

# Culligan (UK) Limited

## Terms and Conditions Sale Agreement

### 1 Interpretation

#### 1.1 DEFINITIONS

**Agreement** the Agreement between the Supplier and the Customer for the Maintenance of the Units in accordance with these Conditions.

**Business Day** a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

**Commencement Date** the date which is 7 days after the date on which the Customer signs this contract or, if later, the date on which the Contract commences as set out in the Order

**Conditions** the terms and conditions set out in this document, as amended from time to time in accordance with Condition 10.5.

**Contract** the contract between the Supplier and the Customer for the Sale/purchase and Maintenance of the Units in accordance with these conditions.

**Customer** the person, partnership, unincorporated association, company or other organisation named in the Order.

**Deposit** a deposit charged for each bottle purchased, which will be refunded when returned, provided the bottle remains undamaged. For the avoidance of doubt there are no deposits in relation to hydration packs.

**Force Majeure Event** an event or circumstance beyond a party's reasonable control.

**Order** the Customer's order for purchase of the Units, as set out in the Customer's purchase order form or the Customer's written acceptance of the Supplier's quotation, as the case may be.

**Payments** the sums payable by the Customer as defined in Condition 4.1 and set out in the Order or as varied under Condition 4.2.

**Sales** the sale and purchase of Units in accordance with Condition 3.

**Specification** any specification for the Units, including any related plans and drawings, that is agreed in writing by the Customer and the Supplier.

**Standard Payment Terms** 30 days from invoice date unless otherwise stated.

**Supplementary Charges** the charges set out in Conditions 4.3 to 4.6.

**Supplier** Culligan (UK) Limited (registered in England and Wales with company number 02418453).

**Units** any water cooler machines and associated goods and equipment (or any substitute for such items) to which this Contract applies.

### 1.2 Interpretation

1.2.1 a reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.

1.2.2 any phrase introduced by the terms **including**, **include**, or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

1.2.3 unless the context requires otherwise, words in the singular shall include the plural and, in the plural, shall include the singular.

1.2.4 a reference to **writing** or **written** includes emails.

### 2 Basis of contract

2.1 The terms of Contract shall consist of the Order and these Conditions to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing. Neither these Conditions nor the Order shall be modified without the written agreement of the Supplier.

### 3 Sale of Units

3.1 The Order constitutes an offer by the Customer to purchase the Units in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order and any applicable Specification are complete and accurate.

3.2 Any descriptions or illustrations of the Units submitted with any quotation or contained in the Supplier's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Units and are not intended to be reliable with regard to details, as improvements are constantly being made in design. They shall not form part of the Contract nor have any contractual force.

#### Quotations

3.3 There shall be no Contract until the Supplier has accepted the Customer's Order and no employee or agent of the Supplier has authority to contract in any other manner.

3.4 A quotation for the Units given by the Supplier shall not constitute an offer. A quotation shall only be valid for a period of 30 days from its date of issue but may be withdrawn earlier.

#### Delivery

3.5 Any dates quoted for delivery are approximate only and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Units that is caused by a Force Majeure Event.

3.6 The Supplier shall ensure that each delivery of the Units is accompanied by a delivery note that shows the date of the Order and the type and quantity of the Units.

3.7 The Supplier shall deliver the Units to the location set out in the Order or such other location as the parties may agree (**Delivery Location**) at any time after the Supplier notifies the Customer that the Units are ready.

3.8 Delivery is completed on the completion of unloading of the Units at the Delivery Location.

3.9 The Supplier may deliver the Units by instalments, which shall be invoiced and paid for separately. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

3.10 Any claim in respect of error in quantity or type of Units or in respect of the conditions of Units delivered must be made in writing to the Supplier within seven days of Delivery.

3.11 If the Supplier agrees to arrange carriage or insurance on behalf of the Customer, all charges and expenses in connection therewith shall be invoiced to the Customer and paid in accordance with Condition 3.26.

3.12 If the sale results in a special delivery of palletised goods, the customer is responsible for making provisions for the goods to be delivered and to ensure there is the means to have these moved to the relevant area of their site. If failure to do so results in the Supplier having to collect the goods, the customer will be charged for 100% of the subsequent collection costs of the Supplier.

#### Quality

3.13 The Supplier warrants from the date of delivery to the end of the relevant warranty period, the Units shall:

3.13.1 conform with their description; and  
3.13.2 be free from material defects in design, material and workmanship.

3.14 Subject to Condition 3.15, if:

3.14.1 the Customer gives notice in writing to the Supplier during the relevant warranty period of any alleged defect as soon as it becomes apparent;

3.14.2 the Supplier is given a reasonable opportunity of inspecting such Units; and

3.14.3 the Customer (if asked to do so by the Supplier) returns such Units or the defective parts to the Supplier's place of business at the Customer's cost,

the Supplier shall, at its option, repair or replace the defective Units, or refund the price of the defective Units in full.

3.15 The Supplier shall not be liable for the Units' failure to comply with the warranty set out in Condition 3.13 in any of the following events:

3.15.1 the Customer makes any further use of such Units after giving notice in accordance with Condition 3.14;

3.15.2 the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Units or (if there are none) good trade practice regarding the same;

3.15.3 the Customer alters or repairs such Units without the written consent of the Supplier;

3.15.4 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or

3.15.5 the Units differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

3.16 Except as provided in this Condition 3, the Supplier shall have no liability to the Customer in respect of the Units' failure to comply with the warranty set out in Condition 3.13.

3.17 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.

3.18 These Conditions shall apply to any repaired or replacement Units supplied by the Supplier.

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### Title & Risk

- 3.19 The risk in the Units shall pass to the Customer on completion of delivery.
- 3.20 Title to the Units shall not pass to the Customer until the Supplier

receives payment in full (in cash or cleared funds) of all sums owing to the Supplier under the Contract. The Supplier shall be entitled at any time to waive the provisions of this Condition 3.20 and to pass the title in the Units to the Customer by giving to the Customer written notice to that effect.

- 3.21 In the event of the Customer failing to pay any sums owing to the Supplier by the due date, the Seller may at any time:
- (a) Require the customer to deliver up all units in its possession; and
  - (b) if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Units are stored in order to recover them.
- 3.22 Until title to the Units has passed to the Customer, the Customer shall:
- 3.22.1 store the Units separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
  - 3.22.2 not remove, deface or obscure any identifying mark or packaging on or relating to the Units;
  - 3.22.3 maintain the Units in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
  - 3.22.4 notify the Supplier immediately if it becomes subject to any of the events listed in Condition 9.1; and
  - 3.22.5 give the Supplier such information relating to the Units as the Supplier may require from time to time.

### Price and payment for Units

- 3.23 The price of the Units shall be the price set out in the Order, or, if no price is quoted, the price set out in the Supplier's published price list in force as at the date of delivery.
- 3.24 The price of the Units, unless otherwise stated in the Order:
- 3.24.1 excludes amounts in respect of value added tax (**VAT**), which the Customer shall additionally be liable to pay to the Supplier at the prevailing rate, subject to the receipt of a valid VAT invoice;
  - 3.24.2 shall be based on Ex Works and shall exclude the costs and charges of United Kingdom export and overseas import duties, packaging, insurance, transport and installation of the Units and any other ancillary costs in respect of which the Supplier shall be entitled to invoice to the Customer.
- 3.25 The Supplier may invoice the Customer for the Units on or at any time after the completion of delivery.
- 3.26 The Customer shall pay all invoices in full and in cleared funds and Standard Payment Terms shall apply. Payment shall be made to the bank account nominated in writing by the Supplier. Time for payment is of the essence.
- 3.27 If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment:
- 3.27.1 the Customer shall pay £40 (not subject to VAT) by way of compensation for costs which may be incurred by the Supplier arising from such overdue sum; and
  - 3.27.2 the Supplier may suspend the performance of its obligations under the contract until such time as the overdue sum is paid in full.
- 3.28 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). The Supplier may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.

### Prices, supplementary charges and other charges

- 4.1 Where the Customer's total monthly payment in respect of Maintenance (**Price**) is less than £20 per month, the Price shall be payable by the Customer on receipt of the Supplier's invoice which shall be issued annually in advance without deduction, counterclaim or set-off.
- 4.2 The Supplier may vary the Prices as follows:
- 4.2.1 at any time where performance of its obligations under the Contract become more difficult and/or costly as a result of new laws or regulations or a change in existing laws or regulations, including those which result in increases in National Insurance contributions and other staff costs;
  - 4.2.2 to take account of an increase in the Supplier's operating costs including (without limitation) increases in fuel prices.

### Supplementary charges

- 4.3 The Supplier reserves the right to recharge to the customer, any unforeseen costs incurred by the Supplier, beyond the Supplier's control.
- 4.4 Supplementary Charges and other charges referred to in this Condition 4 are payable at the rates current at the time that the relevant services are provided, or costs incurred and Standard Payment Terms shall apply.
- 4.5 All Payments are subject to the addition of VAT at the prevailing rate which shall be additionally payable by the Customer in full.

### Customer's obligations

- The Customer shall notify the Supplier of any material changes to their details including address and invoicing details.
- 5.1 The Customer agrees and covenants with the Supplier as follows:
- 5.2 to allow the Supplier and its agents full, convenient and safe access to the Units during such hours as may be necessary to perform its obligations under the Contract;
  - 5.2.1 not to interfere with the Units (including but not limited to attempting to repair, adjust or modify the Units);
  - 5.2.2 to care for and operate the Units in accordance with all relevant instructions;
  - 5.2.3 not to connect the Units (other than with the Supplier's prior written consent) to any other equipment;
  - 5.2.4 where the type of Unit supplied allows the Customer to fill containers with water supplied by the Customer, the Customer shall be wholly responsible for the quality of the water and the cleanliness of the containers used.
  - 5.2.5 to promptly carry out such action to the Units as may be advised by the Supplier from time to time;
  - 5.2.6 to take all reasonable steps to eliminate any cause of a fault as set out in Condition 5.2; and
  - 5.2.7 to notify the Supplier immediately of any loss or damage to the Units and/or the bottles.
- 5.3 Where the Units supplied under the Contract are manufactured or customised to the Customer's own specifications or requirements, the Customer acknowledges that:
- 5.3.1 the Units are required for the purposes of a business carried on by the Customer;
  - 5.3.2 the Units were selected by the Customer and acquired at its request by the Supplier from its supplier for the purposes of the Contract; and
  - 5.3.3 the Supplier's supplier is not the agent of the Supplier unless this is required by law.

### Data

- For the purposes of this Condition 6, the following terms shall have the meaning defined in the Data Protection Legislation: **Controller**, **Processor**, **Data Subject**, **Personal Data**, **Personal Data Breach**, **processing and appropriate technical and organisational measures**.
- 6.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This Condition 6 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation. In this Condition 6. **Applicable Laws** means (for so long as and to the extent that they apply to the Provider) the law of the European Union, the law of any member state of the European Union and/or Domestic UK Law; and **Domestic UK Law** means the UK Data Protection Legislation and any other law that applies in the UK. The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and the Provider is the Processor.
- 6.2 Without prejudice to the generality of Condition 6.2, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful collection of the Personal Data by the Provider on behalf of the Customer for the duration and purposes of the Contract.
- 6.3 Without prejudice to the generality of Condition 6.2 the Provider shall, in relation to any Personal Data processed in connection with the performance by the Provider of its obligations under the Contract:
- 6.4 process that Personal Data only on the documented written instructions of the Customer unless the Provider is required by Applicable Laws to otherwise process that Personal Data.
  - 6.5 Where the Provider is relying on Applicable Laws as the basis for processing Personal Data, the Provider shall promptly notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Provider from so notifying the Customer;

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- 6.5.2 ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Customer, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
- 6.5.3 ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
- 6.5.4 not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
- (a) the Customer or the Provider has provided appropriate safeguards in relation to the transfer;
  - (b) the data subject has enforceable rights and effective legal remedies;
  - (c) the Provider complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
  - (d) the Provider complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;
- 6.5.5 assist the Customer, at the Customer's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- 6.5.6 notify the Customer without undue delay on becoming aware of a Personal Data Breach;
- 6.5.7 at the written direction of the Customer, delete or return Personal Data and copies thereof to the Customer on termination of the agreement unless required by Applicable Law to store the Personal Data; and
- 6.5.8 maintain complete and accurate records and information to demonstrate its compliance with Condition 6.
- 6.6 The Customer does not consent to the Provider appointing any third-party processor of Personal Data under the Contract.
- 6.7 Either party may, at any time on not less than 30 days' notice, revise this Condition 8 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to the Contract).
- 7 Termination**
- 7.1 Without limiting its other rights or remedies, the Supplier may terminate this Contract with immediate effect by giving written notice:
- 7.1.1 if the Customer breaches any condition of the Contract;
  - 7.1.2 if the Customer fails to pay any amount due under the Contract on the due date for payment;
  - 7.1.3 in the event of the Customer's abandonment of the Units or Bottles;
  - 7.1.4 in the event of the Customer becoming bankrupt or insolvent or, being a company, making an assignment for the benefit of its creditors or ceasing to do business as a going concern or entering into liquidation, whether compulsory or voluntary, or having a receiver appointed or taking or suffering any similar action in consequences of debt; or
  - 7.1.5 the Customer's financial position deteriorates to such an extent that in the Supplier's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 7.2 Without limiting its other rights or remedies, the Supplier may suspend provision of the Services under the Contract or any other contract between the Customer and the Supplier if the Customer becomes subject to any of the events listed in Conditions 7.1.1 to 7.1.5, or the Supplier reasonably believes that the Customer is about to become
- 8 subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.
- 7.3 The Maintenance of the Units pursuant to this Contract will start on the date of the Contract and shall continue for the Initial Period. The Customer may terminate the Contract by giving a minimum of 90 days' notice prior to the expiry of the Initial Period or subsequent Extension Period. Failure to give such notice in accordance with this Condition 7.3 shall mean the Contract shall be renewed for a further 12 months.
- 7.4 On termination of the Contract for any reason:
- 7.4.1 the Customer shall, without prejudice to the Supplier's other rights and remedies, pay to the Supplier on demand any and all Payments and other sums payable under the Contract up to the date of termination;
- 7.4.2 at the Supplier's discretion, pay a cancellation charge commensurate with the Supplier's costs incurred up to the date of termination plus the Supplier's loss of profit.
- 7.5 In the event that:
- 7.5.1 the Customer seeks to terminate the Maintenance of one or more of the Units or the Contract in its entirety, otherwise than in accordance with the notice requirements in Condition 7.3 or
- 7.5.2 any of the circumstances in Condition 8.2 occur and as a result the Supplier elects to terminate the Contract, the Customer shall pay to the Supplier, in addition to the sums payable under Condition 7.4 the following sums by way of liquidated damages:
- (a) the charges which would have become payable if the notice requirements in Condition 7.3 were complied with; and
  - (b) a fee up to £175.00 per Unit at the Supplier's reasonable discretion to cover the costs of administration and collection of the Units and bottles.
- 7.6 Termination of the Contract shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of this Contract that existed at or before the date of termination.
- 7.7 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.
- 8 Limitation of liability**
- 8.1 Subject to Condition 8.2, all conditions, warranties and representations, whether express or implied and whether arising by reason of statute, common law or otherwise relating to the quality of the Units, their suitability or fitness for purpose and their conformity with description or sample are expressly excluded from the Contract to the fullest extent permitted by law. In particular, any published pictures or descriptions of the Units are for indication purposes only and actual products supplied may differ from such pictures or descriptions.
- 8.2 Nothing in these Conditions shall limit or exclude the Supplier's liability for:
- 8.2.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
  - 8.2.2 fraud or fraudulent misrepresentation;
  - 8.2.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
  - 8.2.4 any matter in respect of which it would be unlawful for the Supplier to exclude or restrict liability.
- 8.3 Subject to Condition 10.1:
- 8.3.1 the Supplier shall under no circumstances whatsoever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect, consequential or special loss or damage arising under or in connection with the Contract;
  - 8.3.2 the Supplier's liability for loss or damage to property including fixtures and fittings caused by an act or omission of the Supplier or its agents, employees or sub-contractors shall not exceed £1,000,000 per incident; and
  - 8.3.3 the Supplier's total liability to the Customer in any 12-month period caused by an act or omission of the Supplier or its agents, employees or sub-contractors in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the total payments paid to the Supplier in such 12-month period;
- 8.4 The Customer shall indemnify the Supplier against any or all of the following:
- 8.4.1 any loss or damage to the Units, howsoever arising

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- 8.4.2 any and all damage, loss, liability or expenses which the Supplier may suffer or incur as a result of a claim by a third party; and
- 8.4.3 all costs and expenses (including without limitation enquiry agents, debt collection agents and legal costs on a full indemnity basis) incurred or sustained by the Supplier in enforcing any of the terms of this Contract.

### 9 Notices

- 9.1 Any notice required or permitted to be given under the Contract shall be deemed to have been validly given if served personally upon that party or if sent by first class pre-paid post or other next working day delivery service or sent by email to the address of that party as stated in the Contract, its last known address or its registered office.
- 9.2 A notice or other information sent by first class pre-paid post shall be deemed to have been received by the other party within 48 hours after the date of posting. Any notice or other information sent by email shall be deemed to have been received by the other party at the time that it was transmitted.

### 10 General

- 10.1 If the Customer's own systems require it, the Customer shall provide a correct purchase order number at the time of placing the Order.
- 10.2 The Supplier (but not the Customer) may at any time assign, novate, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract (in whole or in part) to any other party without the consent of the Customer.
- 10.3 The person or persons who signs the Contract on behalf of the Customer warrant that they have the appropriate and necessary authority to do so and to bind the Customer to the terms set out herein. Where two or more persons are stated to be the Customer, each of those persons shall be jointly and severally liable for performance of the Customer's obligations under the Contract.
- 10.4 Acceptance of this agreement can be via manual signature, electronic signature or verbally recorded and the Customer confirms that the method of acceptance which it has used to enter into this Contract is valid and binding on it.
- 10.5 This Contract constitutes the entire agreement between the parties and may only be modified by agreement in writing, such variation to be signed by the parties (or their authorised representatives). If any part of it shall, for any reason, be found or held illegal, invalid or unenforceable, this shall not affect the remainder of its terms which shall survive and be construed as if the illegal, invalid or unenforceable part had not been contained in the Contract.
- 10.6 No one other than a party to this Contract and their permitted assignees shall have any right to enforce any of its terms.
- 10.7 No failure or delay by the Supplier to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 10.8 The parties agree that it is not practical to obtain signatures for all services performed and so the Customer accepts that the Supplier's computerised records of the services provided under the Contract will be adequate proof of the fact that those services have been delivered.
- 10.9 The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the law of England and Wales. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Contract or its subject matter or formation.
- 10.10 If at any point the Supplier undergoes a change of legal entity, this contract and all conditions within, will transfer to the new legal entity.