

## NEW LEAF – STANDARD CONDITIONS OF SALE

### 1 Definitions

In these conditions, the following definitions shall apply:

- 1.1 'Buyer' means the person who buys or agrees to buy the Goods from New Leaf.
- 1.2 'Conditions' means the terms and conditions of sale set out in this contract and any special terms and conditions agreed in writing by New Leaf.
- 1.3 'Delivery Date' means the date specified by New Leaf when the Goods are to be delivered.
- 1.4 'Goods' means the articles which the Buyer agrees to buy from New Leaf.
- 1.5 'Price' means the price for the Goods excluding carriage, packing, insurance and VAT.
- 1.6 'New Leaf' means New Leaf Irrigation Limited of Unit 1 Bartle Court, Rosemary Lane, Bartle, Preston, PR4 0HB.

### 2 Conditions Applicable

- 2.1 These Conditions shall apply to all contracts for the sale of Goods by New Leaf to the Buyer to the exclusion of all other terms and conditions including any terms and conditions which the Buyer may purport to apply under any purchase order, confirmation of order or similar document.
- 2.2 All orders for Goods shall be deemed to be an offer by the Buyer to purchase Goods pursuant to these Conditions.
- 2.3 Acceptance of delivery of the Goods shall be deemed conclusive evidence of the Buyers acceptance of these Conditions.
- 2.4 Any variation to these Conditions (including any special terms and conditions agreed) shall be inapplicable unless agreed in writing by New Leaf.

### 3 Price and Payment

- 3.1 The Price of the Goods shall be New Leaf's quoted price which shall be binding on New Leaf provided that the Buyer shall accept New Leaf's quoted Price within 7 days. New Leaf may by giving notice to the Buyer at any time up to 7 days before delivery increase the Price of the Goods to reflect any increase in the cost to New Leaf which is due to any increased cost of labour, materials and other manufacturing costs of the Goods provided that the Buyer may cancel this contract within 3 days of any such notice from New Leaf. The Price is exclusive of VAT which shall be due at the rate ruling of the date of VAT invoice.
- 3.2 Payment of the price and VAT shall be due within 30 days of the date of the invoice unless otherwise agreed in writing. New Leaf shall not be bound to deliver the Goods until the Buyer has paid all outstanding monies owed to New Leaf. Payment of any outstanding amounts due to New Leaf shall be made before the Delivery Date and time for payment shall be of the essence.
- 3.3 If the Buyer fails to pay the Price for the Goods on the due date then without prejudice to any of New Leaf's other rights New Leaf may;
  - 3.3.1 suspend or cancel deliveries of any Goods due to the Buyer; and/or
  - 3.3.2 appropriate any payment made by the Buyer to such of the Goods (or Goods supplied under any other contract with the buyer) as New Leaf may in its sole discretion think fit.
- 3.4 Interest on overdue invoices shall accrue from the date when payment becomes due from day to day until the date of payment at a rate of 8% above Barclays Bank Plc's base rate from time to time in force and shall accrue at such a rate after as well as before any judgement.

### 4 The Goods

- 4.1 The quantity and description of the goods shall be as set out in New Leaf's order confirmation.
- 4.2 The Goods shall be manufactured and supplied in accordance with the description contained in New Leaf's specification and manufactured in accordance with all applicable or international standards which relate specifically to the Goods.
- 4.3 New Leaf may from time to time make changes in the specification of the Goods which are required to comply with any applicable safety or statutory requirements.
- 4.4 New Leaf does not agree to provide advice or assistance on the installation of the Goods by the Buyer and/or any third party.

### 5 Warranties

New Leaf warrants that the Goods supplied will at the time of delivery correspond to the description given by New Leaf subject to clause 4.2. All other warranties, conditions or terms relating to fitness for purpose, quality or condition of the Goods, whether express or implied by statute or common law or otherwise are excluded to the fullest extent permitted by law.

## **6 Delivery of the Goods**

- 6.1 Delivery of the Goods shall be made to the Buyer's address as notified to New Leaf in writing on the Delivery Date. The Goods may be delivered in advance of the Delivery Date upon the giving of reasonable notice to the Buyer. The Buyer shall make all arrangements to take delivery of the Goods whenever they are tendered for delivery.
- 6.2 New Leaf may deliver the Goods by separate instalments.
- 6.3 The failure or refusal of the Buyer to take delivery of the Goods including any delivery by instalments on the due dates shall entitle New Leaf:
- 6.3.1 without notice to suspend further deliveries of the Goods pending payment by the Buyer for any Goods already received by the Buyer; and/or
- 6.3.2 to treat this contract as repudiated by the Buyer.
- 6.4 The Buyer shall promptly obtain all necessary import licences, clearances and other consents necessary for the purchase of the Goods. New Leaf shall promptly upon request supply all documents reasonably required by the Buyer for this purpose.
- 6.5 New Leaf shall not be liable for any loss or damage whatever due to failure by New Leaf to deliver the Goods (or any of them) promptly or at all. Notwithstanding that New Leaf may have delayed or failed to deliver the Goods (or any of them) promptly the buyer shall be bound to accept delivery and to pay for the Goods in full provided that delivery shall be tendered at any time within 3 months of the Delivery Date.

## **7 Acceptance of the Goods**

- 7.1 No Goods delivered to the Buyer which are in accordance with these terms and conditions of contract will be accepted for return without the prior written approval of New Leaf and provided that the Buyer shall comply with New Leaf's returns authorisation procedure and on any other terms which may be determined at the absolute discretion of New Leaf.
- 7.2 If New Leaf agrees to accept any such Goods which are returned subject to clause 7.1 New Leaf reserves the right to levy a handling charge of 20% of the invoice price. Such Goods must be returned by the Buyer carriage-paid to New Leaf in their original packaging.
- 7.3 The Buyer will have the right to return Goods which are not in accordance with these terms and conditions of contract within 5 days of receipt of delivery of the same provided that the Buyer complies in full with New Leaf's returns authorisation procedure.
- 7.4 For the purposes of this contract Goods shall not conform to these terms and conditions of contract if there is any substantive defect, damage, shortage in quantity or significant failure to comply with description or sample.
- 7.5 Goods returned without the prior written approval of New Leaf may at New Leaf's absolute discretion be returned to the Buyer or stored at the Buyer's cost without prejudice to any rights or remedies New Leaf may have.
- 7.6 Notwithstanding the receipt by New Leaf of any notice of return of the Goods by the Buyer for any reason a clear signature on a carriers note shall be deemed to signify acceptance of the Goods by the Buyer.

## **8 Retention of Title**

- 8.1 The Goods shall be at the Buyer's risk as from delivery to the Buyer's address and signature in the delivery note by an authorised representative of the Buyer.
- 8.2 In spite of delivery having been made title in the Goods shall not pass from New Leaf until:
- 8.2.1 the Buyer shall have paid the price plus VAT in full; and
- 8.2.2 no other sums whatever shall be due from the Buyer to New Leaf.
- 8.3 Until the title in the Goods passes to the Buyer in accordance with clause 8.2 the buyer shall hold the Goods and each of them on a fiduciary basis as bailee for New Leaf. The Buyer shall store the Goods (at no cost to New Leaf) separately from all other goods in its possession and marked in such a way that they are clearly identified as New Leaf's property.
- 8.4 Notwithstanding that the Goods (or any of them) remain the property of New Leaf the Buyer may sell or use the Goods in the ordinary course of the Buyer's business at full market value for the account of New Leaf. Any such sale or dealing shall be a sale or use of New Leaf's property by the Buyer on the Buyer's own behalf and the Buyer shall deal as principal when making such sales or dealings. Until property in the Goods passes from New Leaf the entire proceeds of sale or otherwise of the Goods shall be held in trust for New Leaf and shall not be mixed with other money or paid into any overdrawn bank account and shall be at all material times as New Leaf's money.
- 8.5 New Leaf shall be entitled to recover the price (plus VAT) notwithstanding that property in any Goods has not passed from New Leaf.
- 8.6 Until such time as property in the Goods passes from New Leaf the Buyer shall upon request delivery up such of the Goods as have not ceased to be in existence or resold to New Leaf. If the Buyer fails to do so New Leaf may enter upon any premises owned occupied or controlled by the Buyer where the Goods are situated and repossess the Goods. On the making of such request the rights of the Buyer under clause 8.4 shall cease.
- 8.7 The Buyer shall not pledge or in any way charge by way of security for any indebtedness any of the Goods which are the property of New Leaf. Without prejudice to the other rights of New Leaf, if the Buyer does so all sums whatever owing by the Buyer to New Leaf shall forthwith become due and payable.
- 8.8 The Buyer shall insure and keep insured the Goods to the full Price against 'all risks' to the reasonable satisfaction of New Leaf until the date that title in the Goods passes from New Leaf and shall whenever requested by New Leaf produce a copy of the policy of insurance. Without prejudice to the other rights of New

Leaf, if the Buyer fails to do so all sums whatever owing by the Buyer to New Leaf shall forthwith become due and payable.

## **9 Liability**

- 9.1 In the event of any breach of this contract by New Leaf the remedies of the Buyer shall be limited to damages as set out in clause 9.2.
- 9.2 New Leaf shall be under no liability whatever to the Buyer for any indirect loss and/or expense (including loss of profit) suffered by the Buyer arising out of a breach by New Leaf of this contract and the liability of New Leaf shall be strictly limited to the Price of the Goods.
- 9.3 In the event that the Buyer declines to accept the Goods in breach of this contract the Buyer shall pay to New Leaf as and by way of agreed liquidated damages an amount equal to the price of the Goods less the net proceeds received by New Leaf on reselling the Goods after deducting the costs and expenses of resale.

## **10 Intellectual Property**

Any intellectual property rights of the Goods including but not limited to patents, registered or unregistered designs, trademarks and copyright shall be the property of New Leaf. Where any designs or specifications have been supplied by the Buyer for manufacture by New Leaf or to the order of the Buyer then the Buyer warrants that the use of those designs or specifications for the manufacture, processing, assembly or supply of the Goods shall not infringe the intellectual property rights of any third party.

## **11 Force Majeure**

- 11.1 Neither party will be liable for any delay in performing or failure to perform any of its obligations under this contract caused by events beyond its reasonable control ('Force Majeure Event').
- 11.2 The Party claiming the Force Majeure Event will promptly notify the other in writing of the reasons for the delay or stoppage (and the likely duration) and will take all reasonable steps to overcome the delay or stoppage.
- 11.3 If the party claiming the Force Majeure Event has complied with clause 11.2 its performance under this contract will be suspended for the period that the Force Majeure Event continues and the party will have an extension of time for performance which is reasonable and in any event equal to the period of delay or stoppage. As regards such delay or stoppage:
- 11.3.1 any costs arising from the delay or stoppage will be borne by the party incurring those costs;
- 11.3.2 either party may, if the delay or stoppage continues for more than 30 continuous days, terminate this contract with immediate effect on giving written notice to the other and neither party will be liable to the other for such termination; and
- 11.3.3 the party claiming the Force Majeure Event will take all necessary steps to bring that event to a close or to find a solution by which this contract may be performed despite the Force Majeure Event.

## **12 Set Off**

Notwithstanding anything contained or implied in this contract New Leaf may set off against any money which would otherwise be owing by New Leaf to the Buyer under or pursuant to this contract unless or until the Buyer has paid, satisfied or discharged all monies, debts or other liabilities due or owing to New Leaf. All payments made by the Buyer under this contract shall be made in full without any set-off or counter claim whatever.

## **13 Insolvency**

If the Buyer fails to make payment for the Goods in accordance with this contract or commits any other breach of this contract or if any distress or execution shall be levied upon any of the Buyer's goods or if the Buyer offers to make any arrangement with its creditors or if any bankruptcy petition is presented against the Buyer or the Buyer is unable to pay its debts as they fall due or if being a limited company any resolution or petition to wind up the Buyer (other than for the purpose of amalgamation or reconstruction without insolvency) shall be passed or presented or if a receiver, administrative receiver or manager shall be appointed over the whole or any part of the Buyer's business or assets or if the Buyer shall suffer any analogous proceedings under foreign law all sums outstanding in respect of the Goods shall become payable immediately. New Leaf may in its absolute discretion and without prejudice to any other rights it may have:-

- 13.1 suspend all future deliveries of Goods to the Buyer and/or terminate this contract without any liability upon its part and/or
- 13.2 exercise any of its rights pursuant to clause 8.

## **14 Assignment**

- 14.1 New Leaf may assign transfer or sub-contract its rights or obligations of this contract to any third party.
- 14.2 The Buyer shall not assign transfer or sub-contract its rights or obligations of this contract without the prior written consent of New Leaf such consent not to be unreasonably withheld.

**15 Waiver**

Neither New Leaf's failure to exercise any power given to New Leaf under this contract or to insist upon strict compliance by the Buyer with any obligation under it, nor any custom or practice of New Leaf or the Buyer shall constitute any waiver of any of New Leaf's rights under this contract. Waiver by New Leaf of any particular default by the Buyer must be in writing and shall not affect or impair New Leaf's rights in respect of any subsequent default of any kind by the Buyer, nor shall any delay by or omission of New Leaf to exercise any rights arising from any of the Buyer's defaults affect or impair New Leaf's rights in respect of the said default or any default of any kind.

**16 Notices**

Any notice required to be given for the purposes of this contract must be given by sending it by pre-paid first class post or fax, or by delivery by hand at the relevant address shown in this contract or such other address as has been notified in accordance with this clause by the party concerned as being its address for the purposes of this clause. Any notice sent by post shall be deemed to have been served 2 days after posting. In proving service it shall be sufficient to prove that a notice was properly addressed and stamped and put into the post. Any notice sent by fax shall be deemed to have been served on the next business day following the date of despatch of it. Any notice delivered by hand shall be deemed to have been served when physically delivered at the relevant address.