

**1. DEFINITIONS:**

- 1.1. **"Buyer"** means the entity to which Seller is providing Products under the Contract.
- 1.2. **"Contract"** means either the purchase order signed by Buyer and accepted by Seller in writing, or the contract agreement signed by both parties, for the sale of Products, together with these Terms and Conditions, Seller's final quotation, and Seller's order acknowledgement.
- 1.3. **"Contract Price"** means the agreed price stated in the Contract for the sale of Products, including adjustments (if any) in accordance with the Contract.
- 1.4. **"Insolvent/Bankrupt"** means that a party is insolvent, makes an assignment for the benefit of its creditors, has a receiver or trustee appointed for it or any of its assets, or files or has filed against it a proceeding under any bankruptcy, insolvency dissolution or liquidation laws.
- 1.5. **"Products"** means the equipment, parts, materials, supplies, software, and other goods Seller has agreed to supply to Buyer under the Contract.
- 1.6. **"Seller"** means Sistema Azud, S.A, addressed in Polígono Industrial Oeste, Avenida de las Américas, P 6/6 in Alcantarilla (Murcia), Spain, VAT number A-30213433, or the entity providing Products under the Contract.
- 1.7. **"Terms and Conditions"** means these "Terms and Conditions for Sale of Products", including any relevant addenda, together with any modifications or additional provisions specifically stated in Seller's final quotation or specifically agreed upon by Seller in writing.

This document establishes the Terms and Conditions governing the Seller, which may be modified, being the responsibility of the Buyer to read them periodically, since those that are in force at the time of execution of the Contract will be applicable.

**2. ACCEPTANCE:**

- 2.1. Acceptance of the purchase order by the Buyer and/or signing of the contractual agreement between the parties shall constitute Buyer's assent to these Terms and Conditions. Sale of any Products shall constitute Buyer's assent to these Terms and Conditions.
- 2.2. Any acceptance of Seller's offer is expressly limited to acceptance of these Terms and Conditions and Seller expressly objects to any additional or different terms proposed by Buyer.
- 2.3. No facility entry form shall modify these Terms and Conditions even if signed by Seller's representative.
- 2.4. Unless otherwise specified in the quotation, Seller's quotation shall expire 30 days from its date and may be modified or withdrawn by Seller before receipt of Buyer's conforming acceptance. Civil works, trenching, electrical system and physical or chemical treatment of water are not included in Seller's quotation.

**3. CANCELLATION:**

- 3.1. No order or quotation accepted by Buyer may be cancelled unless accepted in writing by Seller.
- 3.2. In the event of a cancellation by Buyer, Buyer shall pay Seller all expenses incurred by Seller related to the Contract, including but not limited to, all commitment to its suppliers, labor and manufacturing expenses of the Products, plus an amount equal to the 15% of the aggregate of all the foregoing.

**4. PRICES AND PAYMENT:**

- 4.1. Prices shall always be understood to be Ex Works Alcantarilla (Murcia), Spain – Incoterms 2010.
- 4.2. Seller reserves the right of change prices at any time, without notice and without updating published material on Buyer's website or in print.
- 4.3. Buyer shall pay Seller for the Products amounts in Euros € in accordance with the payment schedule in the Contract.
- 4.4. For each calendar month that payment is late, Buyer shall pay a late payment charge computed at the rate of two (2) percent per month from the due date over the pending amount.
- 4.5. As and if requested by Seller, Buyer shall at its expense establish and keep in force payment security in the form of an irrevocable, unconditional, sight letter of credit or bank guarantee allowing for pro-rata payments as Products are shipped, plus payment of cancellation and termination charges, and all other amounts due from Buyer under the Contract ("Payment Security"). The Payment Security shall be in a form confirmed and accepted by Seller.
- 4.6. Seller is not required to commence or continue its performance unless and until any required Payment Security is received, operative and in effect and all applicable progress payments have been received. For each day of delay in receiving progress payments or acceptable Payment Security, Seller shall be entitled to a matching extension of the delivery schedule.
- 4.7. If at any time Seller reasonably determines that Buyer's financial condition or payment history does not justify continuation of Seller's performance, Seller shall be entitled to require full or partial payment in advance or otherwise restructure payments, request additional forms of Payment Security, suspend its performance or terminate the Contract.

**5. TAXES AND DUTIES:**

Buyer shall be responsible for all taxes, duties, fees, or other charges of any nature in relation to the Contract other than Seller's taxes, duties or charges expressly accepted by written by Seller.

**6. DELIVERIES:**

- 6.1. Seller shall deliver Products to Buyer under EXW Alcantarilla (Murcia), Spain – Incoterms 2010 conditions.
- 6.2. If Products delivered do not correspond in quantity, type or price to those itemized in the shipping invoice or documentation, Buyer shall so notify Seller within ten (10) days after receipt. No returns of Products will be accepted, unless accepted in writing by Seller.
- 6.3. Terms of manufacture and availability shall be a guide only and not binding for the Seller. Seller's sole liability for any delay in manufacture and availability dates of the Products shall be as expressly set out in these Terms and Conditions.
- 6.4. Failure by Seller to meet the manufacture and availability dates shall not entitle Buyer to cancel the Contract. Buyer waives the exercise to bring any legal actions to which might be entitled for delays due to excusable events in accordance to Section 9, or circumstances beyond Seller's control.
- 6.5. In no case shall the Seller be liable for delays in delivery, including without limitation, for acts or omissions of the Seller's suppliers, for altering the manufacturing/production/assembly process of the Seller for any reason, due to malfunction of the machinery and/or production/manufacturing/assembly tools of the Seller for any reason, or by product validation and/or testing by the Seller.

**7. TITLE AND RISK OF LOSS:**

- 7.1. The title and risk of loss of the Products shall pass to Buyer upon delivery in accordance with Section 6.1. Notwithstanding the above, title to the Products and Services shall remain in Seller until the full Contract price for the Products and/or Services has been paid.
- 7.2. If any Products to be delivered under this Contract or if any Buyer equipment repaired at Seller's facilities cannot be shipped to or received by Buyer when ready due to any cause attributable to Buyer or its other contractors, Seller may ship the Products and equipment to a storage facility, including storage at the place of manufacture or repair, or to an agreed freight forwarder. If Seller places Products or equipment into storage, the following apply: (i) title and risk of loss immediately pass to Buyer, if they have not already passed, and delivery shall be deemed to have occurred; (ii) any amounts otherwise payable to Seller upon delivery or shipment shall be due; (iii) all expenses and charges incurred by Seller related to the storage shall be payable by Buyer upon submission of Seller's invoices; and (iv) when conditions permit and upon payment of all amounts due, Seller shall make Products and repaired equipment available to Buyer for delivery.

**8. WARRANTIES:**

- 8.1. Seller warrants that Products shall be delivered free from defects in material and workmanship and in accordance with any mutually agreed specifications.
- 8.2. The warranty for Products shall expire one (1) year from the shipment date of the Products. After the expiration of this (1) year period, Seller shall no longer accept warranty claims and all obligations for warranty shall terminate.
- 8.3. If Products or Services do not meet the above warranties, Seller, at its option, shall repair or replace defective Products, sole and exclusively when Buyer notifies Seller in a maximum period of thirty (30) days after having notice of the defect or anomaly. Warranty repair, replacement or re-performance by Seller shall not extend or renew the applicable warranty period.
- 8.4. Buyer shall obtain Seller's agreement on the specifications of any tests Buyer plans to conduct to determine whether a non-conformance exists. Seller will be allowed to examine the defects claimed by Buyer by the most appropriate means. Buyer shall not obstruct people authorized by Seller for verifying the non-conformance.
- 8.5. This warranty will not cover (a) any defects and/or malfunction in the Products that result from the installation, storage, use, operation and maintenance made by the Buyer or third persons (b) any defects and/or malfunction in the Products that result from influent water which do not comply with agreed parameters and/or indicated by Buyer and used for the design of the Product, and/or any defects and/or malfunction of the Products that result from influent water containing any substances/elements/components not known or noticed to the Seller before the elaboration of the technical offer (c) any defects and/or malfunction in the Products that result from the use of consumables not authorized by Seller in writing (d) any defects and/or malfunction in the Products caused by operation conditions recommended by Seller, in a enunciating but no limiting way, those caused by higher pressure, water quality, electrical voltage, or by exposure to aggressive environments ( saline, acid and others) (e) Products which have been repaired or modified by Buyer, final user or anyone other than the Seller, and/or Products which have been repaired or modified without following the instructions given by Seller (f) any damages caused by the installation and operation of the Products in places or

environments in which the conditions do not allow the optimal performance of the Products (g) normal wear and tear of Products (h) any loss, personal injury, damage in property caused by the installation, storage, use, operation and maintenance of Products by Buyer or third parties (i) any damages or defects in systems or equipment where Products are integrated or incorporated in the event of malfunction (j) any damages or defects that result from fortuitous facts and force majeure (according to Section 9) (k) any damages caused by operation conditions different from those recommended by Seller (l) damages and defects attributable to negligence, improper use or faulty handling by the Buyer or the end customer. For the range of irrigation Products, in addition to the before said exceptions, this warranty will not cover (a) any defects and/or malfunction in the Products that result from amphibious, insects or rodents (b) any defects and/or malfunction in the Products that result from obstructions of drippers non-attributable to a manufacturing defect (c) any defect and/or malfunction in the Products that result from decantation, precipitations, agglutination of bacteria, fungus or algae, clay, loam, silt in suspension, and/or chemical precipitation (d) any defects and/or malfunction in the Products that result from the non-installation of a pre-filter and from electric and/or hydraulic events.

- 8.6. Buyer shall bear the costs of access for Seller's remedial warranty efforts (including removal and replacement of systems, structures or other parts of Buyer's facility), de-installation, decontamination, and re-installation.
- 8.7. This warranty will only cover Products, materials and components which have been manufactured by Seller. This warranty is not a consumer or final users warranty and does not extend to anyone others than those trade customers who directly purchase from Seller.
- 8.8. In no case shall the Seller be liable for any type of claim, complaint and/or administrative sanction that may receive as a result of: a) the commercialization of the Products made by the Buyer or third parties; b) for possible infringements of the industrial and intellectual property rights of third parties; and/or c) for infringement of the rights of consumers and users. In the event of the aforementioned claims, the Buyer will hold the Seller harmless, and will pay and/or allow the charge in his account of the amounts that are required to the Seller as compensation, fine in disciplinary proceedings, and other expenses that may be incurred, including those of lawyers, attorneys and experts necessary for their defense.
- 8.9. This Section 8 provides the exclusive remedies for all claims based on failure of or defect in Products, regardless of when the failure or defect arises, and whether a claim, however described, is based on contract, warranty, indemnity, tort/extra-contractual liability (including negligence), strict liability or otherwise. The warranties provided in this Section 8 are exclusive and are in lieu of all other warranties, conditions and guarantees whether written, oral, implied or statutory, including any warranty of merchantability or of fitness for a particular purpose. Seller shall not accept other warranty from expressed herein.

#### **9. FORCE MAJEURE:**

- 9.1. Seller shall not be liable or considered in breach of its obligations under this Contract to the extent that Seller's performance is delayed or prevented, directly or indirectly, by any cause beyond its reasonable control, or by armed conflict, acts or threats of terrorism, epidemics, strikes or other labor disturbances, or acts or omissions of any governmental authority or of the Buyer or Buyer's contractors or suppliers.
- 9.2. If an excusable event occurs, the schedule for Seller's performance shall be extended by the amount of time lost by reason of the event plus such additional time as may be needed to overcome the effect of the event.

#### **10. TERMINATION AND SUSPENSION:**

- 10.1. Seller may terminate or suspend the Contract (or the portion affected) for cause if Buyer (i) becomes Insolvent/Bankrupt, or (ii) commits a material breach of the Contract, including but not limited, failure or delay in Buyer providing Payment Security, making any payment when due, or fulfilling any payment conditions.
- 10.2. If the Contract (or any affected portion thereof) is terminated for reasons in Section 10.1, or any reason other than Seller's default, Buyer shall pay Seller for all completed Products and in-work process Products, all expenses incurred by Seller related to the Contract, plus expenses reasonably incurred by Seller in connection with the termination.
- 10.3. Either Buyer or Seller may terminate the Contract (or the portion affected) upon twenty (20) days advance notice if there is an excusable event (as described in Section 9) lasting longer than one hundred and twenty (120) days. In such case, Buyer shall pay to Seller amounts payable under Section 10.2.
- 10.4. Buyer shall pay all reasonable expenses incurred by Seller in connection with a suspension. The schedule for Seller's obligations shall be extended for a period of time reasonably necessary to overcome the effects of any suspension.

#### **11. INDEMNITY:**

Each of Buyer and Seller (as an "Indemnifying Party") shall indemnify the other party (as an "Indemnified Party") from and against claims brought by a third party, on account of personal injury or damage to the third party's tangible property, to the extent caused

by the negligence of the Indemnifying Party in connection with this Contract. For purposes of Seller's indemnity obligation, no part of the Products or places where Products are used is considered third party property.

#### **12. COMPLIANCE WITH LAWS:**

- 12.1. Buyer shall comply with laws applicable to the application, operation, use and disposal of the Products.
- 12.2. Seller's obligations are conditioned upon Buyer's compliance with all applicable trade control laws and regulations. Buyer shall not trans-ship, re-export, divert or direct Products other than in and to the ultimate country of destination declared by Buyer and specified as the country of ultimate destination on Seller's invoice.
- 12.3. Notwithstanding any other provision, Buyer shall timely obtain, effectuate and maintain in force any required permit, license, exemption, filing, registration and other authorization, for the sale of Products.

#### **13. LIMITATION OF LIABILITY:**

- 13.1. The total liability of Seller for all claims of any kind arising from or related to the formation, performance or breach of this Contract, or any Products, shall not exceed the (i) Contract Price, or (ii) if Buyer places multiple order(s) under the Contract, the price of each particular order for all claims arising from or related to that order and ten thousand Euros (€ 10,000) for all claims not part of any particular order.
- 13.2. Seller shall not be liable for loss of profit or revenues, loss of use of equipment or systems, interruption of business, cost of replacement power, cost of capital, downtime costs, increased operating costs, any special, consequential, incidental, indirect, or punitive damages, or claims of Buyer's customers.
- 13.3. All Seller liability shall end upon expiration of the applicable warranty period, provided that Buyer may continue to enforce a claim for which it has given notice prior to that date by commencing an action or arbitration, as applicable under this Contract, before expiration of any statute of limitations or other legal time limitation but in no event later than one year after expiration of such warranty period.

#### **14. GENERAL CLAUSES:**

- 14.1. Products sold by Seller are not intended for use in connection with any other activity than those specified in the Contract and Buyer warrants that it shall not use or permit others to use Products for other purposes, without the advance written consent of Seller. If, in breach of this, any such use occurs, disclaims all liability for any damage, injury, expenses or contamination, and, in addition Buyer shall indemnify and hold Seller harmless against all such liability.
- 14.2. The following Sections shall survive termination or cancellation of the Contract: 4,5,6,7, 8, 9, 10, 11,12,13,14 and 15.
- 14.3. No modification, amendment, rescission or waiver shall be binding on either party unless agreed in writing.
- 14.4. If any provision of the Contract is null and void or not applicable, this will not affect the rest of the Contract. The Buyer and the Seller shall make their best efforts to replace said null or non-applicable provision by a new provision with which the same practical and economic effect is substantially achieved and which is valid and applicable.

#### **15. INTELLECTUAL AND INDUSTRIAL PROPERTY:**

The Buyer acknowledges and consents that all copyright, trademark and other rights of industrial and intellectual property that fall or may fall on the Products, as well as the plans, drawings, manuals, and documentation provided by the Seller or contained on the website of the same, are owned by Azud, without the Buyer being able to use them beyond the purposes established in the Contract. The Buyer may use them in the manner in which it is expressly authorized by the Seller in writing.

#### **16. CURRENT LEGISLATION AND CONFLICT RESOLUTION:**

- 16.1 This Contract will be governed by and construed in accordance with the laws of the Spanish State, in accordance with the provisions of Regulation 593/2008 of the European Parliament and of the Council, of June 17, 2008, (Rome I).
- 16.2 In accordance with the provisions of Regulation 1215/2012 of the European Parliament and of the Council of 12 December 2012 (Brussels I-bis) and the Lugano II Convention of 30 October 2007, the Seller and the Buyer decide to submit all conflicts that arise in connection with the Contract, including questions relating to its existence and / or validity will be submitted; (a) if the Products are delivered in Spanish territory, to the jurisdiction of the Courts and Tribunals of the country of the Seller, and specifically to those of the location where the Seller develops its commercial and industrial activities (b) if the Products are delivered outside of Spanish territory, they will be definitively resolved according to the Rules of Conciliation and Arbitration of the Chamber of Commerce, Industry and Navigation of Murcia (Spain), by one or several arbitrators appointed in accordance with said rules.