



## SEKO UK LIMITED

### CONDITIONS OF SALE

#### 1. Interpretation

1.1 In these Conditions the following words have the following meanings:

<b>"Buyer"</b>	the person(s), firm or company who purchases Goods from the Company;
<b>"Carrier"</b>	any carrier nominated by the Company to make delivery of the Goods in accordance with Condition 4;
<b>"Company"</b>	Seko UK Limited (a company registered in England under number 03533586) and whose registered office is at Unit 3, Coldharbour Pinnacles Industrial Estate, Coldharbour Road Harlow Essex CM19 5JY
<b>"Confidential Information"</b>	all information (including all visual information, and all information recorded in writing or electronically or in any other medium or by any other method) relating to the Company's operations, processes, plans, intentions, product information, know-how, design rights, trade secrets, software, market opportunities, customers and business affairs;
<b>"Consequential Loss"</b>	any loss of anticipated profits, damage to reputation or goodwill, loss of expected future business or any damages, costs, liability or expenses incurred by the Buyer or payable by the Buyer to a third party;
<b>"Contact Parts"</b>	those parts of the Goods which are designed to be in direct contact with or come into direct contact with chemicals or other liquids as part of their ordinary use. Such parts may include, without limitation, hoses, nozzle wands, tubes, conductivity probes and PH and Redox electrodes;
<b>"Contract"</b>	any contract between the Company and the Buyer for the sale and purchase of Goods;
<b>"Goods"</b>	any goods agreed in the Contract to be supplied to the Buyer by the Company (including any part or parts of them);
<b>"Price"</b>	the price of the Goods;
<b>"Working Day"</b>	any day which is not a Saturday, Sunday or a bank or public holiday.

1.2 In these Conditions references to any statute or statutory provision shall, unless the context otherwise requires, be construed as a reference to that statute or statutory provision as from time to time amended, consolidated, modified, extended, re-enacted, or replaced.

1.3 The headings in these Conditions are for convenience only and shall not affect their interpretation.

1.4 In these Conditions references to the masculine include the feminine and the neuter and to the singular include the plural and vice versa as the context admits or requires.

#### 2. Application of Conditions

2.1 Subject to any variation under Condition 2.3, the Contract will be on these Conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Buyer purports to apply under any purchase order, confirmation of order, specification or other document).

- 2.2 No terms or conditions endorsed upon, delivered with or contained in the Buyer's purchase order, confirmation of order, specification or other document will form part of the Contract simply by as a result of such document being referred to in the Contract.
- 2.3 These Conditions apply to all the Company's sales and any variation to these Conditions and any representations about the Goods shall have no effect unless expressly agreed in writing and signed by a Director of the Company.
- 2.4 Each order for Goods by the Buyer from the Company shall be deemed to be an offer by the Buyer to purchase Goods subject to these Conditions.
- 2.5 No order placed by the Buyer shall be deemed to be accepted by the Company and no Contract shall come into existence until the Company's order acknowledgement form has been despatched to the Buyer or (if earlier) the Company delivers the Goods pursuant to Condition 4.
- 2.6 Any quotation is given on the basis that no Contract will come into existence otherwise than in accordance with Condition 2.5. Any quotation is valid for a period of 30 days only from its date, provided that the Company has not previously withdrawn it.

### **3. Specifications**

- 3.1 The Goods supplied by the Company will be in accordance with the order accepted by the Company pursuant to Condition 2.5. No other specification, descriptive material, written or oral representation, correspondence or statement, promotional or sales literature will form part of or be incorporated by reference into any Contract.
- 3.2 The Buyer must ensure that the terms of its order and any applicable specification provided by it are complete and accurate.
- 3.3 The Buyer will be solely responsible for any errors in or omissions from any specifications, information or other items provided by it. The Company will not be obliged to verify whether or not any such specifications, information or other items are correct or sufficient.
- 3.4 If the Company supplies any Goods in accordance with any specifications, information or other items supplied by the Buyer which are incorrect or insufficient, infringe the rights of any third party or fail to meet any applicable safety or statutory requirements or regulations, the Buyer will indemnify the Company against all damages, losses, costs, claims or expenses incurred by the Company arising out of, or in connection with, the execution of the order.
- 3.5 The Company may from time to time make changes in the specification of the Goods which are required to comply with any applicable statutory requirements.

### **4. Delivery**

- 4.1 Unless otherwise agreed in writing by the Company, delivery of the Goods shall be made by the Company engaging a Carrier, and delivery shall take place on the terms of Condition 4.2.
- 4.2 In the event that the Company engages a Carrier, pursuant to Condition 4.1, delivery of the Goods shall take place when the Company delivers the Goods to the Carrier.
- 4.3 In the event that the Company agrees that delivery is to be made at the Company's place of business, the Buyer will take delivery of the Goods at the Company's place of business within 3 Working Days of the Company giving it notice that the Goods are ready for delivery.
- 4.4 In the event that the Company agrees to transport the Goods itself to the Buyer's premises, delivery shall take place when the Goods are delivered to those premises.
- 4.5 Any dates specified by the Company for delivery of the Goods are intended to be an estimate and time for delivery shall not be made of the essence by notice.

- 4.6 If for any reason the Buyer will not accept or take delivery of any of the Goods when they are ready for delivery, or the Company is unable to deliver the Goods on time because the Buyer has not provided appropriate instructions, documents, licences or authorisations then, at the time of such non-acceptance of delivery, or failure to take delivery, or inability to deliver:
- 4.6.1 risk in the Goods will pass to the Buyer (including for loss or damage caused by the Company's negligence);
  - 4.6.2 the Goods will be deemed for all purposes to have been delivered; and
  - 4.6.3 the Company may store the Goods until actual delivery whereupon the Buyer will be liable for all related costs and expenses (including, without limitation, storage and insurance).
- 4.7 The Buyer will provide at its expense if requested by the Company the place where delivery of the Goods is to take place, adequate and appropriate equipment and manual labour for unloading the Goods.
- 4.8 The Company may deliver the Goods by separate instalments in any sequence. Each separate instalment is to be invoiced and paid for in accordance with these Conditions.
- 4.9 The failure of the Company to deliver any one or more instalments of the Goods or any claim by the Buyer in respect of any one or more instalments will not entitle the Buyer to treat the whole Contract as repudiated.
- 4.10 The Company shall be responsible for obtaining any necessary import licences or permits necessary for the entry of the Goods into the United Kingdom.

## **5. Non-delivery**

- 5.1 The quantity of any consignment of Goods as recorded by the Company upon despatch from the Company's place of business shall be conclusive evidence of the quantity received by the Buyer on delivery unless the Buyer can provide conclusive evidence proving the contrary.
- 5.2 The Company shall not be liable for any non-delivery of Goods (even if caused by the Company's negligence) unless written notice is given to the Company within 5 Working Days of the date when the Goods would in the ordinary course of events have been received.
- 5.3 Any liability of the Company for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods.

## **6. Risk and Title**

- 6.1 Risk of damage to or loss of the Goods shall pass to the Buyer:
- 6.1.1 in the case of Goods to be delivered at the Company's place of business, at the time when the Company notifies the Buyer that the Goods are available for collection;
  - 6.1.2 in the case of Goods to be delivered otherwise than at the Company's premises, at the time of delivery or (if applicable) deemed delivery pursuant to Condition 4.6.
- 6.2 Ownership of the Goods shall not pass to the Buyer until the Company has received in full (in cleared funds) all sums due to it in respect of:
- 6.2.1 the Goods; and
  - 6.2.2 all other sums which are or which become due to the Company from the Buyer on any account.

- 6.3 Until ownership of the Goods has passed to the Buyer, the Buyer must:
- 6.3.1 hold the Goods on a fiduciary basis as the Company's bailee;
  - 6.3.2 store the Goods (at no cost to the Company) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as the Company's property;
  - 6.3.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods;
  - 6.3.4 maintain the Goods in a satisfactory condition insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company. On request the Buyer shall produce the policy of insurance to the Company; and
  - 6.3.5 hold the proceeds of the insurance referred to in Condition 6.3.4 on trust for the Company and not mix them with any other money, nor pay the proceeds into an overdrawn bank account.
- 6.4 The Buyer's right to possession of the Goods shall terminate immediately if:
- 6.4.1 the Buyer commits any breach of any of the provisions of the Contract, or any other contract between the Company and the Buyer; or
  - 6.4.2 a receiver or administrative receiver is appointed over any of the property or assets of the Buyer, or in the event that the Buyer is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or
  - 6.4.3 the Buyer makes any voluntary arrangement or composition with its creditors; or
  - 6.4.4 the Buyer (being a company) becomes subject to an administration order, or goes into liquidation (except for the purposes of amalgamation or reconstruction and in such manner that the company resulting therefrom effectively agrees to be bound by or assume the obligations imposed on that other party under the Contract); or
  - 6.4.5 the Buyer (being an individual) becomes bankrupt or dies, or (being a firm) is dissolved; or
  - 6.4.6 the Buyer encumbers or in any way charges any of the Goods; or
  - 6.4.7 the Buyer ceases, or threatens to cease, to carry on business.
- 6.5 The Buyer grants the Company, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Buyer's right to possession has terminated, to recover them.
- 6.6 The Company shall be entitled to recover payment for any of the Goods notwithstanding that ownership of any of the Goods has not passed from the Company.
- 6.7 In the event that any of the events listed in Condition 6.4 occur, the Company may in its absolute discretion suspend all further deliveries of Goods and/or terminate the Contract, without liability on its part on any account whatsoever. If any Goods have been delivered but not paid for, the Price (and any other costs or charges payable by the Buyer to the Company under the Contract) shall immediately become due and payable.

## **7. Price**

- 7.1 Unless otherwise agreed by the Company in writing the Price shall be the Company's quoted price.
- 7.2 The Price, and all other costs and charges set out in these Conditions payable by the Buyer, shall be exclusive of any value added tax which amount the Buyer will pay in addition when it is due to pay for the Goods.
- 7.3 The Price is exclusive of any and all costs and charges in relation to loading, unloading, shipping, carriage and insurance of the Goods, all of which amounts will be set out in the Company's order acknowledgement form and which the Buyer will pay to the Company, when it is due to pay the Price.
- 7.4 The Company may by giving notice to the Buyer at any time before delivery, increase the Price to reflect any increase in costs which is due to any factor beyond the control of the Company such as, without limitation, any increase in the price of materials, parts, components, labour, transport, or other costs of manufacture or provision, any change in delivery address or dates, quantities or specifications requested by the Buyer, or any delay caused by any instructions of the Buyer or failure by the Buyer to give the Company adequate information or instructions.

## **8. Payment**

- 8.1 The Company may invoice the Buyer on or at any time after delivery of the Goods or deemed delivery pursuant to Condition 4.6.
- 8.2 Payment of the Price and VAT is due in cleared funds within 30 days of the date of the invoice or as otherwise stated on the invoice. Payment must be made even if delivery has not taken place and property in the Goods has not passed to the Buyer.
- 8.3 Time for payment shall be of the essence.
- 8.4 No payment shall be deemed to have been received until the Company has received cleared funds.
- 8.5 All payments payable to the Company under the Contract shall become due immediately upon termination of the Contract or any other contract between the Company and the Buyer despite any other provision.
- 8.6 In the event that the Company is to deliver the Goods by separate instalments, failure by the Buyer to make any payment when due in respect of any instalment, shall mean that all payments payable to the Company under the Contract, in respect of all instalments, shall immediately become due, notwithstanding that delivery of the Goods may not have taken place.
- 8.7 The Buyer shall make all payments due under the Contract without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise.
- 8.8 If the Buyer fails to pay the Company any sum due pursuant to a Contract the Buyer will be liable to pay interest to the Company on such sum from the due date for payment at the annual rate of 2% above the base lending rate from time to time of National Westminster Bank Plc, accruing on a daily basis until payment is made, whether before or after any judgement. The Company reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.
- 8.9 Unless otherwise agreed by the Company, all payments due to the Company pursuant to the Contract shall be made in pounds sterling.

## **9. Acceptance of the Goods**

- 9.1 The Buyer will be deemed to have accepted the Goods 5 Working Days after their delivery or deemed delivery.
- 9.2 Where the Goods are sold as a batch, or are to be delivered in separate instalments, the Buyer may (subject to these Conditions) reject only the allegedly defective Goods and not (as the case may be) the entire batch or treat the whole Contract as repudiated.
- 9.3 In any event, the Buyer shall not be entitled to reject any allegedly defective Goods which the Buyer has altered, damaged or modified.

## **10. Intellectual Property**

- 10.1 The Goods may be resold by the Buyer only in the packaging supplied by the Company and in no case may any trade mark other than those applied by the Company be marked on, or applied in relation to, the Goods.
- 10.2 No right or licence is granted under the Contract to the Buyer in relation to any intellectual property rights, except the right to use or resell the Goods.
- 10.3 The Buyer must not, without the Company's prior written consent:-
- 10.3.1 alter the Goods;
  - 10.3.2 copy or allow others to copy the Goods or any part of them;
  - 10.3.3 reproduce or disclose the Company's designs or drawings.

## **11. Warranty**

- 11.1 Subject to the provisions of these Conditions, including without limitation Condition 11.7, the Company warrants that upon delivery, and for a period of 12 months from the date of delivery, the Goods will:
- 11.1.1 be of satisfactory quality within the meaning of the Sale of Goods Act 1979 (as amended);
  - 11.1.2 be free from defects in material and workmanship; and
  - 11.1.3 be reasonably fit for all the purposes for which goods of the nature of the Goods are commonly supplied.
- 11.2 The Company shall not be liable for a breach of any of the warranties set out in Condition 11.1 unless:
- 11.2.1 the Buyer gives written notice of the defect to the Company, and (if the defect is as a result of damage in transit by a Carrier) also to the Carrier, within 5 Working Days of the time when the Buyer discovered or ought to have discovered the defect; and
  - 11.2.2 the Company is given a reasonable opportunity after receiving the notice, of examining such Goods and the Buyer (if asked to do so by the Company) returns such Goods to the Company's place of business at the Buyer's cost, for the examination to take place there.
- 11.3 The Company shall not be liable for a breach of any of the warranties set out in clause 11.1 if:
- 11.3.1 the Buyer makes any further use of such Goods after giving notice pursuant to Condition

- 11.3.2 the defect or damage or failure to operate arises because the Buyer failed to follow the Company's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice;
- 11.3.3. the defect or damage or failure to operate arises due to abuse or tampering with the Goods, damage to ancillary equipment corrosion or chemical waste, or;
- 11.3.4 the Buyer alters or repairs the Goods without the written consent of the Company.
- 11.4 Subject to Conditions 11.2 and 11.3, if any of the Goods do not conform with any of the warranties in Condition 11.1, the Company shall at its option repair or replace such Goods (or the defective part) or refund the price of such Goods (or the defective part) at the pro rata Contract rate provided that, if the Company so requests, the Buyer shall, at the Buyer's expense, return the Goods or the part of such Goods which is defective, to the Company.
- 11.5 If the Company complies with Condition 11.4 it shall have no further liability for breach of the warranty in Condition 11.1 in respect of such Goods.
- 11.6 Any defective Goods (or part thereof) removed and replaced by the Company pursuant to this Condition 11 will belong to the Company and any repaired or replacement Goods will be guaranteed on the terms of this Condition 11 for the unexpired portion of the 12 month period.
- 11.7 The Company and the Buyer acknowledge and agree that the provisions of this Condition 11 (including without limitation the warranty contained in Condition 11.1), do not apply to those parts of the Goods which are Contact Parts.

## **12 Limitation of Liability**

- 12. Whereas:
  - 12.1.1 the amount of any loss, including any Consequential Loss, which the Buyer may suffer as a result of any defect in the Goods, is better known to or more readily ascertainable by, the Buyer than the Company;
  - 12.1.2 the potential extent of such loss is disproportionate to the amounts that are payable to the Company in respect of the Goods;
  - 12.1.3 the amount of product liability, negligence and public liability insurance cover reasonably obtainable by the Company, having regard to both the price and the risk of exposure to unquantifiable loss, is £2,000,000; and
  - 12.1.4 the Company is concerned to keep down the cost of the Goods;
- the Company and the Buyer agree to the provisions of this Condition 12.
- 12.2 Subject to Conditions 5 and 11, the following provisions set out the entire liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of:
  - 12.2.1 any breach of the Contract; and
  - 12.2.2 any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.
- 12.3 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract

- 12.4. Nothing in this Agreement excludes or limits the liability of the Company for
- 12.4.1 death or personal injury caused by the Company's negligence; or
  - 12.4.2 fraudulent misrepresentation.

**THE BUYER'S ATTENTION IS IN PARTICULAR DRAWN TO THE PROVISIONS OF CONDITIONS 12.5 AND 12.6**

- 12.5 Subject to Conditions 12.3, 12.4 and 12.6, the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the sum, in pounds sterling, as is equal to £2,000,000 (being the amount of insurance cover available to the Company, as referred to in Condition 12.1.3). For the avoidance of doubt, such sum in pounds sterling shall be calculated by reference to the exchange rate as between the Euro and pounds sterling prevailing at the date of the Contract.
- 12.6 In any event, the Company shall not be liable (whether in contract, tort (including negligence or breach of statutory duty) misrepresentation or otherwise) to the Buyer for:
- 12.6.1 any Consequential Loss;
  - 12.6.2 any other indirect or consequential loss or expenses (whatever the cause)
- suffered by the Buyer which arises out of, or in connection with, the Contract and/or the Goods.

**13. Indemnity by Buyer**

The Buyer agrees to indemnify the Company against any damages, losses, costs, claims or expenses incurred by the Company in connection with any claim made against it by any third party for any loss, injury or damage wholly or partly caused by the Goods or their use. This Condition will not, however, require the Buyer to indemnify the Company against any liability for the Company's own negligence.

**14. Assignment**

- 14.1 The Buyer shall not be entitled to assign the Contract or any part of it.
- 14.2 The Company may assign the Contract or any part of it to any person, firm or company.

**15. Force Majeure**

The Company reserves the right to defer the date of delivery, or to cancel the Contract or reduce the volume of the Goods ordered by the Buyer, in each case without liability to the Buyer on any account whatsoever, if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Company including, without limitation, acts of God, governmental actions, war or national emergency, riot, fire, explosion, flood, strikes or other labour disputes, import restrictions, or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials.

**16. Confidentiality**

- 16.1 Except as referred to in the next sub-clause, the Buyer will not disclose and will treat as strictly confidential all pricing and financial information regarding the Company and/or the Goods received or obtained as a result of entering into the Contract.

- 16.2 The Buyer may disclose information which would otherwise be confidential if and to the extent:-
- 16.2.1 that disclosure is required by law or any regulatory or governmental authority;
  - 16.2.2 the information has come into the public domain through no fault of the Buyer;
  - 16.2.3 the Company has given prior written approval to the disclosure.
- 16.3 The obligations imposed upon the Buyer by this clause shall survive the termination or expiry of the Contract.

## **17. General**

- 17.1 Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.
- 17.2 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid void, voidable, unenforceability or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.
- 17.3 Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract will not be construed as a waiver of any of its rights under the Contract.
- 17.4 Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Buyer will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of the Contract.
- 17.5 The formation, existence, construction, performance validity and all aspects of such the Contract shall be governed by English law, and the parties submit to the exclusive jurisdiction of the English courts.
- 17.6 A person, firm or company who is not a party to the Contract has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

## **18. Notices**

- 18.1 Any notice required or permitted to be given by either party to the other about a Contract must be in writing addressed to that other party and may be served by delivering it personally or sending it by pre-paid first class post to the other party at its registered office (if a company) or its principal place of business (if not a company) from time to time or by facsimile transmission or e-mail to such e-mail address or facsimile number as may be notified in writing from time to time by the relevant party to the other party.
- 18.2 Notices shall be deemed to have been received:
- 18.2.1 if sent by pre-paid first class post, 2 Working Days after posting (exclusive of the day of posting);
  - 18.2.2 if sent by email, at the time of actual receipt by the other party;
  - 18.2.3 if delivered by hand, on the date of delivery;
  - 18.2.4 if sent by facsimile transmission or e-mail on a Working Day prior to 4.00 p.m. at the time of transmission, and otherwise on the next Working Day.