Terms and conditions of sale

1 DEFINITIONS
(a) **"Conditions"** means the terms and conditions of sale set out in this document and any special terms and conditions agreed in writing by the Seller.
(b) **"Date of Despatch"** means that date deemed to be the date on which the goods are actually despatched ex works.
(c) **"Defects Liability Period"** means a period of twelve months running from the date of despatch or other date expressly agreed by the Seller.
(d) **"Goods"** means the articles which the Purchaser agrees to buy from the Seller.
(e) **"Price"** means the price for the Goods excluding delivery charges and VAT.
(f) **"Purchaser"** means the person, business or other entity who or which purchases or agrees to purchase the goods from the Seller.
(g) **"Seller"** means Balmoral Tanks Ireland Limited.

2 CONDITIONS APPLICABLE
(a) These Conditions shall apply to all contracts for the sale of Goods by the Seller to the Purchaser to the exclusion of all other terms and conditions including any terms or conditions which the Buyer may purport to apply under any purchase order confirmation of order of similar document.
(b) All orders for Goods shall be deemed to be an offer by the Purchaser to purchase Goods pursuant to these Conditions.
(c) Acceptance of delivery of the Goods shall be deemed conclusive evidence of the Purchase's acceptance of these Conditions.
(d) Any variation to these Conditions (including any special terms and conditions agreed between the parties) shall be inapplicable unless agreed in writing by the Seller.
(e) For the avoidance of doubt, no servant or agent of the Seller has authority to agree to any oral variation to these Conditions.

3 PRICE AND PAYMENT
(a) All prices quoted by the Seller shall remain fixed for one month or such other period or periods agreed in writing and thereafter shall be subject to revision at the option of the Seller.
(b) Payment of the Price, delivery charges (if applicable) and VAT shall be due within 30 days from date of invoice.
(c) Time for payment shall be of the essence.
(d) In the event of any delay on the part of the Purchaser which prevents the Seller delivering the Goods as arranged:
i) payment shall remain due on the date of invoice ignoring the period of delay;
ii) the Purchaser shall be liable for any extra costs in labour and / or materials incurred by the Seller incurred as a result of the delay.
(e) In the event of failure to make payment as specified, the Seller shall take such action as it considers necessary to recover the Price and delivery charges together with any pecuniary loss, including loss of profit and interest at the rate of 18% (eighteen per cent) per annum shall be payable on the total sum due as from the due date. Nothing in this or the proceeding conditions shall in any way prejudice the remedies whether statutory or otherwise exercisable by the Seller on non-payment of the Price.

4 WARRANTIES AND LIABILITY
(a) Provided always that
i) the Goods are handled, assembled, installed, used, maintained and investigated in accordance with the Seller's operating and installation instructions or other notices or written advices issued in respect of the Goods;
ii) the Seller is provided with such facilities for inspection and testing of the Goods as the Seller may reasonably require; and
iii) the defect or suspected defect is reported to the Seller promptly and in any event prior to the 12 month Defects Liability Period,
then, in respect of any defective Goods or parts of the Goods manufactured by the Seller and supplied to the Purchaser under this agreement, which are established to the Seller's reasonable satisfaction to have been defective at the time of despatch solely from faulty design, materials or workmanship, and where such defect was neither reasonably ascertainable to the Purchaser, its servants or agents on or after delivery, the Seller will at the discretion of the Seller either:
(1) repair the Goods;
(2) replace the Goods; or
(3) provide a cash payment (or, if preferred by the Purchaser, a voucher redeemable against a comparable product purchased direct from the Seller) to an amount equivalent to the average residual value as at the date of notification of the Goods had they been free from defect;
(b) The Seller's warranty under clause 4(a) does not extend to Goods not of the Seller's manufacture, but at the discretion of the Seller, the Seller will endeavour to obtain for and at the expense of the Purchaser the benefit of any other warranty in relation thereto. The provisions set out in clause 4(a) and (b) are offered as an extra benefit and do not affect the Purchaser's statutory rights;
(c) In the event that the cause and responsibility for a defect or possible defect as envisaged by clause 4(a) above
i) cannot reasonably and practicably be ascertained by the Seller; and / or
ii) is not reported to the Seller during the Defects Liability Period; and / or
iii) is previously deemed by the Seller not to fall within clause 4(a);
repair or replacement of the Goods or any part thereof or payment in respect thereof is at the absolute discretion of Seller;
(d) In the event that the Goods are not handled or assembled or installed or used or maintained or investigated strictly in accordance with the Seller's operating and / or installation instructions or other notices or advice issued in respect of the Goods, the Seller shall have no liability whatsoever for any defect in the Goods or for any consequence arising therefrom;
(e) Save as provided for in clauses 4(a) to (d) of these Conditions, all terms, whether made expressly or implied and whether made by the Seller or its servants or agents relating to the quality and or fitness for purpose of the Goods or any part of the Goods are expressly excluded to the fullest extent permitted by law;
(f) Without prejudice to the generality of clause 4(e) above, in the event of the Seller
i) breaching this agreement; and / or
ii) committing any tort, including the negligence of its servant or agents,
the Seller will have no liability to the Purchaser save that:
(1) the Seller will indemnify the Purchaser in respect of any death or personal injury caused thereby and in respect of which no limitation or exclusion is intended;
(2) the Seller will indemnity the Purchaser in respect of any Fraud on behalf of the Seller subject to the exclusions and limitations set out in clauses 4(g) to (j) below;
(g) Without prejudice to the generality of the above, in no event shall the Seller be liable for :
i) any pollution or contamination of land or waters whether arising directly or indirectly from any breach or tort;
ii) any damage to property whether arising directly or indirectly from any breach or tort;
iii) the cost of assessing or preventing or minimising or mitigating or rectifying or allaying any pollution or contamination of land or waters whether arising directly or indirectly from any breach or tort;
iv) the cost of assessing or preventing or minimising or mitigating or rectifying or allaying any damage to property whether arising directly or indirectly from any breach or tort;
v) loss of profits, business revenue, goodwill or anticipated savings whether arising directly or indirectly from any breach or tort;
vi) consequential loss or damage;
vii) any indemnity in respect of 4(g)(i) to (vi) above.
(h) It is hereby acknowledged and accepted that it is the parties expectation that the service of any remediation notice or notices under the Air Pollution Act, the Environmental Agency Act, the Gas Acts, the Water Pollution Acts, the Wildlife Acts or under any other Act (hereinafter called "the Acts") should generally lie as against the Purchaser or, if different, the owner and / or user of the Goods and / or occupier of the land not as against the Seller;
(i) The Purchaser will indemnify the Seller in respect of :
i) the cost of any action taken pursuant to a notice or order served on the Seller under the Acts;
ii) any liability for the cost of remediation undertaken by any third party.
(j) Without prejudice to the generality of the above, the liability of the Seller for all the losses caused by the breach or tort giving rise to a claim, shall be limited to damages of 3 times the purchase price of the Goods (excluding installation costs) and which the parties have considered and agree is a reasonable sum given the respective positions of the parties and the types of direct losses likely to occur.

5 DELIVERY OF THE GOODS
(a) The Purchaser shall make all arrangement necessary to take delivery of the Goods whenever they are tendered for delivery.
(b) If the Seller does not receive forwarding instructions sufficient to enable it to despatch the Goods within 2 working days after the date of notification that they are ready for despatch, the Purchaser shall take delivery or arrange for storage. If the Purchaser does not take delivery or arrange for storage, the Seller shall be entitled to arrange storage either at its own works or elsewhere on the Purchaser's behalf and all charges for storage, for insurance or for demurrage shall be payable by the Purchaser.
(c) If the delivery of the Goods takes place elsewhere than at the Seller's address, the costs of carriage and any insurance which the Purchaser reasonable directs the Seller to incur shall be reimbursed by the Purchaser. The Purchaser will be responsible for safe offloading.
(d) The Seller shall not be liable for any loss or damages whatever due to failure by the Seller to deliver the Goods (or any or part of them) promptly.
(e) Notwithstanding that the Seller may have delayed or failed to deliver the Goods (or any or part of them) promptly the Purchaser shall be bound to accept delivery and to pay for the Goods in full provided that delivery shall be tendered at any time within one month of the date of the invoice.
(f) The Seller shall be entitled to make delivery by instalments.
(g) Liability for any part of the Goods lost or damaged in transit will only be accepted by the Seller in the following circumstances:
i) In the case of Republic of Ireland delivery consigned carriage paid, - where damage is reported in writing both to the carrier and the Seller within 10 days of receipt by the Purchaser or in the case of non-delivery within such time from the date of despatch as well enable the Seller to make a successful claim on the carrier;
ii) In the case of export contracts, - according to export contract (e.g. f.o.b or c.i.f) subject to which the goods are exported.

6 DRAWINGS AND MOULDS
Where the Price includes part cost of drawing and moulds, the ownership of the drawings and moulds shall at all times belong to the Seller including copyright.

7 ACCEPTANCE AND CANCELLATION
(a) The Purchaser shall examine the Goods delivered forthwith upon delivery. If following such examination the Goods or any part thereof are claimed to be defective by reason of faulty design, materials or workmanship, such claim together with particulars of the matter complained of shall be notified in writing to the Sellers within 7 days of delivery.
(b) The Purchaser shall be deemed to have accepted the Goods within 2 working days after delivery or collection by the Purchaser.
(c) After acceptance the Purchaser shall not be entitled to reject Goods which are not in accordance with the contract.
(d) If for any reason an order is cancelled prior to delivery or collection, the Purchaser will be liable to indemnify the Seller for all costs incurred with the addition of a profit margin of 10% (ten per cent) of the said costs.

8 INSTALLATION BY SELLER
In the event that the Seller shall install and or commission the Goods, the Purchaser shall take full responsibility for all uninstalled Goods or parts thereof pending installation and, in preparation for and during the execution of the work by the Seller,:
(a) provide a suitable place for installation together with any necessary lighting, water and other facilities;
(b) ensure that, where other trades are involved, all necessary work has been previously completed to enable the Seller to execute its work;
(c) make available any necessary storage or protective covering against the elements of weather.

9 DESIGN AND SPECIFICATION
The design and specification of stand units or components, manufactured or sold by the Seller as described in brochures, sales literature or other documentary form are subject to alteration without notice.

10 TAXES
All Government taxes liable on the goods manufacture or supplied are charged as extra unless otherwise stated.

11 RETENTION OF TITLE
(a) Notwithstanding delivery of the Goods to the Purchaser and the passing of risk therein, the ownership of and title to the Goods will remain with the Seller until the Seller has received payment in full of the price of the Goods and all other debts then due by the Purchase to the Seller;
(b) Until ownership of and title to the Goods has passed to the Purchaser (provided the Goods have not been resold) the Seller may require the Purchaser to return the Goods or any part thereof failing which the Seller shall be entitled to enter the premises of the Purchaser or any third party where the Goods are stored to take possession of the Goods or any part thereof;
(c) Notwithstanding that the Goods (or any part of them) remain the property of the Seller, the Purchaser may sell or use the Goods in the ordinary course of the Purchaser's business at full market value for the account of the Seller. Any such sale or dealing shall be a sale or use of the Seller's property by the Purchaser on the Purchaser's behalf and the Purchaser shall deal as principal when making such sales or dealings. Until property in the Goods passes from the Seller the entire proceeds of sale or otherwise of the Goods shall be held in trust for the Seller and shall not be mixed with other money or paid into any overdrawn bank account and shall be at all material times identified as the Seller's money.

12 SEVERABILITY
In the event any one or more of the provisions of this Agreement or of any attachment is invalid or otherwise unenforceable, the enforceability of remaining provisions shall be unimpaired.

13 WAIVER
Any failure by the Seller to exercise any rights under these conditions shall not constitute a waiver or prevent the subsequent exercise of such rights.

14 JURISDICTION
These terms are subject to the laws of Republic of Ireland and the Courts of Ireland shall have non-exclusive jurisdiction.