

PROMINENT FLUID CONTROLS (UK) LIMITED: CONDITIONS OF BUSINESS

1. DEFINITIONS The following words have the following meanings unless the context requires otherwise. **PFC:** Prominent Fluid Controls (UK) Limited, trading from its registered office at Flagstaff 42, Resolution Road, Ashby de la Zouche, Leicestershire, LE65 1DW, registered in England, company number 01252395; **Conditions:** these terms and conditions as amended from time to time in accordance with clause 2; **Contract:** any contract between PFC and You incorporating these Conditions for the sale of Products and/or the provision of the Services; **Deliverables:** the deliverables set out in the Order, if any; **Liability:** liability, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any and all damages, claims, proceedings, actions, awards, expenses, costs and any other losses and/or liabilities; **Order:** Your order for the supply of the Products and/or Services, as set out in clause 3; **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 in accordance with these Conditions once the Services have been completed; **Product Specification:** any specification for the Products, including any relevant plans or drawings, that is agreed in writing by You and PFC; **Services:** The services and/or work, including the Deliverables, performed by PFC for You, as set out in the Service Specification below; **Service Specification:** the description or specification for the Services provided in writing by PFC to You; **You, Your, Yours, Yourself:** the person or firm who purchases the Products and/or Services from PFC.

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 All Orders placed by You shall be subject to these Conditions. The Order shall only be deemed to be accepted when PFC issues written acceptance of the Order at which point and on which date the Contract shall come into existence. 2.3 No variation to these Conditions shall be binding on PFC unless agreed in writing by a Director of PFC. 2.4 The Contract constitutes the entire agreement between the parties. No oral warranties or representations shall bind PFC and You acknowledge that You have not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of PFC which has not been made in accordance with these Conditions and/or is not set out in the Contract.

3. ORDERS AND CONTRACT 3.1 Any quotation given by PFC shall not constitute an offer, and is only valid for 28 days from its date of issue. Quotations may be withdrawn by PFC at any time. 3.2 PFC has the right to refuse to accept any orders placed by You, whether verbal or written. 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 the Order placed by You. 3.5 If You require 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. 3.6 PFC may comply with reasonable requests by You for postponement and/or cancellation of the Order, but shall be under no obligation to do so if at the time of cancellation the Order has already been accepted by PFC and PFC has entered into a contract with its supplier.

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 or 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 the Contract as a whole. 4.4 You shall have no right to reject Products or Services and shall have no right to rescind for late delivery or performance unless the due date has passed and You have 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 and/or Services in the sequence in which they are placed. 4.6 You shall be responsible at Your own cost for all arrangements to unload the Products upon delivery. Delivery will be made during normal office hours on working days and by request on weekends. 4.7 If You refuse to allow delivery of any Products or performance of the Services then PFC shall be entitled to withhold delivery and/or performance of any other Products and/or 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 You will co-operate with PFC in all matters relating to the Services. 4.11 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 of notification, PFC may despatch the Products to You at Your expense and risk or store the Products at Your expense and risk until despatch or collection.

5. POSTPONEMENT AND/OR CANCELLATION OF DELIVERY 5.1 PFC may comply with reasonable requests by You for postponement of delivery and/or cancellation of the Contract, but shall be under no obligation to do so. 5.2 You shall pay all costs and expenses of PFC reasonably incurred as a result of any such postponement and/or cancellation. 5.3 These charges may be restricted, at PFC's sole discretion, to a re-stocking fee which shall be a proportion of all costs and expenses incurred by PFC as a result of such postponement and/or cancellation.

6. PRICE AND PAYMENT 6.1 The price of the Products and/or Services shall be as at the date of PFC's acceptance of the Order. 6.2 PFC may, at its sole discretion, apply a discount for bulk purchases and/or high purchase volumes in accordance with PFC's discount structure. 6.3 Unless stated otherwise, prices are ex-works, PFC's registered office address. 6.4 PFC may increase its prices where the increase is to take account of increases in the cost of the Products to PFC that is due to: 6.4.1 any factor beyond the control of PFC (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs); 6.4.2 any request by You to change the delivery date(s), quantities or types of Products ordered, or the Product Specification; 6.4.3 any delay caused by any of Your instructions in respect of the Products or failure by You to give PFC adequate or accurate information or instructions in respect of the Products. 6.5 You will be informed in writing by PFC of any such increase 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 Product Specification and/or Service Specification made by You after PFC has accepted an Order. 6.7 Subject to clause 6.8 below, You may cancel any Contract where the price is to be increased, provided that the written notice of cancellation is received by PFC at least 21 Business Days prior to the scheduled date of delivery of Products or performance of the Services. 6.8 If the Products are bespoke Products, PFC reserves the right, at its sole discretion, to decrease the Notice of Cancellation period specified in clause 6.7. 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 value added tax chargeable from time to time on VAT. Where any taxable supply for VAT purposes is made under the Contract by PFC to You, You shall, on receipt of a valid VAT invoice from PFC, pay to PFC such additional amounts in respect of VAT as are chargeable on the supply of the Services or Products at the same time as payment is due for the supply of the Services or Products. 6.11 PFC's terms of payment are net cash or cleared funds within 30 days of the date of invoice unless otherwise agreed in writing. Time for payment shall be of the essence. 6.12 If You fail 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 4% 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 and/or 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 performance is suspended before completion of the Services, You shall pay PFC on a quantum meruit basis for such part of the Services performed. If PFC has ordered any goods for performance of the Services, You shall pay PFC for all such costs incurred. PFC may invoice You accordingly and such monies shall be immediately due for payment.

7. SPECIFICATION 7.1 Any Product Specification and/or Service 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 Product Specification and/or Service Specification given is accurate and adequate. 7.3 If there is an error in any Product Specification and/or Service Specification made by PFC for You then, where that error is material and 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 Product Specification or Service 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 Product Specification and/or Service Specification 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 and/or Services. 7.7 If PFC does make changes to the Product Specification and/or Service Specification 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 and/or Services shall be owned by PFC absolutely. 8.2 PFC shall be free to utilise for the benefit of its other customers any skill and/or knowhow 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 and 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 and Services under this Contract and any other agreement between PFC and You.

9.4 Until payment in full for all Products and/or Services supplied has been received by PFC, You shall: 9.4.1 store the Goods separately from all other goods held by You so that they remain readily identifiable as PFC's property; 9.4.2 not remove, deface or obscure any identifying mark or packaging on or relating to the Products; 9.4.3 maintain the Products in satisfactory condition and keep them insured against all risks for their full price from the date of delivery; 9.4.4 notify PFC immediately if You become subject to any of the events listed in clause 10.1 below; and 9.4.5 give PFC such information relating to the Products as PFC may require form time to time. 9.5 PFC may recover Products in which title has not passed to You. You irrevocably license PFC, its officers, employees and agents, to enter any premises of Yours (including with vehicles), in order to satisfy itself that You are complying with the obligations in clause 9.4, and to recover any Products in which property has not passed to You. 9.6 PFC may at any time after delivery elect to transfer title in the Products to You, in which case You shall immediately pay the price or charges for all Products and/or Services to PFC.

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 fail 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; or 10.1.6 - appear to be financially inadequate to meet Your obligations under the Contract; 10.1.7 - being an individual, die or, by reason of illness or incapacity (whether mental or physical), incapable of managing Your own affairs or become a patient under any mental health legislation; and/or 10.1.8 - 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 10.2 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 have 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; and/or 10.2.5 - cancel, terminate and/or suspend without Liability to You any Contract with You. 10.3 Where You become subject to any of the events in clause 10.1 above, all monies owed 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 agree 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/RETURNS 11.1 PFC guarantees that the Products will be free from defects in materials and/or workmanship for the period of time specified on the documentation accompanying the Products, from the date of delivery of the Products to You (warranty period). Subject to clause 11.3, if: 11.1.1 You give notice in writing within a reasonable time of discovery that some or all of the Products do not comply with the warranty set out in clause 11.1; PFC is given a reasonable opportunity of examining such Products; and You (if asked to do so by PFC) return such Products to PFC's place of business at PFC's cost; PFC shall, at its option, repair or replace the defective Products, or refund the price of the defective Products in full. 11.3 PFC shall not be liable for the Products' failure to comply with the warranty in clause 11.1 if: 11.3.1 You make any further use of such Products after giving a notice in accordance with clause 11.2; 11.3.2 the defect arises because You failed to follow PFC's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Products or (if there are none) good trade practice; 11.3.3 the defect arises as a result of PFC following any drawing, design or Products specification supplied by You; 11.3.4 You alter or repair such Products without the written consent of PFC;

11.3.5 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; 11.3.6 the Products differ from the Product Specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards. 11.4 Except as provided in this clause 11, PFC shall have no liability to You in respect of the Products' failure to comply with the warranty set out in clause 11.1. 11.5 The terms of these Conditions shall apply to any repaired or replacement Products supplied by PFC under clause 11.2. 11.6 Products (including but not limited to glass sensors and buffers) which are of a short life are not subject to the guarantee set out in this clause 11. 11.7 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 5 working days of delivery or, in the event of total non-delivery, PFC are notified within 5 working days of receipt of the invoice by You. 11.8 The guarantee in clause 11.1 will not apply if You have not paid in full for the relevant Products and/or Services on the due date for payment. 11.9 Credit may not be available for returned Products if the sealed packages in which Products are shipped to maintain cleanliness and facilitate traceability of the contents are opened, damaged or missing. 11.10 Products may only be returned for credit if PFC's Credit Request Form has been completed and properly authorised prior to the return of the Products. 11.11 Products which have a short shelf life or Products which have been specially purchased will only be credited if returned within 5 working days of the delivery date identified on the proof of delivery document and if all of PFC's costs, expenses and fees have been paid in full in accordance with clause 5 above.

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 remediating the matter itself and if You fail to do so PFC shall have no Liability to You. 12.3 PFC shall have no Liability for to You 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 control. 12.5 PFC shall have no Liability to You for any: 12.4.1 - consequential losses; 12.4.2 - loss of profit 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. 12.6 You shall be under a duty to mitigate any loss, damage, costs or expenses that You may suffer. 12.7 PFC's total Liability to You shall not exceed: 12.7.1 - £150,000.00; or 12.7.2 - the price paid by You under the Contract for the Products and/or Services. 12.8 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: 12.8.1 - breach of contract; 12.8.2 - tort (including negligence); 12.8.3 - breach of statutory duty; and 12.8.4 - breach of common law, except clause 12.7 above which shall apply once only in respect of all the said types of Liability. 12.9 Nothing in this Contract shall exclude or limit the Liability of PFC for death or personal injury caused by its negligence, or fraud or fraudulent misrepresentation, or any other liability which cannot be excluded or limited as a matter of law. 12.10 All warranties, terms, conditions and duties implied by law relating to fitness, quality or adequacy are excluded to the fullest extent permitted by law. 12.11 Nothing in this Contract shall exclude or limit any of Your statutory rights that may not be excluded or limited due to You acting as a consumer, and any clauses to which this applies, shall accordingly have no force or effect. If You are a consumer, for detailed information please visit the Citizens Advice website www.adviceguide.org.uk or call 03454 04 05 06.

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 by You; 13.1.2 - tortious act and/or omission by You; 13.1.3 - breach of statutory duty by You; 13.1.4 - cancellation of this Contract by You other than pursuant to clauses 6.7 and/or 6.8; 13.1.5 - refusal by You to accept delivery of the Products and/or performance of the Services; 13.1.6 - use by PFC 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 Your 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 By purchasing goods from PFC, you agree that the goods will be for your final use or sale within the United Kingdom (Great Britain or Northern Ireland) and shall not be exported to the European Union, unless the purchase originates from the European Union. This declaration is made under the UK Internal Market Scheme (UKIMS) and is subject to the conditions and limitations outlined in the UKIMS regulations. 13.8 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.