

CONDITIONS OF SALE - CULLIGAN ITALIANA SPA

These Conditions of Sale ("Conditions") govern all current and future sales Contracts between Culligan Italiana SpA ("Culligan") and the customer identified in the Order ("Customer"). Unless expressly waived in writing, these Conditions apply to the Contract 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. By ordering any Goods and/or Services from Culligan, the Customer agrees to be bound by these Conditions.

1. DEFINITIONS

- 1.1. "Contract" shall mean the contract between the Customer and Culligan for the provision of Goods and/or Services, which is formed upon the acceptance of the Order by Culligan;
- 1.2. "Force Majeure Event" shall mean any event beyond Culligan's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics, embargo or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or sub-contractors;
- 1.3. "Goods" shall mean any goods ordered by the Customer;
- 1.4. "Order" shall mean the order placed by the Customer requesting Goods and/or Services from Culligan;
- 1.5. "Services" shall mean any services ordered by the Customer which Culligan has agreed to provide including the assembly, installation, conservation, maintenance, commissioning and start-up of the Goods;
- 1.6. "Warranty Period" shall mean the period set out in clause 8.1;
- 1.7. "Working Day" shall mean any day other than a Saturday or Sunday or a public holiday in Culligan's country.

2. PURCHASE ORDERS

- 2.1. The Customer may place an Order by fax, email or post.
- 2.2. Each Order constitutes an offer by the Customer to purchase Goods and/or Services in accordance with these Conditions which will only be deemed accepted when Culligan issues written acceptance.
- 2.3. Any quote issued by Culligan will be deemed valid for 15 days from the date of receipt by the Customer. After this date, the quote will be deemed ineffective.
- 2.4. Orders submitted by the Customer either direct to Culligan or via agents and representatives of Culligan are not binding until acceptance has been issued in writing by Culligan, at which point the Contract shall come into existence.
- 2.5. The collection of money or debt securities paid at the time an Order is placed by the Customer does not constitute acceptance of the Order. In the event of non-acceptance of Orders by Culligan, Culligan will return any sums received, without interest.
- 2.6. Without prejudice to the execution of Orders already confirmed, Culligan may suspend or terminate at any time and without notice to the Customer, the production and supply of any of the Goods and/or Services in its price lists without any liability to the Customer.
- 2.7. Culligan reserves the right to alter the specifications of the Goods to take account of any improvements in design, availability of materials or any other reason.
- 2.8. Any quote provided by Culligan is based on the information and drawings supplied to Culligan at the time of the quote and the Goods are limited to that shown in the quote. Any variation or extra work accepted by Culligan will result in adjustment to the price and completion date. The Customer shall inform Culligan of any special requirements, environmental considerations, regulations (statutory or otherwise), variations or hazards applicable to the site and/or Goods. It shall be the sole responsibility of the Customer to ensure that the Goods comply with all relevant legislation including environmental legislation. The Customer shall be responsible for any discrepancies, errors or omissions in any drawings and/or information supplied by the Customer to Culligan and shall indemnify Culligan against any loss caused by such discrepancies, errors or omissions.
- 2.9. All weights, measurements, powers, capabilities and other particulars of Goods quoted by Culligan are stated in good faith and are approximate. Culligan shall not be liable for any deviation from these estimates.

3. PRICE

- 3.1. The price of the Goods and Services shall be those specified in the quote issued to the Customer by Culligan, or where no quote is issued, in the price lists in force at the time of acceptance of the Order by Culligan.
- 3.2. Unless otherwise specified, the price quoted is on the basis of delivery Ex-Works Culligan's premises as detailed in the acceptance of the Order issued by Culligan, and does not include any tax, duty, and/or charges, packing and delivery which will be payable by the Customer in addition to the price quoted.
- 3.3. All prices are exclusive of packing costs, shipping costs, postage, insurance and other costs related to returning the Goods.
- 3.4. Any additions or modifications to the Goods requested by the Customer will be charged separately and added to the price of the Goods.
- 3.5. In the event that an Order is accepted by Culligan and delivery is delayed due to acts or omissions by the Customer, Culligan shall not be responsible for any deterioration of the Goods during such period of delay.
- 3.6. Unless specified in a quote, the quote does not include the price of any chemicals, any water or any consumable items for which the Customer shall be responsible to make available during installation, commissioning and/or subsequent use.
- 3.7. If any law, charge, regulation, levy or tax etc. is changed after the date of a quote issued by Culligan, which affects Culligan's performance of the Order, the price and completion date will be varied by Culligan accordingly.

4. PAYMENT

- 4.1. Payments must be made in full without set off or deduction or withholding on the date agreed by the parties in each individual Order, or where not stated, within 30 days of the date of an invoice from Culligan.
- 4.2. Any payments made to agents, representatives or vicarious agents of Culligan by the Customer are not deemed to be accepted until received in full, cleared funds by Culligan.
- 4.3. If the Customer fails to make any payment in full by the due date ("Due Date"), then the Customer shall pay interest on the overdue amount at the rate of 8% per annum above the Bank of England's base rate from time to time in addition to any reimbursement of expenses for the cost of credit recovery. Such interest shall accrue on a daily basis from the Due Date until the date of actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount. In the event that this rate of interest is deemed unenforceable by any applicable law, the Customer shall pay interest at the highest rate permitted by applicable law or by any competent jurisdiction.
- 4.4. Without limiting its other rights or remedies, Culligan may suspend provision of any of the Goods or Services under the Contract or any other contract between the Customer and Culligan if the Customer fails to pay any amount due under this Contract on the Due Date, until such time as the payment is made.
- 4.5. Where delivery of the Goods is delayed at the request of the Customer, Culligan reserves the right to invoice for the Goods in accordance with the billing payment terms set out in the Order.
- 4.6. In the event of default or delay of payment by the Customer, Culligan reserves the right to immediately revoke any discount and invoice the Customer for the undiscounted price for any future payments.

5. DELIVERY AND SHIPPING

- 5.1. Any delivery times indicated by Culligan in the Order are approximate only. Time of delivery is not of the essence.
- 5.2. Culligan may deliver the Goods by instalments, which may, at Culligan's option be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.
- 5.3. Unless otherwise agreed in writing between the parties, delivery of the Goods shall be Ex-Works Culligan's premises as detailed in the Order acceptance issued by Culligan and the cost of shipping and transportation of the Goods shall be borne by the Customer, who within 5 days of being informed by Culligan that the Goods are ready for delivery, must appoint a carrier and inform Culligan.
- 5.4. The Customer agrees to pay a sum equal to 2% of the agreed price of the Goods, plus any relevant taxes, for each calendar day or part calendar day that delivery of the Goods is delayed beyond the due date as reimbursement of storage costs incurred by Culligan. The Customer agrees that this is a genuine pre-estimate of the loss that would be incurred by Culligan in the event of any delay.
- 5.5. If the Customer fails to arrange a carrier pursuant to clause 5.3 for more than 60 days, Culligan reserves the right at its sole discretion to dispose of the Goods, including without limitation arranging a carrier to deliver the Goods to the Customer, at the cost and expense of the Customer, giving the Customer notice of the terms and conditions of carriage.
- 5.6. In the case of persistent refusal of the Customer to receive the Goods, the Contract may be terminated by Culligan, without prejudice to any claim for the price of the Goods, compensation or for any damage suffered by Culligan.
- 5.7. Culligan shall not be liable for any delays arising out of customs clearances or inspections of the Goods.
- 5.8. The latest edition of the Incoterms shall form part of these Conditions where appropriate.

6. TITLE AND RISK

- 6.1. The risk in the Goods shall pass to the Customer on delivery in accordance with clause 5.3.
- 6.2. Title to the Goods shall not pass to the Customer until Culligan has received payment in full (in cash or cleared funds) for:
 - 6.2.1. the Goods; and
 - 6.2.2. any other goods or services that Culligan has supplied to the Customer in respect of which payment has become due.
- 6.3. Until title to the Goods has passed to the Customer, the Customer shall:
 - 6.3.1. hold the Goods on a fiduciary basis as Culligan's bailee;
 - 6.3.2. store the Goods separately from all other Goods held by the Customer so that they remain readily identifiable as Culligan's property;
 - 6.3.3. not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - 6.3.4. maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
 - 6.3.5. notify Culligan immediately if it becomes subject to any of the events listed in clause 12.1; and
 - 6.3.6. give Culligan such information relating to the Goods as Culligan may require from time to time.
- 6.4. At any time before title to the Goods passes to the Customer, Culligan may require the Customer to deliver up the Goods or may enter any premises of the Customer or of any third party where the Goods are stored in order to recover them. If necessary, Culligan may detach or remove the Goods from any other goods.
- 6.5. The Customer may agree to sell Goods before title has passed, subject to the express and fundamental condition that the Customer shall expressly account to Culligan for all proceeds from any sub-sale of Goods and shall hold on trust for Culligan part, or all, of the proceeds of the sub-sale equal to the amount due by the Customer to Culligan outstanding under any or all invoices submitted by Culligan, this amount always being identifiable at all times as Culligan's monies until Culligan has been paid in full and shall not at any time be paid into any overdrawn bank account.

7. SERVICES

- 7.1. Unless otherwise agreed in acceptance of the Order by Culligan, the assembly, connection, installation, conservation, maintenance, commissioning and start-up and all other services in respect of the Goods, are the sole responsibility of the Customer including without limitation the electrical and water connections and the arrangement of suitable structures or shelves.
- 7.2. The Customer shall be solely responsible for all costs associated with any services that may be necessary to fill the Goods with mineral filter or resins.
- 7.3. If the Customer requires any technical guidance, it will request this from Culligan or from a third party authorised by Culligan to provide care of the Goods. Any guidance will be charged for by Culligan at Culligan's then current rates, unless otherwise agreed in writing by Culligan.
- 7.4. Before beginning any Services, each party shall notify the other party in writing of its appointed supervisor. During the execution of the Services, the supervisors appointed by the parties shall be present at the location that the Services are to be performed, or at least nearby.
- 7.5. The Customer shall make available at its own expense, additional labourers, skilled and unskilled, who are deemed necessary by Culligan for the provision of the Services.
- 7.6. The due date for completion of the Services specified in the Order shall be deemed as merely indicative and not binding on Culligan. Time for completion is not of the essence of the Contract.
- 7.7. It is the responsibility of the Customer to obtain any necessary permits, authorisation, consents and licences or similar, required for Culligan to perform the Services.
- 7.8. In any case in which the Services are interrupted and/or third party materials are delayed other than due to any fault of Culligan, Culligan reserves the right to receive payment from the Customer for all materials already delivered and Services already completed but not yet paid for at the time of the interruption or delay.
- 7.9. The Services shall be deemed completed upon successful testing by Culligan.
- 7.10. Where provision of the Services is delayed due to any act or omission by the Customer, Culligan shall be entitled to reasonably vary the price accordingly with reference to Culligan's prevailing standard daily rates to take into account such delay.

8. WARRANTY

- 8.1. Subject to the limits of performance of systems sold, the limits indicated in the Order, and based on the characteristics of the water to be treated as set out in the analysis report attached to the Order or therein referred to, Culligan warrants the operation of the Goods and Services according to data described in the relevant technical reports for the period of 12 months from delivery or completion (in respect of Services), subject to the limitations and exclusions set out in these Conditions and to payment for all Goods and Services being received in full by Culligan from the Customer.
- 8.2. The Customer must notify Culligan in writing of all defects of the Goods that are considered to have occurred within 8 days of discovery. If a defect is likely to cause damage to the Goods, the notification must be made within twenty four (24) hours of discovery. If the Customer fails to notify Culligan of any defect in accordance with this clause 8.2, Culligan shall not be required to repair the defect or replace the Goods.
- 8.3. If, in the opinion of Culligan at its sole discretion it appears that the defect is due to a design error, a defect in materials or workmanship attributable to an error by Culligan, it will at its sole option, replace or repair the defective Goods at its expense.
- 8.4. The installation of any Goods replaced by Culligan in accordance with clause 8.3 shall be at the expense of the Customer.
- 8.5. If, in the event that Culligan determines that the defect is not attributed to Culligan, any repair or replacement of the defective Goods will be at the Customer's expense, including all shipping costs.
- 8.6. The Customer shall have no right to terminate the Contract, a reduction to the price of the Goods or compensation for any damage suffered or for employees' non-use of the plant and the Goods for the time period required by Culligan for repairs and replacement of the Goods.
- 8.7. The Customer acknowledges that the warranty contained in clause 8.1 is in lieu of any other warranty or liability, whether in contract, tort, implied by sections 13 to 15 of the Sale of Goods Act 1979 or any other legislation, and/or required by law in relation to the Goods supplied.
- 8.8. The warranty does not apply:
 - 8.8.1. when the defect was caused by bad installation or assembly of the Goods by the Customer or third parties;
 - 8.8.2. when the Customer or third parties have used materials or techniques which are not recommended by Culligan for the installation or maintenance of the Goods, or when it has used materials or cleaning products not expressly certified as suitable for use with treated water;
 - 8.8.3. if the Customer has not used and/or stored and maintained the Goods in accordance with the Culligan's product manual or instructions;
 - 8.8.4. if the defect is due to normal wear and tear of the Goods, wilful damage or negligence;
 - 8.8.5. if the Customer repairs the Goods itself or instructs a third party directly to repair the Goods without the prior written consent of Culligan;
 - 8.8.6. if the defect relates to third party materials not supplied by Culligan;
 - 8.8.7. if the damage and/or defects have been caused during transportation of the Goods; or
 - 8.8.8. where the defect is caused by accident, misuse, decrease in pressure or flow variations in characteristics of the water to be treated from the analysis report indicated in the tender document, or from changes in the supply of electricity as well as the unfitness of operating supplies.
- 8.9. All perishable materials, chemicals and consumables are excluded from the warranty.
- 8.10. To the extent that the end-user is a consumer, any warranty given by Culligan will not affect the Customer's statutory rights.
- 8.11. Any warranty given as to the performance of the Goods in a quote is based on the design parameters and water quality specified in the quote.
- 8.12. Culligan shall be under no liability for failure to achieve any performance figures quoted unless Culligan shall have expressly and specifically guaranteed them as a separate obligation in writing.

9. IMPORT AND EXPORT LICENCES

- 9.1. The Customer will promptly obtain and maintain all licences, clearances and other consents that are necessary for the supply of the Goods (including import licences).
- 9.2. Without limiting clause 8.1, the Customer will at its own cost provide to Culligan, or (where local laws or regulations require Culligan to do so) assist Culligan in procuring, any documents necessary under applicable laws and regulations for Culligan to export the Goods to the Delivery Location in accordance with such laws and regulations.
- 9.3. The Customer warrants that it will not directly or indirectly export, re-export or transfer the Goods in violation of any export/import rules or regulations. With respect to export/import rules, the Customer shall ensure that any third party to whom it supplies the Goods will also comply with this warranty.
- 9.4. If the Customer is found by Culligan to be in breach of the warranty in clause 9.3 above, Culligan will be entitled at its sole discretion to withhold delivery of any undelivered goods, withhold the performance of any Services and cease any Services in progress, and/or cancel, terminate and/or suspend any contract with the Customer and all monies owed by the customer to Culligan shall immediately become due and payable.

10. ANTI BRIBERY

- 10.1. Each party will comply with applicable bribery laws including the Bribery Act 2010, the US Foreign Corrupt Practices Act 1977 as amended, 15 U.S.C. §§ 78dd-1, et seq., Italian Anti-Corruption Law no 190 dated 6 November 2012, Law Decree no. 231 dated 8 June 2001 and art. 2635 of Italian Civil Code ('Bribery Laws') and relating to prevention of bribery and corruption (as updated from time to time), and each will ensure that:
 - 10.1.1. all of that party's personnel;
 - 10.1.2. all of that party's subcontractors; and
 - 10.1.3. all others associated with that party,
 involved in performing services or supplying goods for or on behalf of that party or otherwise involved with the supply of the Goods so comply.
- 10.2. Without limitation to the above, neither party will directly or indirectly:
 - 10.3. offer, promise or give a bribe, other improper payment or advantage (financial or otherwise) to another person (including any third party);
 - 10.4. request, agree to receive or accept any bribe, other improper payment or advantage (financial or otherwise); or
 - 10.5. bribe any Foreign Public Official intending to influence that Foreign Public Official in their capacity as a Foreign Public Official in order to obtain or retain business or an advantage in the conduct of business (including any trade or profession) where the written law applicable to that Foreign Public Official does not permit or require them to be influenced by the relevant offer, promise, gift or advantage,
- 10.6. either in the United Kingdom or elsewhere, in breach of applicable Bribery Laws.
- 10.7. Each party will implement, maintain and enforce adequate procedures designed to prevent persons associated with that Party engaging in conduct which contravenes the Bribery Laws and any other associated bribery laws.
- 10.8. Each party will immediately notify the other as soon as it becomes aware of a breach or possible breach of any of the requirements in this clause 10.

11. LIABILITY

- 11.1. The Customer expressly releases Culligan from all liability and redress for damage resulting from improper use of the Goods by the Customer or by third parties, independently or at the request of the Customer.
- 11.2. Subject to clauses 11.3 and 11.4, Culligan's total liability to the Customer 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:
 - 11.2.1. where a claim relates to Goods or Services, 125% of the sums paid by the Customer to Culligan in respect of the Goods or Services giving rise to the liability;
 - 11.2.2. where a claim does not relate to Goods or Services, 125% of the sums paid by the Customer to Culligan in the 3 months immediately preceding the date of the event giving rise to the liability; and
 - 11.2.3. €25,000 Euros in aggregate in respect of any and all claims under these Conditions.
- 11.3. Nothing in these Conditions limits or excludes Culligan's liability for:
 - 11.3.1. death or personal injury caused by Culligan's negligence;
 - 11.3.2. fraud or fraudulent misrepresentation;
 - 11.3.3. breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession); or
 - 11.3.4. any matter in respect of which it would be unlawful for Culligan to exclude or restrict liability.
- 11.4. Culligan shall under no circumstances be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profits, sales, business, or revenue; loss or corruption of data, information or software; loss of business opportunity; loss of anticipated savings; loss of goodwill; or any indirect or consequential loss, arising under or in connection with the Contract.

12. TERMINATION

- 12.1. Without prejudice to any other rights or remedies which Culligan may have, if the Customer:
 - 12.1.1. fails to pay any sum due within 60 days from the due date for payment;
 - 12.1.2. commits a material breach of any of the terms of the Contract and (if such a breach is remediable) fails to remedy that breach within thirty (30) days of the Customer being notified to do so;
 - 12.1.3. is unable to pay its debts (within the meaning of section 123 of the Insolvency Act 1986), or becomes insolvent, or is subject to an order or a resolution for its liquidation, administration, winding-up or dissolution (otherwise than for the purposes of a solvent amalgamation or reconstruction), or has an administrative or other receiver, manager, trustee, liquidator, administrator or similar officer appointed over all or any substantial part of its assets, or enters into or proposes any composition or arrangement with its creditors generally, or is subject to any analogous event or proceeding in any applicable jurisdiction; or
 - 12.1.4. suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business;
 then Culligan shall be entitled to exercise any of the rights set out in clause **Errore. L'origine riferimento non è stata trovata.** below.
- 12.2. If any of the events set out in clause 12.1 above occurs in relation to the Customer then:

- 12.2.1. Culligan may enter, without prior notice, any premises of the Customer (or premises of third parties with their consent) where Goods owned by Culligan may be and repossess and dispose of or sell any Goods found which are owned by Culligan so as to discharge any sums due to Culligan under the Contract or any other agreement with the Customer;
 - 12.2.2. the Customer automatically is no longer entitled to re-sell, use or part with the possession of any Goods owned by Culligan until the Customer has paid in full all sums due to Culligan under the Contract or any other agreement with the Customer unless Culligan gives it express written agreement to such use and/or disposal of the Goods;
 - 12.2.3. Culligan may withhold delivery of any undelivered Goods and stop any Goods in transit;
 - 12.2.4. Culligan may withhold the performance of any Services and cease any Services in progress;
 - 12.2.5. Culligan may cancel, terminate and/or suspend without liability to the Customer any contract with the Customer; and/or
 - 12.2.6. all monies owed by the Customer to Culligan shall immediately become due and payable.
- 13. FORCE MAJEURE**
- 13.1. Culligan shall not be liable for any failure or delay in performing any of its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event or to the extent that such failure or delay is caused or requested by the Customer.
 - 13.2. If a Force Majeure Event occurs that affects the performance of Culligan's obligations under the Contract, Culligan will notify the Customer as soon as reasonably possible and Culligan's obligations under the Contract will be suspended and the time for performance of such obligations will be extended for the duration of the Force Majeure Event. In the event that a Force Majeure Event continues for more than 6 weeks, the Customer or Culligan shall be entitled to terminate the Contract.
- 14. SEVERANCE**
- 14.1. If any provision of these Conditions or any other term of the Contract is found to be illegal, invalid or unenforceable under any applicable law, such term shall, insofar as it is severable from the remaining terms (or capable of modification), be deemed omitted from the Contract (or modified as appropriate) and shall in no way affect the legality, validity or unenforceability of the remaining terms which shall remain in full force and effect.
- 15. WAIVER**
- 15.1. The failure of either party to enforce or to exercise any term or right under the Contract shall not be a waiver of such term or right and shall not affect such party's right to later enforce or exercise it.
- 16. RIGHTS OF THIRD PARTIES**
- 16.1. The Contracts (Rights of Third Parties) Act 1999 shall not apply to the Contract except to the extent that any provision of these Conditions expressly provides otherwise.
- 17. ASSIGNMENT**
- 17.1. Culligan may at any time assign in whole or in part its rights and obligations arising from or in connection with the Contract.
 - 17.2. The Customer may not assign in whole or in part its rights and obligations arising from or in connection with the Contract without the prior written consent of Culligan.
- 18. COPYRIGHT**
- 18.1. The copyright subsisting or which subsequently subsists in all documents, drawings, specifications, designs, programs or any other material prepared by Culligan whether readable by humans or by machines shall belong to Culligan absolutely and they shall not be reproduced or disclosed or used in their original or translated form by the Customer without Culligan's written consent for any purpose other than for which they were intended.
- 19. APPLICABLE LAW AND JURISDICTION**
- 19.1. In the event that the Customer's place of business is situated in the European Union, these Conditions shall be construed in accordance with the laws of England and Wales and the parties submit to the exclusive jurisdiction of the English Courts.
 - 19.2. To the extent that the Customer's place of business is situated outside of the European Union, these Conditions shall be construed in accordance with the laws of England and Wales and any dispute or claim which may arise concerning the construction, meaning or effect of these Conditions or concerning the rights and liabilities of the parties hereunder or any other matter arising out of or in connection with these Conditions shall be referred to a single arbitrator in London to be agreed between the parties. Failing such agreement within 30 days of the request by one party to the other that a matter be referred to arbitration in accordance with this clause 19.2 such reference shall be to an arbitrator appointed by the President for the time being of the International Chamber of Commerce. The decision of such arbitrator shall be final and binding upon the parties. Any reference under this clause 19.2 shall be deemed to be a reference to arbitration within the meaning of the Arbitration Act 1996. Such arbitration shall be in the English language.