

# CONDITIONS OF SALE

## 1. FORMATION OF CONTRACT

- 1.1 All quotations are made and all orders are accepted subject to the Terms and Conditions contained herein.
- 1.2 The Terms and Conditions set out, and detailed below, constitute an invitation to treat by Thermal Engineering Systems Limited (hereinafter called the Company), unless submitted in response to a written purchase order in which case they shall constitute an acceptance. The Buyer's written order shall be deemed to be the offer.
- 1.3 The Buyer's written order shall be deemed to be an acceptance of the Terms and Conditions herein, to the exclusion of any representations of statements made prior to contract, all other Terms and Conditions contained in the Buyer's written order, or implied by law, subject only to any variation as may be expressly agreed by the Company in writing, signed by a director. No salesman, employee, agent or representative of the Company is authorised to vary, alter or modify the Terms and Conditions herein.
- 1.4 All descriptive matter and specifications in the Company's leaflets, price lists and other advertising media do not form part of the Contract. No design, drawing or specification shall be regarded as being incorporated into the Contract unless the final details thereof are stated in, or annexed to, the Contract.
- 1.5 The Company reserves the right to accept or refuse orders. The Company reserves the right to cancel any uncompleted order or to suspend delivery if the Buyer fails to observe his part of any Terms of this Contract or if the Company, in good faith suspects the Buyer may do so.
- 1.6 If one or more terms herein prove to be invalid or unenforceable all other Terms shall remain valid and enforceable.
- 1.7 No waiver by the Company of any default on the part of the Buyer shall be deemed to be a waiver of any prior or subsequent default, nor shall such waiver affect the rights of the Company contained herein.
- 1.8 In addition to the rights and remedies of the Company contained herein, the Company shall have all the rights and remedies conferred by law, and shall not be required to proceed with this agreement if the Buyer is in default in performance of this, or any other agreement with the Company.
- 1.9 This Contract shall in all respects be construed and take effect according to the laws of England.
- 1.10 The Buyer undertakes not to remove, deface or obliterate the Company's nameplate from the goods sold subject to this contract.

## 2. PRICES

- 2.1 In addition to the prices stated herein, the Buyer may be required to pay or reimburse the Company for any Tax (except income or Corporation Tax) which may now or hereinafter be imposed by any Taxing Authority in respect of the goods and services contracted for. In the event of the Company being required to pay such Tax, the Buyer shall reimburse the Company for such payment.
- 2.2 The prices quoted are based on costs ruling at the date of quotation. The Company reserves the right to vary the quoted price, should any fluctuation in these costs occur between the date of quotation or acknowledgement and the date of despatch.
- 2.3 All prices quoted in the Company's price lists, leaflets and other advertising media are subject to alteration or withdrawal without notice.
- 2.4 Should the Company incur any extra costs due to lack of instructions, overtime working, abortive deliveries, suspension of the work, or delays caused by others, such extra cost will be added to the Contract price and accordingly paid by the Buyer.
- 2.5 An extra charge above the price quoted will be made if the site to where the equipment is to be installed is not ready, level, cleared or easily accessible to normal transport from a ground floor site. It is the Buyer's sole responsibility to obtain all necessary permissions and consents for the installation, which may be required by law, or by third parties. All prices quoted are based on the Company's standard production drawings. The Buyer may request reasonable variations which must be approved by the Company in writing, and any extra cost arising to the Company therefrom shall be charged in addition to the quoted price. Under no circumstances may the Buyer instruct the Company workmen to carry out variations without the written consent of the Company, nor are such workmen authorised to execute any variations without such consent. The Company will not be liable for any damage of whatsoever nature arising from these instructions being ignored.
- 2.6 If any materials specified are not available the Company reserves the right without notice to substitute other materials which in the opinion of the Company are suitable.

## 3. EXTENT OF LIABILITY

- 3.1 The Company's quotation does not include the following:
  - (a) Any electrical wiring, plumbing, building works, making good, or any materials or devices not specifically mentioned in the Quotation.
  - (b) Any casual labour costs or hiring, lifting or handling equipment or scaffolding required to convey goods supplied to the site.
  - (c) Cost of lighting, power, heating and water required during erection and installation of equipment at site.
  - (d) Any insurance payable relating to the above.
- 3.2 The Quotation and Specification are based on the assumptions that the equipment can be installed in such a position that there is available at all times a constant supply of free air at a temperature not higher than 80°F unless otherwise stated. If these conditions do not exist and that fact is not disclosed to the Company, the Company reserves the right (at the Company's option) either to cancel the contract or to make an extra charge above the price quoted for the cost of carrying out any modifications necessary or to cancel the warranty.
- 3.3 The Company will carry out installation in a workmanlike manner and to the best of its ability, but shall not be liable for any damage caused to persons or property in or about the premises caused by reasons beyond the control of the Company or its employees.
- 3.4 If after delivery, but before completion of installation, damage to or destruction of any part of the equipment on site occurs, arising from any accident, theft or malicious intent, or from war, fire or any cause beyond the Company's control, the Company shall make good the damage or destruction and will make an extra charge to the Buyer in respect thereof, which the Buyer must pay. The extra charge will be calculated in accordance with the Company's standard Charges and Terms. If further work shall be impracticable the Buyer shall pay for the equipment and labour already supplied, and the contract shall be at an end.
- 3.5 The Buyer shall be solely responsible for the cost of protecting the equipment against damage or destruction after delivery howsoever caused.
- 3.6 Where the Buyer is to provide materials to be used in connection with the Contract they must be in good condition and suitable for the purpose for which they are intended. Any replacement found necessary after the inspection and/or testing by the Company (whose decision in this respect will be final) will be charged for in addition to the quoted price.
- 3.7 The Company shall not accept responsibility for the condition of any existing plant, machinery or fittings which may be set to work in conjunction with the plant supplied by the Company.
- 3.8 The Company shall not accept liability for failure due to frost.

## 4. DELIVERY

- 4.1 Delivery shall mean the deposit of the goods on the site designated by the Buyer, or in the event of an agreed ex-works delivery, on loading of equipment for transportation or in the event of sales of goods for destinations not within England, Scotland or Wales, on deposit of the goods at the UK port from which the goods are contracted to be shipped.
- 4.2 The delivery date referred to in the Company's acknowledgement or order shall only be regarded as an estimate of the actual date of delivery. The Company shall not be bound to deliver on the estimated delivery date nor shall the Company be liable for any delay in delivery unless specifically agreed in writing from the Company's head office.
- 4.3 A specifically agreed delivery date will only be given on the condition that the Company will in no way be obstructed in its work by the insufficiently advanced work of other trades or parties engaged on the same site or installation. Such other work must be completed early enough to enable the Company sufficient time to carry out its own work. Delay caused in this way shall relieve the Company from all liability to meet any specifically agreed date.
- 4.4 Notwithstanding any agreed date under Clause 4.3, the Company shall not be liable for loss or damage arising from delays in delivery resulting from Acts of God, Government Orders, Strikes, War, Delay in Delivery of Manufacturing Material, or any circumstances beyond the Company's control. None of these events shall entitle the Buyer to cancel the contract, and the delivery dates shall be extended accordingly.
- 4.5 Where delivery is delayed upon the Buyer's request, or due to lack of delivery instructions, or due to Buyer's delayed payment of his account, the Company shall have the right to charge storage costs, which the buyer shall pay. Storage shall be charged at 3% of the invoice value, for each completed month by which the delivery is delayed beyond the stated delivery date.

- 4.6 The Company may make, and the Buyer shall accept, partial deliveries when required by the Company.
- 4.7 On delivery all risks in connection with the goods shall pass to the Buyer.
- 4.8 No goods delivered under this contract may be returned to the Company, unless prior written consent is received from the Company's Head Office. No claim shall be allowed or credit given for goods returned without such consent, regardless of whether or not the returned goods are accepted by the Company.
- 4.9 If the Company attempts to effect delivery and such attempt is abortive due to the Buyer's refusal to accept the goods for whatsoever reason, then, unless the Buyer has given to the Company one week prior to the delivery a written notice of his wish to postpone the delivery date, the Company shall have the right to charge the Buyer with all costs and expenses of the abortive delivery.

## 5. NOTICE OF DEFECTS

- 5.1 The Company is obliged to notify all claims within 14 days of delivery. Consequently, claims regarding incomplete delivery or notices of defect must be submitted to the Company in writing not later than 10 days after delivery of the goods. If complaints are not submitted within this time the goods shall be deemed to have been fully delivered in perfect condition.

## 6. PAYMENT

- 6.1 Unless otherwise agreed by a Director of the Company in writing, payment of the full invoiced price shall be made by the Buyer within net 30 days, that is the last day of the month following the date of invoice. Where goods are delivered by instalments, payment shall become due as each delivery is made within 14 days of the date of invoice. If payment is not made, the Company may suspend all or part of the work until they are settled in full.
- 6.2 Should the Buyer fail to observe any Term of the Contract, or if the Company in good faith believes that the Buyer will fail to observe any term of the contract, or doubts the ability of the Buyer to pay, then the full price of any goods already delivered and work done, and any sums due or payable on account, shall immediately become due and payable. In such circumstances the Company reserves the right to cancel or suspend the Contract at its option, and the Company expressly reserves the right to lien, stoppage in transit, and the right to resell conferred under the Sale of Goods Act 1893.
- 6.3 Where the Company is ready to complete the contract on or after the acknowledgement delivery date and is delayed from so doing at the Buyer's request, the Company shall thereupon have the right to charge and receive immediate payment for all goods and services supplied pursuant to the Contract.
- 6.4 The Company reserves the right to set off payments made by the Buyer against any outstanding amounts due to the Company regardless of the purpose of the payments specified by the Buyer.
- 6.5 All the costs incurred by the Company in collecting overdue accounts including legal expenses shall be borne by the Buyer. The Company reserves the right to charge interest at 3% per month on all overdue accounts.
- 6.6 The risk in the goods shall pass from the Company to the Buyer upon delivery of such goods to the Buyer. However, notwithstanding delivery and the passing of risk in the goods, title and property in the goods, including full legal and beneficial ownership, shall not pass to the Buyer until the Company has received in cash or cleared funds payment in full of all goods delivered to the buyer under this and all other contracts between the Company and the Buyer for which payment of the full price of the goods thereunder has not been paid. Payment of the full price of the goods shall include the amount of any interest or other sum payable under the terms of this and all other contracts between the Company and the Buyer under which the goods were delivered.
- 6.7 The Company reserves the right to request stage payments on contracts, which it deems, has significant value and or schedule implications.

## 7. WARRANTY

- 7.1 The Company hereby warrants subject to the Clauses 7.2, 7.3, 7.4 and 7.5 hereof that each new product or part manufactured by the Company and supplied under this Contract shall be free from defects in material and workmanship. The Company does not in any way guarantee or accept responsibility for any parts not of its own manufacture. If called upon to do so the Company will assign to the Buyer the benefit of any guarantee or warranty given by the manufacturer of any such part so far as the Company is able to do so.
- 7.2 The Company's obligations under this warranty shall be limited, at the Company's option, to repairing or replacing ex-works, or allowing credit for any part which under normal and proper use and maintenance proves to the Company's satisfaction to be defective in material and workmanship for a period of 12 months from the date of invoicing.
- 7.3 Warranty Terms:
  - (a) For equipment destined within mainland UK, Warranty covers the supply of new replacement material in exchange for those defective parts and also a free supply of labour to effect the repair if necessary on the Company's premises. All associated carriage costs involved in effecting such replacement or repairs shall be borne by the Buyer.
  - (b) For equipment destined outside of mainland UK, Warranty covers the supply of new replacement parts in exchange for those that are defective and the Buyer will pay all other costs incurred in effecting the repair to the Buyer's satisfaction.
  - (c) It is a condition of Warranty for Chillers that the Buyer submits a commissioning report to the Company completed at start up, either by the Company or another competent body.
- 7.4 This warranty does not apply:
  - (a) to second hand products supplied hereunder
  - (b) to damage to any product or part caused by frost, overloading, abuse, misuse, tampering, neglect or accident, or putting to use other than normally recommended by the Company.
  - (c) to any product or parts, repairs, altered, or assembled by anyone other than the Company, its supplier or its appointed installation or service contractor which in the sole judgement of the Company affects the performance, stability or purpose for which it was manufactured.
  - (d) to costs for removal or installation of warranted parts;
  - (e) to loss of food or contents of the equipment, due to failure for any reason;
  - (f) to components not manufactured by the Company.
  - (g) for any claim in excess of the contract price.
- 7.5 This warranty is in lieu of all other warranties, express or implied, including any implied warranty of interchangeability or fitness for a particular purpose, and in no event shall the Company be liable for consequential loss of special damages.

## 8. GENERAL

- 8.1 Except as otherwise expressly mentioned in these conditions the Company shall have no liability of any kind whatsoever to the buyer in respect of loss or damage, whether direct indirect or consequential, suffered by the Buyer whether in contract or negligence or otherwise in respect of any goods supplied or work done by the Company.
- 8.2 The performance of all contracts is subject to variation or cancellation by the Company owing to any Act of God, War, Strikes, government regulations or orders, national emergencies, lock-outs, fire, flood, drought, tempest or any other cause beyond the control of the company or owing to any inability of the Company to procure materials or articles required for the performance of the contract and the Company shall not be held responsible for any inability to deliver caused by such contingency.
- 8.3 Once the Company has acknowledged the Buyer's order, the Buyer may only cancel the order if the Company agrees to accept such cancellation. In such event the Company reserves the right to charge a cancellation fee in respect of its costs which the Buyer shall pay.
- 8.4 Any dispute arising out of the Contract, including the construction or interpretation of its provisions, shall be settled by a single arbitrator appointed by agreement between the parties, or failing such an agreement, by the President of the Law Society of England and Wales, at the request of either party. This shall be deemed to be a submission to arbitration within the meaning of the Arbitration Act 1950 or any statutory reenactment or replacement Bill.
- 8.5 The Company may assign this Contract, or any Client claims arising therefrom, to third parties without the Buyer's consent.
- 8.6 Any notice or request to be given hereunder shall be given in writing by first class prepaid letter post sent to the last known address of the party to be notified and shall be deemed to have been given on the day following that on which it was posted.
- 8.7 Any clerical errors or omissions contained in the Company's quotation, acknowledgement or invoice shall be rectified by the Company on discovery and immediately notified to the Buyer; such errors or omissions shall not be binding on the Company and rectification thereof shall not invalidate the Contract.