

THIS AGREEMENT sets forth the terms and conditions under which Cool Designs Ltd (“CDL”) and Customer agree that Customer may shall have the right to purchase Goods and Services supplied by CDL as maybe specifically described in one or more separate

1. DEFINITIONS

In these Terms of Sale the following meanings shall apply:

“Agreement” means these terms and conditions of this document and shall include any special terms included within quotations, specifications and drawings, agreed in writing and signed by the authorised signatory for CDL.

“Associated Company” means the Parent company and subsidiaries of such Parent Company of either Customer or CDL as such terms are defined in Section 1162 and Schedule 7 of the Companies Act 2006. “Authorised signatory for CDL” means a manager employed by CDL who has the Managing Director’s authority to bind CDL.

“Commissioning” shall mean that once the product has been installed, CDL shall, if contracted to do so, attend the site or sub-contract to approved commissioning engineer to attend site to start up the product and provide the services defined in section 8

“Confidential Information” shall mean Information, knowledge, technical or non-technical data, formulas, patterns, compilations, prototypes, models, sample products, equipment, patent applications, concepts, ideas, and other intellectual property, programs, software, devices, methods, techniques, drawings, processes, financial data, financial plans, product or service plans or lists of actual or potential customers or suppliers disclosed by a disclosing party to a receiving party whether in written or other tangible form

“Consumer” means a person acting for purposes outside their trade, business or profession or as may otherwise be defined under section 25 of the Unfair Contract Terms Act 1977 and/or the Unfair Terms in Consumer Contracts Regulations 1999, and for the purposes of this agreement shall not include any end user or other purchaser under a resale of the Goods and Services by the Customer.

“Contractual Sum” means the price quoted by CDL within the Quotation or such other sum as may have been confirmed in writing by an authorised signatory for CDL

“Customer” means the person named above and includes their employees or agents seeking to purchase Goods and/or Services from CDL under the terms of this Agreement.

“Force Majeure event” shall mean an event that results from causes beyond the reasonable control of the party who is unable to fulfil the terms of the agreement provided that such event occurred without the assenter’s fault or negligence and shall include but is not limited to acts of God, strikes, lockouts, riots, acts of war, epidemics, communication line failures, and power failures, import or export regulations or embargoes, difficulties in obtaining fuel, power failure. Inability or failure to pay shall not be considered a Force Majeure event. “Goods” means the goods described in the Quotation, purchase order or other schedule which CDL have agreed in writing to supply to Customer.

“Insolvent” means Customer becoming unable to pay Customer debts within the meanings of Section 123 (Company) or Section 268 (Individual) of the Insolvency Act 1986 or Customer ceasing to pay their debts in the ordinary course of business or being unable to pay their debts as they become due or Customer ceasing or threatening to cease to carry on their business.

“Normal Working Hours” means 8.30 am to 5.30 pm Monday to Friday excluding weekends, public, bank and statutory holidays for the United Kingdom

“Order” means the Customer’s purchase order or other document sent by Customer confirming that Customer wishes to order the goods and/or services detailed within the Quotation. Customer understands and agrees that the terms and conditions detailed on any Customer’s Order shall be invalid unless expressly accepted and agreed in writing and counter-signed by an authorised signatory for CDL.

“Quotation” means the written quotation, proposal or tender signed by an authorized employee of CDL and shall detail the Goods and/or Services to be provided for the Contractual Sum stipulated. All such Quotations are invitations to treat and shall be confirmed by Orders from Customer within 60 days of the Quotation date. In the event that there is no confirmation by way of an order, the Quotation shall be considered to have expired after 60 days unless an alternative expiry date is stated on the Quotation.

“Services” means the work described in the Quotations or Tenders or other Schedule which CDL have agreed in writing to supply to Customer

“CDL” means Cool Designs Limited and its internal divisions and Trading Names or Business Names.

2. THE CONTRACT

2.1 All orders for Goods are accepted by CDL only under these ‘Terms and Conditions for Sale and Services’ which may not be altered except with the written and signed agreement of an authorised signatory for CDL. Any contrary or additional terms are excluded unless so agreed in writing and counter-signed by an authorised signatory for CDL.

2.2 Quotations must be accepted in writing and is valid for a period of 60 days (unless another period is specified) after which period it may be withdrawn at the sole option of CDL.

2.3 Any typographical, clerical or other error or omission in any sales literature, quotation, tender, price list, acceptance of offer, invoice or other document or information issued by CDL shall be subject to correction without liability on CDL’s part.

2.4 CDL shall not be liable for any representation made by CDL employees or agents to Customer as to the condition of the Goods, their fitness for any purpose or as to quantity measurements, drawings or specification unless such representation is made and confirmed in writing by an authorised signatory for CDL.

2.5 CDL brochures and other literature are for Customer guidance only and shall not constitute representations by CDL. If Customer requires advice in relation to the Goods, a specific request for advice should be made in writing and only any advice given in writing and signed by an authorised signatory for CDL shall amount to a representation for which CDL or the manufacture represented may be responsible.

2.6 CDL may make changes to the specification of the Goods necessary to conform to any applicable statutory or EC requirements or to improve the design. CDL reserves the right to alter the specifications of any Goods ordered by Customer if the altered specifications do not materially affect the quality or performance of the Goods ordered by Customer.

2.7 Once an Order has been placed, it may not be cancelled by Customer unless CDL agrees in writing to such cancellation and Customer agrees to any cancellation charges and/or any other conditions required by CDL or manufacturers represented

2.8 Customer understands and agrees that once Goods are delivered, the price of any Goods (used or unused) shall not be refundable nor will the Goods be accepted for return to CDL without prior written agreement and subject to restocking charges

2.9 Unless otherwise agreed by the parties in writing, the Customer shall at its own expense supply CDL with all necessary Documents or other materials, and all necessary data or other information relating to the Services, within sufficient time to enable CDL to provide the Services in accordance with the Contract.

2.10 The Customer shall afford to CDL all reasonable cooperation in all matters relating to the performance of CDL's obligations under the Contract. In particular but without limitation to the foregoing, the Customer shall: (i) promptly and fully respond to all communications of CDL relating to the provision of the Services and to liaise with CDL on matters relevant to the provision of the Services; (ii) conduct its affairs at all times in a proper and reputable manner observing all legal requirements in relation to its business; (iii) provide proper and clear instructions to CDL in respect of its requirements in relation to the Services, any Additional Services or in connection with the Contract; (iv) pay Charges promptly when due and if not paid on the due date shall pay such applicable default interest at the specified rate from time to time in force.

2.11 Throughout the Term of the Contract the Customer shall afford CDL such access to the Customer's information or records and other materials relevant to the Services as well as to any utilities services that CDL may require in connection with or to provide the Services and the Customer shall assume responsibility for complying with all laws and regulations in connection with the Services. CDL does not warrant, guarantee or undertake on behalf of any third party supplier or COL that access to any facilities or any products or services will be uninterrupted nor does CDL guarantee any particular level of availability or quality.

2.12 The property, copyright and any other intellectual property rights in the Customer's Confidential Information shall either belong to the Customer or that Customer has the right to provide the information to CDL. The property, copyright and any other intellectual property rights in any CDL

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Information shall belong to CDL, subject only to the right of the Customer to use the CDL Confidential Information for the purposes envisaged in the contract during the term specified in the contract. The Customer warrants that the Customer's Confidential Information and its use by CDL for the purpose of providing the Services will not infringe the copyright or other rights of any third party and the Customer shall indemnify CDL against any loss, damages, costs, expenses or other claims arising from any such infringement.

3. PRICE

3.1 The price of the Goods shall be as stated on the Quotation and is exclusive of VAT. Any discounts deductions or rebates may only apply if agreed in writing and provided that the price is fully paid by the due date.

3.2 Prices stated or quoted are applicable to the quantity specification, site details, delivery dates and information provided by Customer. CDL reserves the right to adjust the price if the order placed is varied or delay is caused by Customer instructions or lack of Customer instructions.

4. PAYMENT

4.1 The price shall be invoiced on or before delivery of Goods or upon provision of a discrete portion of the agreed goods and/or services or as defined more specifically on the Quotation. All invoices are due and payable without deduction, retention, set-off or claim within 60 days following the month end of date of invoice unless CDL has specifically agreed otherwise in writing.

4.2 Interest on late payments shall be payable by Customer in accordance with the Late Payment of Commercial Debts Act 1998 (i.e. at an annual rate not exceeding 8% per cent above the Bank of England Official Dealing Rate in force from time to time) from the due date until date of payment and accrued on a daily basis until the full debt has been settled.

4.2 Credit may be granted at CDL's sole discretion and may be reviewed at any time. CDL reserves the right to withdraw a Quotation or to refuse to execute any order or contract if the arrangements for payment or Customer's credit-rating are not satisfactory to CDL.

4.3 Customer may not withhold payment of any invoice or other amount due to CDL by reason of any right of set off or counterclaim which Customer may have or allege to have for any reason.

4.4 All spare parts and replacements or any warranty repairs shall be subject to these terms and shall become part of the Equipment. Any parts and components removed by CDL under the warranty shall become the property of CDL. In all cases, CDL administers the warranty on behalf of the manufacturer and shall act in accordance with the manufacturers terms and conditions of warranty.

4.5 The Customer shall be liable for costs incurred as a result of the Customer's instructions or lack of instructions, the inaccuracy of any Customer material or any other cause attributable to the Customer.

4.6 CDL shall be entitled to vary its standard charges from time to time by giving not less 30 days written notice to Customer unless a fixed price is agreed for a specified term.

4.7 Unless specifically stated in writing, the Contractual Sum does not include any of the following and, if undertaken to supply, additional charges will be made at the rates applicable at that time:

- (a) Day works or works performed outside normal UK working hours and on Saturdays and Sundays or during Bank Holidays;
- (b) The services of one or more engineers;
- (c) Fees of competent authorities incurred in performing the Services;
- (d) Demonstrations or training on how to Use the Equipment;
- (e) Travel, accommodation, disbursements or other expenses that are not included in the Quotation or if incurred in excess of the charges anticipated in the Quotation;
- (f) Any changes or upgrade required by the Institute of Electrical Engineers regulations; and/or
- (g) Fulfilling any of Customer obligations under these term or any additional services provided including but not limited to those under Clause 6.4.8.

4.8 After the date of the Quotation the Contractual Sum may be adjusted:

- (i) If there is delay caused by Customer instructions or lack of instructions or Customer failure to fulfil Customer obligations under this Contract;
- (ii) Based on the indices published by the British Electrotechnical and Allied Manufacturers Association in respect of labour and materials;
- (iii) if there is any change in government taxes, or charges by any Statutory Authority, changes in British Standards, Codes of Practice or applicable statutory or EC requirements or changes in wages and conditions in the industry;
- (iv) If there is any change in the Equipment, run times, or the premises which affect the Services; and/or

(v) if Customer requests and CDL agrees to assign, novate or warrant the benefit of the Contract or if the period of warranty is increased to beyond 12 months of date of delivery

5. DELIVERY

5.1 Delivery shall occur when the Goods arrive at the delivery address within the United Kingdom provided by the Customer and if no address is provided, Delivery shall be deemed to have occurred at the end of the second working day after delivery or collection is offered whether such offer is made verbally or in writing to Customer.

5.2 If Customer specifies that Delivery shall be made to a site not belonging to or not occupied by Customer, then delivery to Customer shall be deemed to have taken place upon delivery by CDL to the site stated on the Quotation or detailed on the Order or on any other verbal or written communication sent by Customer.

5.3 If Customer fails to take delivery or make arrangements to accept delivery or collect the Goods or if CDL are unable to deliver because of inadequate access or instructions or inadequate site surface conditions or inadequate unloading conditions. Delivery shall be deemed to have taken place in accordance with the provisions of Section 5.1 above and CDL shall charge a minimum rate of £50 for each day of delayed delivery. This charge could be increased to cover additional charges for failed delivery and/or storage charges at Customer's risk and cost and/or any insurance charges

In addition to the charges levied as detailed above, CDL shall be entitled to the rights and remedies detailed below:

- invoice Customer for the Goods from the initial agreed delivery date and/or
- terminate this contract without liability on CDL's part and/or
- recover from Customer all costs and losses incurred by COD

5.4 Delivery dates are given in good faith but are estimates only. Time for delivery shall not be of the essence. Customer shall make suitable arrangements for delivery to be acknowledged in writing at the site.

5.5 Time estimates will be revised on receipt of the Customer order and any time estimate will not run until CDL are in receipt of all information required from Customer including any Customer written approvals requested by CDL or compliance with any credit conditions imposed on Customer in relation to the order.

5.6 CDL shall not be liable for any damages whatsoever whether direct or indirect (including for the avoidance of doubt any liability to any third party) resulting from any delay by CDL or its agents in delivery of the Goods or Services, or failure to deliver the Goods or Services within a reasonable time whether such delay or failure is caused by CDL's negligence or otherwise. Any such requirement for payment of damages for delay in delivery or completion shall only apply if specifically agreed in writing by an Authorised signatory for CDL.

5.7 CDL reserves the right to make delivery by instalments and upon each such delivery CDL shall invoice Customer separately for the quantity of Goods actually delivered. Any claim which Customer may have in respect of any individual instalment shall not affect Customer's liability to pay in respect of any other instalment(s).

5.8 Customer shall indemnify CDL in respect of all losses damages costs and expenses incurred as a result of delivery or performance of services in accordance with Customer instructions. This indemnity will be reduced in proportion to the extent that such losses, damages, costs or expenses are due to CDL's negligence.

6. INSPECTION

6.1 Customer shall inspect the Goods at the place and time of unloading but nothing in these Terms shall require Customer to break packaging and/or unpack Goods which are intended to be stored before use.

6.2 Customer shall notify CDL of any loss damage or short delivery by telephone immediately upon receipt of the delivery and shall endorse details on the delivery note. Thereafter Customer shall, within 3 working days of delivery confirm the loss damage or short delivery in writing to CDL. In the event that Customer fails to follow the procedure above, Customer shall be deemed to have received full delivery of undamaged Goods and shall be deemed to have waived any right to reject the Goods.

6.3 CDL shall only be liable for any breach of any terms agreed in writing and Customer's remedies shall be subject to the terms of Clauses 9 and 11

7. TITLE AND RISK

7.1 Risk in the Goods shall pass to Customer upon delivery by CDL to the site address within the United Kingdom specified by Customer.

7.2 The title to the Goods shall remain with CDL until CDL has received in full (in cash or cleared funds):- (i) the full price of the Goods and/or Services and (ii) all other sums which are or which become due to CDL from the Customer on any account. CDL reserves the right to hold a lien in respect of the goods in relation to any other payments due to CDL by Customer whether in respect of the specific Order against which the Goods and/or Services were delivered or any other Order made by Customer subject to the terms below. Until title passes to Customer:-

7.2.1 Customer shall hold the Goods as CDL's fiduciary agent and bailee;

7.2.2 the Goods shall be stored, at no extra cost to CDL, separately from any other goods of the Customer or any third party, in such a way that they remain readily identifiable as CDL's property and Customer shall not interfere with any identification marks labels batch numbers or serial numbers on the Goods;

7.2.3 CDL may agree that Customer may use or agree to sell the Goods as principal and not as CDL's agents in the ordinary course of Customer's business. If such agreement is made this shall be in writing and shall be subject to one or more of the following express conditions:

- (i) Customer shall pay CDL the full Contractual Sum prior to Customer delivering or passing any title to the goods to any prospective purchaser;
- (ii) that Customer shall notify their purchaser that CDL remains the legal owner of the Goods until CDL receives full payment of the Contractual Sum and CDL reserve the right to label the Goods accordingly; and/or
- (iii) that Customer will at CDL's request and at Customer's expense assign to CDL all rights Customer may have against their purchaser;

7.2.4 if Goods are to become affixed to any land or building Customer must ensure that they are capable of removal without material injury to the land or building or damage to the Goods and Customer shall take all necessary steps to prevent title to the Goods from passing to the owner or landlord of such land or building until payment in full has been made to CDL; and

7.2.5 the Goods shall be maintained in satisfactory condition and be insured on CDL's behalf (and at the Customer's cost) for their full price against all risks to the reasonable satisfaction of CDL and, upon request, the Customer shall produce the policy of insurance to CDL.

7.3 The Customer's right to possession of the Goods shall terminate immediately if:

7.3.1 the Customer has a bankruptcy or an insolvency order made against Customer or makes an arrangement or composition with customer's creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Customer or notice of intention to appoint an administrator is given by the Customer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up of the Customer or for the granting of an administration order in respect of the Customer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Customer; or

7.3.2 the Customer suffers or allows any execution, whether legal or equitable, to be levied on Customer's property or obtained against Customer, or fails to observe or perform any of Customer's obligations under the Agreement or any other contract between CDL and Customer, or is insolvent or the Customer ceases to trade; or

7.3.3 the Customer encumbers or in any way charges any of the Goods.

7.4 CDL shall be entitled at any time to recover any or all of the Goods to which CDL have title and for that purpose CDL employees or agents may with such transport as is necessary enter upon any premises occupied by Customer or to which Customer has access and where the Goods may be or are believed to be situated.

7.5 CDL shall be entitled to recover payment for the Goods notwithstanding that title to any of the Goods has not passed from CDL.

7.6 Where CDL is unable to determine whether any Goods are the goods in respect of which the Customer's right to possession has terminated, the Customer shall be deemed to have sold all goods of the kind sold by CDL to the Customer in the order in which they were invoiced to the Customer.

7.7 On termination of the Agreement, howsoever caused, CDL's (but not the Customer's) rights contained in this Clause 7 shall remain in effect.

8. COMMISSIONING

8.1 CDL obligations on commissioning only includes physical inspection of the product, inspection of external services or connections, supervision of start-up and testing in accordance with the manufacturer's requirements. Note this is a paid service and does not form part of any agreement unless previously agreed in writing

8.2 CDL agreement to commission the Goods is subject to Customer ensuring that:

- (a) suitable buildings, foundations, scaffolding and lifting tackle are provided to enable commissioning to take place;
- (b) the site, the Goods and other services including sufficient labour and equipment are ready at the agreed time for commissioning and all preparatory work is completed including masonry brickwork, carpentry, plumbing and wiring and the supply of any other materials necessary not
- (c) continuous and suitable access to the site is available at all times necessary to complete commissioning;
- (d) the programme of works allows for commissioning to be completed within Normal Working Hours;
- (e) CDL commissioning will not be delayed or interrupted;
- (f) the Goods are correctly fitted to the required utilities including but not limited to water and electricity;
- (g) suitable lighting heating and power supplies are provided;
- (h) a safe and appropriate working environment is provided in accordance with the British Standard Code of Practice for safe working in occupied and unoccupied parts of the site for CDL employees and agents;
- (i) the Goods are subject to a suitable and sustainable duty load of greater than 40 per cent design duty;
- (j) Customer fills the pre-commissioning checklist at least 15 working days prior to CDL or its representatives attending the site for commissioning.

8.3 If any of the above conditions is not met CDL shall be entitled (without prejudice to any other right or remedy CDL may have) to:

- (a) suspend CDL obligations to commission the Goods without liability on CDL's part and if the conditions are not met within 6 months cancel CDL's obligation to commission the Goods and recover from Customer all losses and costs incurred including any claims by any Third Party or
- (b) charge Customer for additional costs incurred in completing the commissioning including but not limited to travel costs, storage and re-delivery charges and additional and/or overtime rates for labour.

8.4 Customer shall not be entitled to raise any issue with regard to delay in commissioning unless they have satisfied the criteria set out within sections 8 and section 9 below.

9. CUSTOMER OBLIGATIONS

9.1 Unless otherwise stated in the Schedules or agreed otherwise in writing the provision of the Services is subject to Customer ensuring:

- (a) all reasonable co-operation in all matters relating to the performance of CDL's obligations under the Contract;
- (b) prompt and full response to all communications of CDL relating to the provision of the Services and to liaise with CDL on matters relevant to the provision of the Services;
- (c) conduct at all times in a proper and reputable manner observing all legal requirements in relation to its business;
- (d) proper and clear instructions to CDL in respect of its requirements in relation to the Services or in connection with the Contract;
- (e) payment of Charges promptly when due and if not paid on the due date shall pay such applicable default interest at the specified rate from time to time in force;
- (f) suitable building, foundations, scaffolding and lifting tackle are provided to enable the Services to be performed and all pre-requisites completed by Contractor to enable CDL to proceed with works;

- (g) all preparatory work is completed including demolition building carpentry plumbing wiring or other works and the supply of any other necessary materials not supplied by CDL;
- (h) compliance with all regulations and for obtaining all permissions necessary to enable CDL to perform the Services including but not limited to those relating to providing access road closures;
- (i) the Site, the Equipment (unless supplied by CDL) and other services including sufficient labour (other than that of CDL representatives) are ready at the time agreed for the performance of the Services;
- (j) full continuous and safe access to the Site and the Equipment at all times necessary to enable the Services to be performed;
- (k) the Equipment is correctly fitted to the required utilities of satisfactory standard including water gas and electricity;
- (l) the availability of suitable lighting, heating and power supplies necessary to perform the Services and run the Equipment while performing the Services;
- (m) the Services can be performed during Normal Working Hours or as otherwise specifically defined in writing within the quotation;
- (n) the safety of the CDL representatives on the Site including but not limited to compliance with the Health and Safety at Work etc. Acts in force at the time and ensuring a safe working environment and safe access to the location and the Equipment; and
- (o) adequate insurance against fire theft vandalism of the Equipment and the value of any work completed or partially completed and in the event of loss or damage CDL shall be entitled to invoice immediately for the Services rendered and the Equipment delivered. Any insurance proceeds

9.2 If the Services include Maintenance and/or Monitoring Services, then in addition to the Customer obligations under Clause 9.1 above Customer shall:

- (a) ensure that the Equipment is in a reasonable operating condition at the start of the Contract;
- (b) at all times keep and operate the Equipment in the environmental conditions recommended by the manufacturer of the Equipment;
- (c) use the Equipment only in accordance with such instructions and recommendations relating to the care and operation of the Equipment as may be issued by the manufacturer of the Equipment or as may from time to time be advised in writing by CDL;
- (d) not allow any person other than CDL representative to adjust, maintain, repair, replace or remove any part of the Equipment;
- (e) not move the Equipment from the location without CDL prior written consent; and
- (f) provide CDL with such information concerning the Equipment, its application, use, location and environment as CDL may reasonably request to enable CDL to carry out its duties.
- (g) comply with all applicable statutory or EC requirements, British Standards and Codes of Practice.

9.3 If Customer fails to fulfil all or any of Customer obligations as set out above CDL may (without prejudice to any other right or remedy it has):

- (a) suspend its obligations to perform the Services without liability on its part and if the conditions are not met after 5 working days' notice, cancel its obligation to perform the Services and recover from Customer all losses and costs (including loss of profits and any special, indirect or consequential loss) incurred including any claims by any Third Party; or
- (b) charge Customer for additional costs incurred in performing the Services including but not limited to additional travel costs and overtime rates for labour.

9.4 Customer will fully indemnify CDL against all losses damages penalties costs on an indemnity basis and expenses awarded against or incurred by CDL in connection with or paid or agreed to be paid by CDL resulting from Customer's breach or non-compliance with or non-performance of Customer obligations under this agreement. This indemnity will be reduced in proportion to the extent that such losses damages penalties costs and expenses are due to CDL's negligence.

10. SERVICES NOT INCLUDED

10.1 Maintenance Services do not apply to any design or other defect in the Equipment, or any defect or malfunction which is due to faulty materials or workmanship in manufacture (unless the Equipment was manufactured by CDL), or which in CDL's opinion has arisen as a result of:

- (a) other equipment or services connected to the Equipment including but not limited to gas, water or electricity supplies;
- (b) failure to supply an adequate water supply to the Equipment including, if necessary, removing and/or cleaning deposits caused by hard water;
- (c) any error or omission relating to the operation of the Equipment or operating the Equipment in a manner or at a time against CDL's advice or without seeking consent;
- (d) the subjection of the Equipment to unusual physical or electrical stress, the neglect or misuse of the Equipment or any failure or fluctuations of water supply, electrical power, air conditioning, humidity control or other environmental controls;
- (e) operating the Equipment outside its design capability which includes but is not limited to weather conditions;
- (f) any modification, adjustment or repair to the Equipment made by a third party without CDL written consent;
- (g) transportation or relocation of the Equipment not performed by CDL or on its behalf; and/or
- (h) any other cause including but not limited to atmospheric corrosion which is not due to CDL's neglect or default.
- (i) fair wear and tear of the equipment or running equipment beyond its economic life.

10.2 If on investigation CDL reasonably determines that any defect in or malfunction of the Equipment is the result of Customer failure to comply with any of Customer obligations within this Agreement, Customer shall be liable for all costs incurred by CDL in investigating the same and determining its cause, as if that work formed part of the Services.

10.3 The Services do not include:

- (a) repair, resetting or replacing parts caused by power failure, prevailing weather conditions or theft; or
- (b) replacement or repair of non-moving parts including but not limited to ductwork, lagging, pipework, boiler refractory materials, shells and tubes, evaporators, heater batteries and electrical wiring unless specified in the Schedules or otherwise agreed in writing.
- (c) any off-loading and/or crainage unless specifically included and priced.

10.4 If the Services include Maintenance Services and any part of the Equipment can no longer be maintained in good working order by the provision of replacement spare parts or the whole of the Equipment is damaged beyond economic repair otherwise than through CDL's fault (as to whether either of which events has occurred CDL's decision shall be final and binding), CDL reserve the right to terminate the Contract of its manufacturer forthwith, by giving Customer written notice in respect of the whole or any part of the Equipment which can no longer be maintained. In this case CDL shall repay to Customer a fair proportion of any charges for the Services which have been paid in advance.

11. WARRANTY AND LIMITATION OF LIABILITY

11.1 CDL warrants that the Goods detailed under the Quotation shall comply with CDL's Warranty Policy or that of the manufacturer in question. Full details of CDL's Warranty Policy are provided upon quotation and if not provided shall be available to Customer upon request. CDL makes no other warranties, conditions or representations, written, oral, express or implied, in fact or in law, including without limitation any implied warranties, conditions or representations of design, satisfactory quality, fitness for any specific or general purpose, title or non-infringement, all of which are, to the extent permissible by law, hereby expressly excluded and disclaimed.

11.2 Customer shall notify CDL in writing of any defect or damage or loss within three (3) working days after delivery of Goods or of non-conformance of any services or within three (3) working days of performance of such Services. Provided that CDL has received notice of such defect or non-conformance as required above, and provided that CDL accepts that such damage or loss is due solely to a breach by CDL, CDL may, at its sole discretion provide to Customer one of the following remedies, namely:-

(a) repair the goods at CDL's sole expense; or

(b) supply replacement Goods or re-commission the Goods at no additional charge to Customer (and if so any Goods or components so replaced shall be returned to CDL and become CDL property); or

(c) refund a discrete portion of any monies paid relating to those Goods (or parts of such Goods) that are non-conforming or defective or in the case of commissioning or services to re-perform or correct any non-conforming Services to the extent due solely to errors on the part of CDL, as per the manufacturers terms and conditions of warranty

11.3 CDL shall not be under any liability for damages whatsoever except in the proportion and to the extent that such damages have resulted solely from CDL's breach of contract or negligence. CDL's total liability to Customer (whether such liability arises from breach of warranty, breach of contract, liability in tort including negligence or otherwise) shall be limited to direct damages that are caused as a result of CDL's acts or omission and shall be as detailed above and in no event shall the total cost of any remedy or payment or monetary damages exceed the amount of the Contractual Sum payable by Customer for the discrete portion of the Goods and/or the Services that are non-conforming or defective.

11.4 CDL shall not, in any event, be liable for any incidental, indirect special, punitive or consequential losses or damages for any loss of profit, loss of revenue, loss of business or goodwill, data or data use, loss of reputation or loss of anticipated savings or the like, whether in an action for contract or tort or other legal theory whether or not CDL has been advised of the possibility of such losses and/or damages

11.5 Nothing in these Terms and Conditions shall exclude or restrict CDL's liability for death or personal injury resulting from CDL's negligence or to limit CDL's liability for fraudulent misrepresentation.

11.6 Save where the Customer is a Consumer, the provisions of sections 13, 14 and 15 of the Sale of Goods Act 1979 (including any amendment or re-enactment thereof) and those consumer protection rights under the Supply of Goods and Services Act 1982, Sale and Supply of Goods Act 1994, the Sale and Supply of Goods to Consumer Regulations 2002, the Unfair Contracts terms Act 1977 and the Unfair Terms in Consumer Contracts Regulations 1999 shall not apply to this Agreement and any terms and/or conditions otherwise implied by those Acts to protect consumers shall not be incorporated in this Agreement by virtue of the fact that the parties are dealing as commercial enterprises acting within the ordinary course of their businesses. For the avoidance of doubt, the statutory rights of any Consumer, being an unincorporated body or person and not acting in the course of his/her trade or business shall not be affected by this Clause.

11.7 The limitations, exclusions and disclaimers set forth in this section 9 will not apply only if and to the extent that a court of competent jurisdiction requires liability under applicable law beyond and despite these limitations, exclusions and disclaimers.

11.8 Any proposal or other documentation including any drawing, design, measurement or specification provided by way of tender shall not be binding unless such terms are specifically incorporated within a written and contract executed by an authorised signatory for CDL.

11.9 CDL will not be liable under Clause 11.8 if any material information has been withheld concealed or misrepresented by Customer.

11.10 Customer will unconditionally fully and effectively indemnify CDL against all losses, damages, penalties and costs on an indemnity basis and expenses awarded against or incurred by CDL in connection with or paid or agreed to be paid by CDL in settlement of any claim by any third party arising from the supply or use of the Goods which has been sold or assigned by Customer to any such third party. This indemnity will be reduced in proportion, and subject to the liability limitations set out within Clause 11 to the extent that such losses, damages, penalties, costs and expenses are due wholly and solely to CDL's negligence.

11.11 Customer agrees to indemnify and keep CDL fully indemnified from and against any loss, claim or liability whatsoever incurred or suffered by CDL as a result of negligence or any default by the Customer (or its employees, agents or representatives) of its obligations however arising in connection with the provision of Goods and or Services, together with expense, claim, loss or damage which CDL or any of its employees, agents, sub-contractors and other clients) may suffer due to the negligence or breach of the Customer (or its employees, agents or subcontractors).

11.13 CDL will not be liable for any claim for delay damages or other claim for losses due to not meeting

any timelines for delivery or performance by CDL unless such liability has been agreed with suitable monetary caps and the agreement has been signed by an authorised signatory for CDL. Notwithstanding such agreement, CDL will bear no liability if the delay is attributable, in part or whole, to any of Customer's or any third

party's acts or omission.

11.14 Each party will be excused from performance for any period during which, and to the extent that, it or its subcontractor(s) is prevented from performing any obligation or service, in whole or in part, as a result of a Force Majeure event. If CDL are relieved of their obligations under a Force Majeure event for a continuous period in excess of 3 months, either Customer or CDL may terminate this contract by providing the other party with not less than 10 working days prior written notice. Upon such termination, Customer shall pay to CDL, taking account of any prepayments made by Customer, a fair proportion of the Contractual Sum allocated to the supply of goods and/or services performed up to the date of expiry of the notice as well as any and all costs and expenses CDL may have incurred directly or indirectly relating to the contract.

11.16 SAFETY INFORMATION ABOUT THE USE OF THE GOODS IS PROVIDED AND IT IS CUSTOMER'S RESPONSIBILITY TO ENSURE COMPLIANCE WITH SUCH INFORMATION AND/OR ANY STATUTORY REGULATIONS AND INDUSTRY GOOD PRACTICE. CUSTOMER SHOULD ALSO ENSURE THAT THE SAFETY INFORMATION IS BROUGHT TO THE ATTENTION OF THE USER OF THE GOODS. CDL SHALL NOT BE RESPONSIBLE FOR ANY BREACH BY CUSTOMER OR THE USER OF SUCH SAFETY INFORMATION OR REGULATIONS.

12 EXPORT CONTROLS

12.1 Customer understands and agrees that CDL is subject to applicable export controls and regulations promulgated from time to time by the United Kingdom, the European Union, the Government of the United States of America and other governments Customer will not do or omit to do anything that would place CDL or any subsidiary, holding or an Associated Company of CDL in breach of the said laws. Such export controls may include debarment to sell to certain denied parties within the United Kingdom. Customer shall obtain all necessary licences authorisations and consents for the export or import of the Goods. Customer agrees to provide any necessary information and support to enable CDL to comply with such controls and regulations. CDL shall not be deemed to be in breach or default of this Agreement because of compliance with any such export control laws or regulations to which it is or may become subject

12.2 In the event that Customer wishes the Goods to be shipped to a country outside the United Kingdom, and there are no bars to export under clause 12.1 above, Customer shall undertake all shipment costs and arrangements and shall undertake to meet any export and/or import certification or other requirements.

13 ANTI BRIBERY PROVISIONS

13.1 CDL represents, covenants and warrants to and with Customer that CDL has not obtained this order as a result of any bribery or kick-back or other gratuity with a view toward securing any business from Customer and will indemnify and hold harmless Customer from any violation of the UK Bribery Act, any European Union directive or regulation and/or the United States Anti-Kickback Act of 1986 or any subsequent re-enactment of such legislation or directives

13.2 By placing the order with CDL, Customer represents, covenants and warrants to and with CDL that Customer has not obtained this order nor placed it with CDL as a result of any bribery or kick-back or other gratuity with a view toward securing any business in relation to the orders placed with CDL and will indemnify and hold harmless CDL from any violation of the UK Bribery Act, any European Union directive or regulation and/or the United States Anti-Kickback Act of 1986 or any subsequent re-enactment of such legislation or directives

14. DEFAULT & TERMINATION

14.1 If Customer fails to pay any invoice or any Contractual Sum due to CDL under any contract on the due date or Customer's credit limit is exceeded or Customer or their Associated Company becomes Insolvent or there is a material change in Customer or their Associated Company's constitution or either Customer or their Associated Company commits a material breach of this contract and fail to remedy that breach after being requested to do so, all sums outstanding between Customer and CDL under this and any other contract shall become immediately due and payable and CDL shall be entitled to do any one or more of the following remedies (without prejudice to any other legal right or remedy that CDL may have):-

- (a) Require payment in cleared funds in advance of further deliveries of Goods
- (b) Charge interest on the monies outstanding at the rate of 8 per cent above the Bank of England Official Dealing Rate in force from time to time calculable from the due date until date of actual payment in cleared funds.
- (c) Suspend or cancel any further deliveries of Goods to Customer under any contract without liability on CDL's part
- (c.a) Exercise its lien on any goods delivered which remain unpaid and recovers any monies held by Customer on trust in accordance with Clause 7.2 above
- (d) Suspend or cancel any obligation to commission Goods whether under this or any other contract
- (e) Without prejudice to the generality of any of these Terms exercise any CDL rights pursuant to the Agreement; and/or
- (f) Terminate this or any other contract with Customer or any Associated Company without liability on CDL's part.

14.2 Customer shall reimburse CDL's costs (including legal costs) on an indemnity basis, that CDL may incur in enforcing CDL's rights under this contract including but not limited to enforcement proceedings for recovery of any sums due

15. GENERAL

15.1 This Agreement, the written CDL Quotations or CDL Tenders and any Schedules or Addenda which are signed by an authorised signatory for CDL constitute the entire agreement between CDL and Customer and shall supersede all other agreements, proposals, purchase orders, or representations, whether written or oral, relating to the subject matter hereof. The terms and conditions of any Order or other instrument issued by Customer in connection with this Agreement that are in addition to or inconsistent with the terms and conditions of this Agreement are null and void and shall not be binding on CDL. Neither party shall have any remedy in respect of any untrue statement made by it when entering into this Agreement unless such untrue statement was made in writing and signed by an Authorised signatory of the party against whom the statement is asserted. The only remedies shall be for breach of contract as provided in this Agreement. No alterations or modifications of this Agreement will be valid unless made in writing and signed by both parties.

15.2 This contract shall be governed and interpreted according to the Law of England and Wales and Customer agrees to submit to the exclusive jurisdiction of the English Courts.

15.3 Any reference in these Terms to any Statute or Statutory Provision includes a reference to that Statute or Statutory Provision as from time to time amended extended or re-enacted.

15.4 The headings in these Terms are for convenience only and shall not affect their interpretation.

15.5 The waiver by CDL of any breach or default of these Terms shall not be construed as a continued waiver of that breach or as a waiver of any subsequent breach of the same or any other provision.

15.6 If any clause or sub-clause of these Terms is held by a competent authority to be invalid or unenforceable the validity of the other clauses and sub-clauses of these Terms shall not be affected and they shall remain in full force and effect.

15.7 This contract is personal to Customer and it may not be assigned without the signed agreement of CDL.

15.8 Any notice or other communications to be given under the Contract shall be in writing and may be delivered by hand or sent by first class prepaid recorded delivery post (or if the recipient is in another country by prepaid airmail) to the relevant address(es) stated in the Contract (or to such other address as the addressee may from time to time have notified for that purpose) or sent by email or facsimile transmission. Communications shall be deemed to have been received, if delivered by hand at the time of delivery, if posted within 5 (five) working days of posting if sent by prepaid airmail), and if sent by email or fax transmission, at the date of transmission.

15.9 Termination of this contract shall not affect rights and obligations which have already accrued at the time of termination.

16 DATA PRIVACY

Compliance with Law. The products and/or services being provided require the collection of Personal Information (information and data exchanged in connection with this Agreement related to any identified or identifiable natural person or, in case of a conflict with applicable law, which is subject to any applicable data privacy laws). The parties will comply with applicable data privacy laws governing Personal Information processed in connection with this Agreement. The parties take all reasonable commercial and legal steps to protect Personal Information.

Rights and Obligations. If the Customer provides the CDL with Personal Information, the Customer will ensure that it has the legal right to do so. The Customer will notify the individuals whose Personal Information it has provided to CDL prior to providing it to the CDL.

16.1 CDL may share Personal Information with CDL service providers in accordance with applicable data privacy laws and with appropriate protections.

16.2 CDL may store Personal Information on servers located and accessible globally by CDL entities and their service providers with appropriate protections in place.

16.3 If CDL processes Personal Information under this Agreement, CDL will retain the Personal Information for the term of this Agreement and thereafter as required under this Agreement, to protect CDL's legal rights, or as required or permitted by law or audit requirements. If CDL processes Personal Information for purposes separate and apart from this Agreement, CDL serves as a controller and assumes legal obligations as a controller, including for defining the appropriate retention period.

16.4 If the Personal Information is involved in a Data Breach Incident (set of circumstances that involve actual or a reasonable possibility of unauthorized access to or possession of, or the loss or destruction of, Personal Information), the party on whose system the data was stored is responsible for any notifications and associated costs. Unless prohibited by law or a regulator with jurisdiction over a party, the notifying party shall make reasonable efforts to coordinate with the other party to allow input into the notification before it is made.

16.5 While performing under this Agreement, if a party learns of any: (i) complaint or allegation indicating a violation of the applicable data privacy laws regarding Personal Information; (ii) request from one or more individuals seeking to access, correct, or delete Personal Information; or (iii) inquiry or complaint from one or more individuals in relation to the processing of Personal Information, the party will exercise reasonable efforts to promptly notify the other party in writing, except to the extent prohibited by law, law enforcement, or a regulator with jurisdiction over such party. The parties shall provide reasonable commercial assistance to each other in investigating the matter, identifying the relevant information, preparing a response, implementing a remedy, and/or cooperating in the conduct of and defending against any claim, court or regulatory proceedings.

17 CREDIT CHECKS

In order to process Customers application CDL will supply Customer information to credit reference agencies (CRAs) and they will give CDL information about Customers business, such as financial history. CDL do this to assess creditworthiness and product suitability, check Customer identity, manage Customer account, trace and recover debts and prevent criminal activity. CDL may also continue to exchange information with CRAs on an ongoing basis, including settled accounts and any debts not fully repaid on time.

18 RESTRICTIONS ON SENSITIVE COUNTRIES

CDL reserves the right to refuse to carry out any obligation under this Agreement, or to refuse any order placed under the agreement or suspend or terminate this Agreement with immediate effect in the event that there is or could be a potential breach laws, regulations or ethical rules applicable to CDL including, but not limited to, international trade compliance rules prohibiting sale of goods and services to certain countries,

19 RIGHT TO TERMINATE OR NEGOTIATE

In the event of a Brexit Trigger, the CDL may serve notice requiring the Buyer/Customer to negotiate in good faith an amendment to this agreement to alleviate the Brexit Trigger Event. If no such amendment is made to this agreement within 30 days from the date of such notice, CDL may terminate this agreement by giving the Buyer not less than 14 days written notice.

20 BREXIT TRIGGER EVENT

This refers to any of the following events occurring at any time after the UK ceases to be a Member State of the European Union:

20.1 Changes to the Law

20.2 Any changes to pricing of products or services incurred by CDL in performing the Agreement since the price of the product or service was agreed;

20.3 Changes or new requirements for licenses or consents;

20.4 Delays in export or import of products or services due to controls, processes or restrictions;

20.5 Any other change to the business or economic environment in which CDL operates that may be unforeseen at the date of this Agreement.

21 OVERLAP WITH OTHER RIGHTS AND OBLIGATIONS

Save as expressly provided in this clause [], a Brexit Trigger Event shall not terminate or alter (or give any party a right to terminate or alter) this contract, or invalidate any of its terms or discharge or excuse performance under it.

If there is an inconsistency between the provisions of this clause and any other provision of this agreement, the provisions of this clause shall prevail

