

# COOLTECH BUILDING SERVICES LTD – TERMS & CONDITIONS

## 1. GENERAL

A) These terms & Conditions of Services and Equipment supersede all other Terms & Conditions, representations or undertakings made by the client (buyer) or the Cooltech (seller) whether during the course of negotiations between the Buyer or the Seller of whether before or after these Terms & Conditions. Acceptance of the services or equipment shall be deemed to be acceptance of these Terms & Conditions.

B) No agreements shall be effective to vary this contract unless agreed upon in writing by a Director of the Company (seller).

## 2. DEFINITION OF TERMS

A) "Services or equipment" means subject to this clause, services of the description ordered or contained in the quotation and to be delivered hereunder.

B) The term "buyer" shall mean the Company, Firm or Person, from whom a purchase order is received by the seller for services.

C) The term "seller" refers to Cooltech Building Services Limited.

## 3. DESCRIPTION OF SERVICES AND EQUIPMENT

A) The seller reserves the right to supply without notice, services and equipment that differ in specification, dimension, and design or otherwise from the services and equipment ordered by the buyer, provided such difference is not a material one.

B) Illustrations, photographs, general literature and descriptions relating to the services and equipment are intended as a general guide only and the services and equipment will not necessarily correspond in all respects with the services and equipment shown or described in those illustrations, photographs or general literature.

## 4. DRAWINGS, SPECIFICATIONS AND PRINTS

Any technical drawings, prints or specifications supplied by the seller under or in connection with a quotation or contract shall remain the property of the seller. The buyer shall not copy them or pass them on without prior written consent of the seller and shall comply with the sellers reasonable requirements as to their use and return or otherwise.

## 5. PATENTS

The seller gives no warranty in respect of any actual or alleged infringement of the patents, registered design, design copyright, or any other industrial property right relating to the services and equipment.

## 6. DELIVERY

A) Delivery shall be effected when the services and equipment are delivered either direct to site or to the buyers premises. Delivery is affected when such services and equipment arrive at such premises. The place of and date for delivery are as agreed in writing between the buyer and seller.

B) The date for delivery is the sellers best estimate based on present information. The seller shall not be liable for any delays of delivery in any circumstances whatsoever, even if caused by the negligence of the seller, its servants, agents or employees, not for any loss, damage or expense which the buyer or clients may suffer by reason of such delay.

C) Claims for services and equipment received in damaged condition will only be considered if notified in writing to the seller within fourteen days of delivery date.

D) When deliveries are made directly to the site, the buyer warrants to the seller that the site will be readily accessible in normal working hours at the date and time agreed.

E) The seller reserves the right to charge for any delays or extraordinary charges incurred during the course of delivery to the buyers site or premises.

## 7. CANCELLATIONS

Orders or part orders cannot be cancelled without prior agreement and written consent of the seller. Any items or materials considered for a credit must be in new and unused condition and in the original packing. Credit for the returns will be subject to a minimum charge of 20%.

## 8. PROPERTY

A) Property of the services and equipment shall not pass to the buyer until the buyer has paid in cleared funds the whole of the price of the services and equipment and all other services agreed to be sold by the seller to the buyer for which payment is then due, in full, to the seller.

B) The buyer shall, hold the services and equipment as fiduciary agent and bailee of the seller, but the buyer shall be authorised to resell the services and equipment provided that he shall hold the proceeds of sale (or insurance monies if the services and equipment are damaged or lost) as trustee for the seller in a separate designated bank account.

C) At any time after the purchase price has become due and remains unpaid in the event of termination under sub-clause 14a or 14b, the buyer shall cease to have any interest in or right to possession of the services and equipment and the seller for the purpose of exercising its rights as unpaid seller and otherwise under this contract shall be entitled to enter any premises where the services and equipment are situated and to remove them at the buyers expense. The Sellers rights as aforesaid shall apply whether or not the services and equipment have been mixed.

D) The buyer shall keep the services and equipment identified as the sellers and separate from those of the buyers of third parties until property passes. However, in the event of the services and equipment having been mixed, the seller shall have the right to sell the product in which the services and equipment have been mixed to deduct from the proceeds of sale the purchase price and the cost of sale and any other monies due hereunder and shall account to the buyer for the remainder of the proceeds of sale if any.

## 9. RISK

Risk in the services and equipment shall pass on delivery in the case of services and equipment to be collected from the sellers premises, at the time when the seller notifies the buyer that services and equipment are ready for collection.

## 10. JURISDICTION

The law governing the contract shall be the law of England. Any disputes arising out of or in connection with the contract, shall be submitted to the jurisdiction of the English Courts, except that the seller may elect and be entitled to proceed in Scotland or Northern Ireland or any foreign jurisdiction whatever proceedings may lawfully be brought against the buyer.

## 11. NOTICES

Any notice may be served by either party of the other by leaving it at or sending it by post, fax, telex or E-mail to the address of that party contained in the order or quotation, or if none at the registered office of the seller and registered office or other place of business or buyer. Such notice shall be deemed to be

served when it would be received by either party in the normal course of transmission of post or otherwise.

## 12. FORCE MAJEURE

A) The seller shall not be liable if manufacture or delivery is prevented, hindered or delayed by reason of strikes, sit-ins, trade disputes lock-out or any actual or threatened industrial action or by difficulty in obtaining labour, plant, materials or bought-in components, or by breakdown of plant or machinery (including transport) or by the interruption of power supplies, or by fire or by legal action by a third party (whether or not the aforesaid are caused by negligence of seller, its servants or agents) or by reason of any circumstances outside the sellers control which shall include but not be limited to war, civil riot, intervention by Government and all other cases of force majeure.

B) If the manufacture or delivery of the full quantity due hereunder is prevented hindered or delayed by reason of any circumstances within clause A) then without prejudice to the contract description at its discretion between the buyer and other customers of the seller and to deliver the quantity so apportioned to the buyer and other customers of the seller and to delivery in full the price to be adjusted pro-rata or to withhold delivery, until such time as full quantity can and is delivered hereunder.

## 13. TERMINATION OF THE CONTRACT

A) The contract shall automatically terminate if the buyer (being an individual or, in the case of a firm, any member thereof) commits any act of bankruptcy or has a receiving order made against him or has any process of distress or execution levied upon his services and equipment or makes any arrangements with his creditors, before the property in the services and equipment has passed to the buyer hereunder.

B) If the buyer (being a limited company) has a Receiver or Administrator or other officer appointed of its assets or goes into liquidation whether compulsory or voluntary or ceases to carry on business or if the seller reasonably considers that any of the said events is about to occur before or after the property in the services and equipment has passed to the buyer, then the seller may terminate the contract forthwith by notice in writing.

C) Termination under the clause or under clause 16 hereof shall be without prejudice to the seller's right to recover all services and equipment and damages for any breach of contract by the buyer.

## 14. VARIATIONS, ACCELERATION, PHASING.

A) The seller agrees to carry out any reasonable variations, accelerations or phasing to the previously agreed specifications and drawings, which is requested by the buyer or his agent and accepted in writing by the seller. Such variations will be subject to a separate charge.

B) When specified or agreed materials are not readily available the seller in addition to its rights under Clause 3 shall be entitled to substitute other materials which it deems suitable without prior notice to the buyer.

## 15. TRADE NAMES AND TRADE MARKS

A) The buyer undertakes not to hold himself out in any circumstances or in any manner whatsoever as having authority to sell, service or maintain or deal with the services and equipment as agent or dealer or other authorised representative of the seller.

B) In particular and without prejudice to a) the buyer undertakes not to use or reproduce any

# COOLTECH BUILDING SERVICES LTD – TERMS & CONDITIONS

trade name or registered trade mark of the buyer of the services and equipment, premises, vehicles, letter headings and other stationary, sales literature or any way whatsoever and not to do or authorise to be done any other act to which section 6 (2) of the Trademark Act 1938 (or any statutory amendment of re-enactment thereof) applies.

C) The buyer's undertakings under this clause are conditions of this contract so that any breach thereof shall entitle the seller to terminate the contract and recover damages in respect of all loss, damage and expense occasioned thereby. The seller at its option shall be entitled to recover the profit made by the buyer during the period of the breach from sales, servicing, maintenance and other dealings with services and equipment manufactured by the seller.

D) Notwithstanding Clause 1b) of these conditions, no document purporting to authorise the buyer to do any act which would otherwise be a breach of the buyers undertakings under this clause or supporting to consent thereto on behalf of the seller, shall be binding on the seller unless it is a formal licence agreement bearing the seller's corporate seal.

## 16. PAYMENT

Please note that an initial deposit invoice may be issued on all work for contract and non-contract buyers.

A) Non-contract buyer, will be invoiced under the Terms of Payment and shall be due for payment on the date of the invoice unless otherwise agreed in writing.

Any sum due which is not paid in full by the due date, or the buyer is unable without justification to make the payment in full, the seller shall have the right to pursue legally recovery of full payment

The seller reserves the right to charge Interest at the rate of 12% above the Monthly Bank Base Rate, for each month or part thereof in Compound Interest Rate on all sums not paid by the due date. The buyer will be liable for a late payment fee of £50.00.

B) Contract buyer will be invoiced under the Terms of Payment and shall be 30 days from the date of the invoice unless otherwise agreed in writing between buyer and seller and must be strictly observed. If any sum due is not paid in full by the due date or if before such a date, or the buyer is unable or unwilling to make such a payment in full, then the seller shall have the right to terminate the contract forthwith.

Progress payment invoices will be issued for work with duration of more than five working days.

The seller reserves the right to charge Interest at the rate of 12% above the Monthly Bank Base Rate, for each month or part thereof in Compound Interest Rate on all sums not paid by the due date.

## 17. INDEMNITY

A) The buyer acknowledges that he has a requisite knowledge of the services and equipment and that he will do so without prejudice to the generality of the foregoing he will endure that all necessary warning notices are affixed to explanatory literature delivered with the services and equipment, whether they are used by or on behalf of the buyer, or in respect of any Third Party.

B) The buyer further acknowledges that he is not purchasing the services and equipment or otherwise acting in reliance of any

representation, warranty or advice of the seller.

C) The buyer shall indemnify the seller in respect of all damage or injury to any person or to any property and against all liability, actions, suits, claims, demands, costs, charges and expenses arising in connection therewith caused by any defect whatsoever in the services and equipment (or services and equipment into which the services and equipment are incorporated) including, without prejudice to the generality of the foregoing defective design, defective materials or defective workmanship, save to the extent that same is caused by an error or omission on the part of the seller.

D) It shall be a condition of this contract that the buyer shall take out and / or maintain insurance adequate to cover the liabilities mentioned in sub-clause C) above. Such insurance (if not in existence at the date of contracting) to be taken out within 7 days of the conclusion of this contract.

E) The buyer further undertakes as a condition of this contract to provide such documentary evidence as is reasonably required by the seller in order to satisfy himself as to the existence and adequacy of the Insurance under the Terms of Sub-clause D) above. The buyer shall provide such documentary evidence as is referred to in this sub-clause within 14 days of the seller's requirement being communicated to him.

F) Should the buyer make default in insuring or continuing to insure, provided in sub-Clause D) above, or in failing to provide such documentary evidence as is required under sub-clause E) and if the seller elects not to determine the contract for default, the seller may himself insure against any risk with respect to which the default shall have occurred and may deduct a sum or sums equivalent to the amount paid or payable in respect of premiums from any monies due or to become due to the buyer or may reclaim such sum or sums as monies due and owing.

## 18. WAIVER

No failure by the buyer or seller to enforce these Terms & Conditions shall constitute a waiver of its rights there under.

## 19 WARRANTY

A) The seller warrants to the original buyer in respect of services and equipment supplied by the seller, that as from the date of supply will for a period of 12 months from the date of invoice, the seller will free of charge, replace or repair any part or parts, thereof proved to its satisfaction to be defective owing to faults in workmanship or materials. The warranty will be extended for equipment parts only subject to the statement above, and applying only to residential, light commercial direct expansion equipment and / or VRV and VRF systems only. For this equipment only the warranty will be extended for an additional period of 24 months, covering parts only, but which is subject to an annual service agreement being in place with the seller from the period of 60 days from the installation completion date, which remains with the seller unbroken for the entire 36 month warranty period.

B) In the event of any services, parts or materials not provided by the seller, which are required to operate the equipment provided by the seller, the warranty period will start from the original date of installation. Any equipment being returned to the seller under the above warranty, must be accompanied by completed warranty documentation, particulars of the

original order number, seller's invoice number and the serial number of each item or any part thereof, and proof of planned preventative servicing of the equipment.

C) The seller reserves the right to supply and charge for services and equipment pending the outcome of any investigations into the validity of a warranty claim.

D) The seller reserves the right to supply without notice replacement parts, which may differ in specification, dimension, design or otherwise from the services and equipment originally supplied of the exact services and equipment supplied are not available or to offer a replacement part which has been re-manufactured to the original specification.

E) Warranties shall not apply to:

1. Any defect, which in the opinion of the seller arises for reason of misuse, misapplication neglect or accident of fair wear and tear.

2. Any defect, not notified to the seller, its subsidiary companies or by the buyer in writing within 7 days of it becoming apparent to, or when it should have come to the seller's notice or reported to his office.

3. Any services and equipment, which shall in the opinion of the seller have been improperly applied, installed, serviced, repaired or altered to in or to which any part not manufactured by the seller has been fitted.

4. Any services and equipment installed outside of Great Britain, Isle of Man, Northern Ireland < Eire and the Channel Islands.

5. Any defect arising from a matter specified by the buyer or alteration or adaption not specified by the seller.

6. Services and equipment, which have not been paid for in full.

7. Services and equipment or parts thereof not manufactured by the seller (in respect of which the buyer shall only be entitled to such warranty as given to the seller in respect thereof).

F) Subjects as contained in this agreement all express or implied warranties or conditions statutory or otherwise as to quality or fitness for purpose of the services and equipment are hereby expressly excluded to the full extent permissible by law.

G) Except in respect of death or personal injury caused by the seller's negligence, the seller shall not be liable to the buyer by reason for any representation, warranty, condition or other term, or any duty at common law or contract, for consequential loss or damage (whether for loss or profit or otherwise) costs, expenses or other claims for consequential compensation whatsoever (and whether caused by the negligence of the seller, its employees or agents or otherwise) which arise in connection with the supply of services and equipment of their re-sale by the buyer.