rd party shall have any right to enforce this Contract. This shall not apply to members of PFC’s group from time to time who shall, subject to PFC’s consent, have the right to enforce this Contract as if they were PFC. **13.7** This Contract is governed by and interpreted in accordance with English law and the parties agree to submit to the exclusive jurisdiction of the English courts.