



**Heating Products Limited**

## **Terms and conditions of sale**

### **1. Interpretation**

1.1 In the Conditions (as hereinafter defined in this clause 1.1), the following expressions shall (unless otherwise hereinafter expressly provided) have the following respective meanings:-

"the Buyer" means the person who accepts a quotation of the Seller for the sale of the Goods or whose order for the Goods is accepted by the Seller;

"the Conditions" means the general and standard-form terms and conditions of sale of the Seller as set out in this document and adopted at the date hereof by the Seller or otherwise in force from time to time hereafter in lieu of and so as to supersede such terms and conditions of sale or any of them in respect of the Seller's dealings with actual and prospective buyers of any of the Seller's goods generally including (unless the context otherwise requires) any and all special and supplemental or contrary terms and/or conditions of the Seller, agreed in Writing between the Buyer and the Seller or notified in Writing by the Seller to the Buyer and expressly or impliedly accepted by the Buyer and expressed as forming or plainly intended to form part of the Contract;

"the Contract" means the contract for the purchase and sale of the Goods incorporating, without limitation, the Conditions;

"the Goods" means the goods (including any consignment or instalment of such goods or any parts or components thereof or spares or replacements therefore and, where appropriate, any and all services ancillary thereto) which the Seller has agreed to supply in accordance with the Contract;

"the Group" has the meaning ascribed thereto by clause 11.1;

"holding company" and "subsidiary" have the meanings respectively ascribed thereto by section 736 of the Companies Act 1985 (as amended);

"Incoterms" has the meaning hereinafter ascribed thereto by clause 10.1;

"the Seller" means GAH (HEATING PRODUCTS) LIMITED (being a private company incorporated with limited liability in England and Wales under registered number 2778816, whose registered office is at Hubbard House, Civic Drive, Ipswich, Suffolk IP1 2AR and principal place of business is at Melton Road, Melton, Woodbridge, Suffolk IP12 1NH, at the date hereof; and

"in Writing" includes letter, slip, note, memorandum, form, telex, cable, computer-generated material, facsimile transmission and other comparable means of electronic, electric, mechanical, telephonic/cable/satellite or other documentary or equivalent communication or transmission in visual and legible or otherwise decipherable or reproducible/reconstitutable tangible and permanent form.

1.2 In the event of there existing or arising any conflict or ambiguity between any of the general and standard-form terms and conditions of sale of the Seller of the kind hereinbefore referred to in clause 1.1 against the definition of "the Conditions" on the one hand and any special and supplemental or contrary term and/or condition of the Seller of the kind likewise hereinbefore referred to as aforesaid or (as the case may be) any express provision of the Contract on the other, then and in any and every such case the latter shall prevail to the exclusion of the former to the necessary extent only. Subject only as aforesaid, such general and standard-form terms and conditions shall have and continue to have full force and effect in their entirety and for all material purposes as between the Buyer and the Seller.

1.3 Any reference in the Conditions or in the Contract to any provision of a statute or (as the case may be) statutory instrument shall be construed as a reference to that provision as may be amended, modified, re-enacted or extended at the relevant time.

1.4 Unless the context otherwise requires, in the Conditions and in the Contract:-

1.4.1 any reference to the singular number shall, where appropriate, denote the plural number and vice-versa;

1.4.2 any reference to the masculine gender shall, where appropriate, denote the feminine gender or (as the case may be) neuter gender and vice-versa; and

1.4.3 any reference to "the parties" shall mean the parties to the Contract, namely the Buyer and the Seller.

1.5 The headings in the Conditions are for convenience only and shall not affect their interpretation or effect, and any reference in the Conditions to a clause or sub-clause number shall mean the relevant clause or sub-clause of the Conditions.

### **2. Basis of Sale**

2.1 The Seller shall sell and the Buyer shall purchase the Goods in accordance with any quotation in Writing given by the Seller which is accepted in Writing by the Buyer or (as the case may be) in accordance with any order in Writing made by the Buyer which is accepted in Writing by the Seller, subject in either case aforesaid to the Conditions, which Conditions shall (subject and without prejudice to the provisions of Clause 1.2) govern the Contract to the exclusion of

any and all other terms and conditions subject to which any such quotation is so accepted or purported to be so accepted, or (as the case may be) any such order is so made or purported to be so made, by the Buyer.

2.2 No variation to the Conditions or to any provision of the Contract shall be binding unless agreed in Writing between the respective authorised representatives of the Buyer and the Seller.

2.3 Neither any of the Seller's employees nor any of the Seller's agents is authorised to give or make any instruction, information, advice, assurance, guarantee, representation or recommendation concerning any of the Goods or any purported feature or attribute thereof unless confirmed in Writing by an authorised representative of the Seller. In entering into the Contract, the Buyer hereby acknowledges that it does not rely on, and the Buyer hereby waives and shall hold harmless and indemnify and keep indemnified the Seller and the Seller's officers, employees and agents against any and all claims, losses, damage, liabilities, costs, charges and proceedings in respect of or arising from, any such instruction, information, advice, assurance, guarantee, representation or recommendation which is not so confirmed.

2.4 Any instruction, information, advice, assurance, guarantee, representation or recommendation given by the Seller or any of the Seller's officers, employees or agents to the Buyer or any of the Buyer's officers, employees or agents as to the storage, quality, description, modification, capacity, capabilities, purpose, merchantability, application or use of the Goods which is not confirmed in Writing by the Seller is followed or acted upon entirely at the Buyer's own risk, and accordingly the Seller shall not be liable (whether to the Buyer or, with the benefit of the Buyer's indemnity hereby given to the Seller, to any other person) for any such instruction, information, advice, assurance, guarantee, representation or recommendation which is not so confirmed.

2.5 Any typographical, arithmetical, descriptive, clerical or other error or omission in or from any sales or product literature, advertisement, specification, design, diagram, estimate, tariff, quotation, price list, acceptance of offer, invoice or other document, advice, recommendation, instruction or information issued by the Seller (whether or not in relation to the Goods) shall be subject to correction at any time by and without any liability thereby accruing to the Seller.

2.6 The Buyer hereby acknowledges that the Buyer has on or before delivery of the Goods received the Seller's instruction manual or manuals and other manufacturer's literature, if any, relative to the safe and proper installation, testing, use, application, operation, maintenance/servicing and repair/replacement of the Goods and each of them (the Buyer hereby undertaking henceforth duly to observe and comply with and use its best endeavours to procure that any and every third party into whose ownership or possession or under whose control the Goods or any of them may hereinafter come duly observes and complies with each of the foregoing documents at all material times and in all material respects and at no time to remove or procure, permit or facilitate to be removed from the Goods or any of them any plaque, plate, sticker or label affixed thereto by or with the knowledge and approval of the Seller whether of a cautionary or instructive nature or intended merely to identify the relevant manufacturer or supplier) and that on or before delivery of the Goods the Buyer has studied each of the same and has inspected, examined and tested the Goods and each of them and has satisfied itself from such study, inspection, examination and testing that:-

2.6.1 the Goods and each of them are of merchantable quality and safe for use and are free from risk of causing injury, death, loss or damage to any person or property or to the health and/or well-being of any person if installed, tested, used, applied, operated, maintained/serviced and repaired/replaced in their intended or prescribed and otherwise usual and proper manner; and

2.6.2 the Goods and each of them correspond with their description and any sample(s) provided by the Seller and are fit for the Buyer's purpose in all material respects (the Buyer relying exclusively on its own skill and judgment for this purpose).

2.7 The Buyer hereby undertakes not to modify, alter or adapt any of the Goods or to install, test, use, apply, operate, maintain/service or repair/replace any of the Goods except in their intended or prescribed and otherwise usual and proper manner and, in the event of any re-sale, letting on hire or other parting with possession of or control over any of the Goods on the part of the Buyer, to ensure that every relevant third party is contemporaneously provided with a complete and up-to-date copy of the Seller's instruction manual or manuals and other manufacturer's literature, if any, relative to the safe and proper installation, testing, use, application, operation, maintenance/servicing and repair/replacement of such Goods. The Buyer hereby further undertakes to hold harmless and indemnify and keep indemnified the Seller against all losses, damage, costs, claims, expenses, charges, liabilities and proceedings arising from any breach of any of the undertakings stipulated in this clause 2.7 on the Buyer's part.

3. Orders and Specifications, Cancellation etc.

3.1 The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Buyer and for giving the Seller any necessary information relating to the Goods within a sufficient time to enable the Seller to perform the Contract in accordance with its terms including, but without limitation, in relation to delivery, assembly, power sourcing, installation, inspection, testing and any special requirements for mechanised or other unloading.

3.2 Unless expressly stated in the Seller's sales or product literature or, as the case may be, the Seller's standard price list or tariff in force at the date of the Contract, the quantity, quality and description of and any specification for the Goods shall be those, if any, set out in the Seller's quotation (if accepted by the Buyer in accordance with clause 2.1) or in the Buyer's order (if accepted by the Seller in accordance with clause 2.1) PROVIDED that, unless otherwise stated, all electrical equipment supplied by the Seller under the Contract shall be suitable for a power supply of 230/240 volts, 50 cycles AC.

3.3 If the Goods are to be manufactured or any process is to be applied to the Goods or any of them by the Seller in accordance with a specification submitted by the Buyer, then the Buyer shall hold harmless and indemnify and keep indemnified the Seller against all claims, losses, damage, liabilities, costs, charges and proceedings suffered or incurred by the Seller in connection with or paid or agreed to be paid by the Seller in settlement of any claim for infringement of any patent, copyright, registered design, design right, trade mark (or any application for any of the foregoing) or any other industrial or intellectual property or licence, right or know-how vested or purportedly vested in any other person which results from the Seller's use of the Buyer's specification.

3.4 The Seller reserves the right at any time prior to or following delivery of the Goods or any of them to make changes in any specification of such Goods (whether devised or configured by the Seller or by the Buyer) which are required to conform with any applicable statutory or EU requirements as to safety or otherwise and to make any further or other such changes which are designed to enhance or, as the case may be, which do not materially and adversely affect their quality or performance as envisaged under and at the date of the Contract.

3.5 No order or quotation which has been accepted by the Seller or, as the case may be, by the Buyer may be cancelled by the Buyer except with the agreement in Writing of the Seller and, in that event, only on terms that the Buyer shall thereupon forthwith reimburse and hold harmless and indemnify and keep indemnified the Seller in full and without deduction in respect of and against all losses (including, but without limitation, loss of profit), costs (including, with but without limitation, the cost of all labour and materials ordered or used and of delivery comprising carriage and insurance, assembly, installation and testing), damages, charges, taxes, duties, levies, expenses and proceedings suffered or incurred by the Seller as a result of such cancellation.

#### 4. Price

4.1 The price of the Goods shall be the Seller's quoted price under the Contract or, where no price has been so quoted (or a price so quoted is no longer valid), the price listed in the Seller's standard or, as the case may be, published price list current at the date of the Seller's acceptance of the Buyer's order or, as the case may be, the Buyer's acceptance of the Seller's quotation in either case in accordance with and subject to clause 2.1. Where the Goods are supplied for export from the United Kingdom, the Seller's published export price list shall apply. All prices quoted by the Seller are valid for 30 days only or until earlier acceptance by the Buyer, after which time they may be altered by the Seller without giving notice to the Buyer.

4.2 The Seller reserves the right, by giving notice to the Buyer at any time before delivery, to increase the price of the Goods to reflect any increase in the cost to the Seller which is due to any factor beyond the control of the Seller (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture or delivery), any change in delivery dates, quantities or specifications for the Goods which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller any adequate information or instruction.

4.3 Except as otherwise stated under the terms of any quotation or in any current price list (as referred to in clause 4.1) of the Seller, and unless otherwise agreed in Writing between the Buyer and the Seller, all prices are quoted by the Seller on a CIF basis inclusive of packaging, carriage, insurance and delivery to the specified premises in Great Britain of the Buyer or, as the case may be, and terms and subject to conditions first stipulated or agreed by the Seller in any and every such case, of the Buyer's pre-designated customer. The Seller reserves the right to make an additional charge to the Buyer and will notify or confirm to the Buyer in Writing and as soon as practicable the amount of such additional charge in the event that the Buyer or the relevant such customer requires "next day" or other special delivery as aforesaid (or delivery to any place outside Great Britain) or, as the case may be, requires installation and/or testing by or at the instance of the Seller of the Goods or any of them following their delivery in accordance with the Contract.

4.4 The price of the Goods is quoted or, as the case may be, accepted by the Seller in every case exclusive of any and all applicable value added tax, import or export duty, or other levy, tax, duty, impost or surcharge, each of which the Buyer shall be additionally liable to pay to the Seller or otherwise as the applicable law, statute or regulation may require.

4.5 The cost of pallets and returnable containers, if any, will be charged by the Seller to the Buyer in addition to the price of the Goods, but full credit to which the Seller may be entitled in respect of such pallets or containers will (if applicable) be given to the Buyer PROVIDED that each of the same is returned promptly following delivery of the Goods and in a complete and undamaged state to the Seller (or in accordance with the Seller's order in Writing given to the Buyer) before the due payment date.

#### 5. Terms of Payment

5.1 Subject to any special terms agreed in Writing between the Buyer and the Seller, the Seller shall be entitled to invoice the Buyer for the full price of the Goods (inclusive of any and all ancillary or consequential costs, charges and expenses agreed with the Buyer and attributable value added tax or other applicable duty) on or at any time after acceptance by the Seller of the Buyer's relevant order or, as the case may be, by the Buyer of the Seller's relevant quotation in either case in accordance with and subject to clause 2.1. Where the Seller has exceptionally agreed (notwithstanding and without prejudice to the generality of the foregoing) only so to invoice the Buyer after delivery of the Goods then the Seller shall be entitled, if the Goods are to be collected by the Buyer or the Buyer fails to take delivery of the Goods, to invoice the Buyer for the full price of the Goods at any time after the Seller has notified the Buyer in Writing that the Goods are ready for collection or, as the case may be, after the Seller has duly tendered delivery of the Goods to the Buyer.

5.2 Unless COD or (as the case may be) special credit terms have first been agreed in Writing between the parties in respect of the Goods or any of them, the Buyer shall pay the price of the Goods (inclusive of any and all ancillary or consequential costs and otherwise as aforesaid in clause 5.1) in full in £s sterling and in cash or cleared funds within a maximum period of 30 days following the date of the Seller's relative invoice, and the Seller shall be entitled to recover the full amount of the said price notwithstanding that delivery (whether wholly or in part) may not then have taken place or that title to the goods or any of them may not then have passed to the Buyer. The time of payment of the price of the Goods and each of them and any and every consignment or instalment thereof shall be of the essence of the Contract. Receipts for payment will be issued by the Seller only upon request in Writing made by the Buyer following payment in cash or cleared funds and otherwise as aforesaid to the Seller of all sums to which the relevant such receipt relates. The Seller reserves the right to issue a non-value added tax invoice or statement of account to the Buyer (which invoice or statement of account shall nonetheless be treated in every case as the relative invoice for the purposes of this clause 5.2 and shall be or become enforceable accordingly) pending payment in full and otherwise as aforesaid in respect of the Goods and any and every consignment or instalment thereof whereafter, where appropriate, a relative receipted value added tax invoice will forthwith be issued by the Seller and sent to the Buyer in consideration of such payment in full and by way of confirmation of satisfaction of the relevant debt.

5.3 If the Buyer fails to make any payment on the due date, then, without prejudice to any other right or remedy available to the Seller, the seller shall be entitled:-

5.3.1 to cancel the Contract or, as the case may be, any and every unperformed part thereof and undischarged obligation thereunder and, in the Seller's and any relevant Group member's absolute discretion, any and every other contract between the Seller or any other member of the Group of the one part and the Buyer or any associated company of or person connected with the Buyer of the other part (in either case aforesaid without cost, penalty or other liability thereby accruing to or for the Seller or any other relevant member or members of the Group against any and all of which the Buyer hereby agrees to hold harmless and indemnify and keep indemnified the Seller and every other relevant member of the Group in such event) or, as the case may be, to suspend any further deliveries to the Buyer; and/or

5.3.2 to appropriate any payment made by the Buyer to such of the Goods (or to any other goods or services sold or supplied or to be sold or supplied under any other contracts between the Buyer and the Seller) as the Seller may, in its absolute discretion, think fit (notwithstanding any purported appropriation by the Buyer); and/or

5.3.3 to charge the Buyer interest (both before and after any judgment) on the amount unpaid, at the rate of 4 per cent per annum above Midland Bank Plc base rate from time to time and calculated on a daily basis with monthly rests, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).

## 6. Delivery

6.1 Delivery of the Goods shall be made by the Buyer collecting the Goods at the Seller's premises at any time after the Seller has notified the Buyer that the Goods are ready for collection or, if some other place for delivery is agreed by the Seller, by the Seller delivering the Goods to that place.

6.2 Any dates quoted for delivery of the Goods are approximate only, and the Seller shall not be liable for any delay in delivery of the Goods howsoever caused. Time for delivery of the Goods or any part thereof shall not be of the essence of the Contract unless otherwise expressly agreed by the Seller in Writing upon or before entering into the Contract. The Goods may be delivered by the Seller in advance of the quoted delivery date upon giving reasonable notice to the Buyer.

6.3 Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure by the Seller to deliver any one or more of the instalments in accordance with the Conditions or any claim by the Buyer in respect of any one or more such instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.

6.4 Without prejudice to clause 6.2, if the Seller fails to deliver any of the Goods for any reason other than any cause beyond the Seller's reasonable control or the Buyer's fault, and if the Seller is accordingly liable to the Buyer, the Seller's liability shall be limited to the excess (if any) of the cost to the Buyer in the cheapest available market of similar goods or, as the case may be, services to replace those Goods not so delivered over the price of the undelivered Goods.

6.5 If the Buyer fails to take delivery of the Goods or fails to give the Seller adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of the Seller's fault), then, without prejudice to any other right or remedy available to the Seller, the Seller may:-

6.5.1 store the Goods at any place of the Seller's choice until actual delivery or for such lesser period as the Seller may in its sole and absolute discretion consider fit and charge the Buyer for all the costs (including, without limitation, the cost of securing, protecting, packing/repacking and insurance) of such storage; or

6.5.2 sell the Goods at the best price readily and reasonably obtainable in the open market as determined by the Seller in its sole and absolute discretion and (after deducting all incidental storage and selling costs, charges, taxes, levies, duties and expenses) account to the Buyer for any excess over the price under the Contract or, as the case may be, charge the Buyer for any shortfall below the price under the Contract whereupon and in which last-mentioned event the Buyer shall be liable forthwith to indemnify and keep indemnified the Seller accordingly or engage in any combination of the foregoing in each case aforesaid at the Seller's sole and absolute discretion.

## 7. Risk and Title

7.1 Risk of damage to or loss of the Goods shall pass to the Buyer:-

7.1.1 in the case of any Goods to be delivered at the Seller's premises, at the time when the seller notifies the Buyer that such Goods are available for collection; or

7.1.2 in the case of any Goods to be delivered otherwise than at the Seller's premises, at the time of delivery of such Goods or, if the Buyer or (as the case may be) any pre-designated and approved customer of the Buyer of the kind referred to in clause 4.3 wrongfully fails to take or delays in taking delivery of any such Goods, at the time when the Seller has tendered delivery thereof.

7.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of the Conditions, title to the Goods shall not pass to the Buyer until the Seller has received in cash or cleared funds in £s sterling payment in full and without deduction of the price of the Goods and of all other goods delivered or agreed to be sold by the Seller or by any and every holding company and subsidiary of the Seller or any and every other subsidiary of any such holding company to the Buyer or any and every other subsidiary of any such holding company for which payment is then outstanding or, as the case may be, overdue.

7.3 Until such time as title to the Goods passes to the Buyer, the Buyer shall hold the Goods in or under the Buyer's sole and exclusive possession or control as the Seller's fiduciary agent and bailee and shall keep the Goods in good condition and repair free from risk of damage or deterioration and separate from those of the Buyer and of any third party or parties and properly stored, protected and insured at the Buyer's expense against all insurable risks of any and every relevant kind (in each case in a sum not being less than the full amount of the price of the Goods and with the Seller's interest in the Goods duly noted on or otherwise duly protected under the Buyer's relevant insurance policy and any relative cover note) as well as clearly identified and labelled as the Seller's sole, exclusive, absolute and unencumbered property. Until that time the Buyer shall not be entitled to re-sell, use, let on hire or otherwise part with possession of any of the Goods or agree to do any of the foregoing whether or not in the ordinary course of its business, but (notwithstanding the foregoing prohibition) the Buyer shall in any event and forthwith account to the Seller in full and without deduction in cash or cleared funds in £s sterling for the proceeds of any re-sale or other disposal of or dealing with the Goods, whether such proceeds be tangible or intangible and including (but without limitation) any insurance proceeds, and shall hold all such proceeds on bare trust on behalf and (where feasible) in the name and in any event for the exclusive and absolute benefit of the Seller and keep all such proceeds separate and readily distinguishable from any moneys or property of the Buyer and of any third party or parties in a designated bank account opened by the Buyer and suitably identified by reference to the Seller for the Seller's exclusive and absolute benefit and (in the case of tangible proceeds) properly stored, protected and insured in each case aforesaid pending payment to the Seller in cash or cleared funds in £s sterling in full and without deduction of all sums then outstanding or, as the case may be, overdue from the Buyer or from any and every holding company and subsidiary of the Buyer and or any and every other subsidiary of any such holding company to the Seller or to any and every holding company and subsidiary of the Seller or any and every other subsidiary of such holding company.

7.4 Until such time as title to the Goods passes to the Buyer (and provided the Goods are still in existence and have not been re-sold), the Seller shall be entitled at any time to require the Buyer to deliver up the Goods or any of them to the Seller and, if the Buyer fails to do so forthwith or otherwise as so required, to enter upon any premises of the Buyer or any third party where any of the Goods are for the time being kept or stored and repossess such Goods.

7.5 The Buyer shall not be entitled to pledge or procure, permit or facilitate any lien to arise on or any distress or execution to be levied against, or to sell or part with possession of or mortgage, charge or otherwise encumber by way of security for any indebtedness, the Goods or any consignment or instalment thereof or any other goods for so long as the Seller or any holding company or subsidiary of the Seller or any other subsidiary of such holding company may continue to have title to any such Goods or other goods, but, if the Buyer does so, then and in any and every such case all moneys (whether billed or unbilled) then payable or owing by or outstanding or overdue from the Buyer and/or by or from any and every holding company and subsidiary of the Buyer or any other subsidiary of any such last-mentioned holding company to the Seller or, as the case may be, to any and every holding company and subsidiary of the Seller or any other subsidiary of any such last-mentioned holding company shall, without prejudice to any other right or remedy of the Seller or of any and every holding company and subsidiary of the Seller or any other subsidiary of any such last-mentioned holding company then accrued or arising in consequence (whether hereunder or otherwise), become immediately due and payable in full and without deduction as a debt.

7.6 If any of the Goods are destroyed, damaged or lost by an insured risk at any time prior to title to such Goods having passed to the Buyer in accordance with the foregoing provisions of this clause 7, then and in any and every such case the Buyer shall at the Buyer's expense use its prompt and best endeavours to report the relevant event to the insurers of the Goods and to effect a full recovery of the sum insured from such insurers at the earliest feasible opportunity and the buyer shall receive the proceeds of any and all such insurances (if paid to the Buyer or to any other person on its behalf) as bare trustee for and on behalf and for the exclusive and absolute benefit of the Seller.

## 8. Warranties and Liability

8.1 Subject to the provisions of this clause 8, the Seller warrants that the Goods will correspond with their specification at the time of delivery and will be free from defects in materials and workmanship for a period of 18 months following the date of their delivery to the Buyer or 12 months following the date of their installation, whichever is the first to expire.

8.2 The warranty contained in clause 8.1 is given by the Seller subject to the following conditions:-

8.2.1 the Seller shall be under no liability in respect of any defect in the Goods arising from any drawing, design or specification supplied or instruction given or configuration required by the Buyer;

8.2.2 the Seller shall be under no liability in respect of any of the Goods so far as concerns any defect, shortfall in performance or output, unanticipated running cost or other expense, loss or damage therein, thereof or thereto arising from any fair wear and tear, mis-specification, obsolescence, premises, machinery, equipment or inherent vice beyond the Seller's knowledge or reasonable control or influence or from any wilful damage, vandalism or theft or other criminal act or omission, negligence, abnormal working conditions, failure to follow the Seller's or any manufacturer's instructions or recommendations (whether oral or in Writing) to or in respect of, or for any abnormal use or application or any operation, adjustment, adaptation, reconfiguration, alteration, modification, renovation, enhancement, maintenance/servicing or repair/replacement of or interference with, any of the Goods or any consignment or instalment thereof occurred, undertaken or effected (where applicable) without the Seller's prior knowledge and prior approval in Writing.

8.2.3 the Seller shall be under no liability under the warranty contained in clause 8.1 (or, in respect of the Goods or any of them, any other warranty, indemnity, undertaking, assurance, representation, stipulation, term, condition or guarantee whether express or implied) if the total price for the Goods has not been paid by the due date for payment or if the Buyer re-sells, lets on hire or otherwise parts with possession of any of the Goods without first ensuring that such Goods are free from defects and that the person to whom the Buyer re-sells or otherwise as aforesaid is made fully aware of the proper method of installation, operation, application, maintenance/servicing, repair/replacement and use (including, but without limitation, by means of the Seller's standard instruction manual or manuals and any and all other manufacturer's literature for the time being in force) of such Goods;

8.2.4 the warranty contained in clause 8.1 does not extend to any part, component, materials or equipment not manufactured by the Seller and comprised in or ancillary to the Goods or any of them, in respect of which the Seller accepts no liability to the Buyer or to any third party (the Buyer hereby undertaking to bring the provisions of this sub-clause 8.2.4 to the immediate attention of any and every relevant third party and to hold harmless and indemnify and keep indemnified the Seller against all losses, damage, costs, claims, expenses, charges, liabilities and proceedings arising from any defect in any such part, component, materials or equipment) and the Buyer shall only be entitled to the benefit of any such warranty or guarantee as may be given by the relevant manufacturer to the Seller on the terms and subject to the conditions thereof and as may be capable of lawful assignment by the Seller in favour of the Buyer, and the Seller expressly reserves the right to charge the Buyer in respect of the Seller's reasonable labour costs and all other expenses incurred by the Seller in discharging its obligations under clause 8.1; and

8.2.5 the Buyer shall promptly (and, in any event, within a maximum period of 7 days after the same has become or ought to have become apparent to the Buyer or other the owner or user for the time being of the Goods or such of them as may be relevant) notify the Seller in Writing of any defect in or in connection with any of the Goods, and without prejudice to the foregoing the Seller shall not in any event be liable in respect of any such defect (whether latent or otherwise) which is not so notified before the expiry of the relevant period specified in clause 8.1.

8.3 Subject as expressly provided in the Conditions, and except where the Goods are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977, as amended), all warranties, conditions or other terms implied by statute or at common law or in equity against the Seller are hereby excluded to the fullest extent permitted by law. In particular, but without limitation, the Seller shall not in any event admit or accept or suffer or incur any cost, charge, or other liability whatsoever in respect of or arising from any loss, expense, damage, delay, death or injury suffered or incurred by the Buyer or by any third party or parties in connection with or in consequence of the carriage, delivery, installation, testing, inspection or siting of the Goods or any of them (or in connection with or arising from any goods or services not supplied by the Seller under the Contract or any other matter beyond the Seller's reasonable control including, without limitation and without prejudice to the provisions of clause 8.8, the sourcing or supply or surging or interruption of power of any kind or the ingredients, features, smell or smoke or other noxious or undesirable or unlawful properties, grade, contamination, suitability, combustibility, calorific or thermal value or capabilities, performance or use of any fuel or other relevant consumables or the adequacy, parts or components, constituent materials, features, inherent vice or defect, capacity, strength, suitability, functioning, design, construction, workmanship, noise or smell or smoke or other noxious or undesirable or unlawful emissions or emanations, positioning or capabilities of or from any floor, wall, ceiling, pipe, wiring, flue, chimney, thermostat, control system, radiator, water or fuel tank or other ventilation, heating, cooking, extraction, insulation, protective or environmentally or energy-savings-related prescribed, recommended or desirable equipment, apparatus or machinery whether or not of a nature ancillary to the Goods or any of them or necessary or intended for use in connection therewith or for the better enjoyment thereof) howsoever caused.

8.4 Where the Goods are sold under a consumer transaction (as defined by the Consumer Transactions (Restrictions on Statements) Order 1976), then and in any and every such case the statutory rights of the Buyer are not affected by the Conditions.

8.5 Notwithstanding the provisions of clause 8.2.5, any claim by the Buyer which is based on any defect in the quality or condition of the Goods or their failure to correspond with specification shall (whether or not delivery is refused by the Buyer) be notified to the Seller in Writing within 7 days following the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within 7 days following discovery of the relevant defect or failure or, as the case may be, following the date by which such defect or failure ought reasonably to have been discovered. If the delivery is not refused, and the Buyer does not notify the Seller in Writing accordingly, then the Buyer shall not be entitled to reject the Goods and the Seller shall have no liability for such defect or failure, and in any and every such case the Buyer shall be bound to pay the full amount of the price as if the Goods had been delivered in accordance with the Contract.

8.6 Where any valid claim in respect of any of the Goods which is based on any defect in the quality or condition of the Goods or their failure to meet any specification is notified to the Seller in accordance with the Conditions, the Seller shall be entitled to replace the Goods (or, as the case may be, the part or component in question) free of charge or, at the Seller's sole and unfettered discretion, to refund to the Buyer the full amount of the price of the Goods (or, as the case may be, a fair and appropriate proportionate part of such price) after first deducting any and all incidental costs, charges, expenses, taxes and duties of and associated with carriage, packing or re-packing, insurance and delivery and, where appropriate, of and associated with installation and/or testing paid or incurred by the Seller and whether or not forming part of such price, but the Seller shall have no further liability to the Buyer.

8.7 Except in respect of death or personal injury caused by the Seller's negligence for the which the liability of the Seller cannot by law be excluded, the Seller shall not be liable to the Buyer by reason of any representation or any implied warranty, condition or other term, or pursuant to any duty at common law, or under the express or implied terms of the Contract, for any indirect or consequential loss or damage (whether or not foreseeable and whether for loss of profit or otherwise) or for any costs, expenses, charges, liabilities, duties, levies, taxes, fines, imposts, penalties, proceedings or other claims for consequential compensation whatsoever (whether caused by the negligence of the Seller, its officers, employees or agents or otherwise) which arise out of or may be in connection with the supply of the Goods or their application, use or re-sale by the Buyer or any third party, except as expressly provided in the Conditions. The Buyer hereby undertakes to the Seller, in the event of any such re-sale, immediately to bring the provisions of this clause 8.7 (together with all other material provisions of the Conditions) to the attention of the person to whom any of the Goods are re-sold and to hold harmless and indemnify and keep indemnified the Seller against any and all claims, costs, charges, expenses, liabilities and proceedings in the event of any delay or failure on the part of the Buyer so to do or (as the case may be) to ensure that any and every such person agrees to be bound by all such provisions, to the same extent as the Buyer hereunder, thenceforth.

8.8 The Seller shall not be liable to the Buyer (whether hereunder or otherwise) or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Seller's obligations in relation to the Goods if such delay or failure was due to any cause beyond the Seller's reasonable control or influence or (as the case may be) arisen without the Seller's knowledge. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Seller's reasonable control or influence (in which case, unless the relevant event is or is considered by the Seller to be permanent or fundamental or unless the Buyer and the Seller may otherwise agree in Writing, the time for performance by the Seller of and delivery of the Goods under the Contract (which, subject as aforesaid in this clause 8.8, shall remain in force) shall be deemed to have been automatically extended by the period during which such event continues without cost, penalty or other liability to the Seller and without prejudice to the rights of the Seller to recover from the Buyer at the due time and as a debt due under the Contract all additional costs and expenses thereby occasioned or accruing):-

8.8.1 any Act of God, implosion or explosion, theft or vandalism or fraud or other criminal act or omission affecting any of the Goods, radiation, plague or illness or death or injury affecting any officer(s), employee(s), supplier(s) or agents(s) of the Seller or of any relevant third party, flood or any inadequate or defective or burst or leaking pipe or valve or joint/connection, tempest, drought, earthquake, hurricane, frost or hail or ice or snow, blizzard, heat wave or global warming, fire, inherent vice or defect of any materials, subsidence or similar, any inadequacy, delay or defect in design or construction or workmanship not performed or undertaken by the Seller or in any wiring, carriage, insurance, delivery, installation, testing or inspection, malicious damage, vandalism or accident;

8.8.2 any war or threat of war (whether civil or otherwise), sabotage, act of terrorism or piracy/barratry or hijacking/skyjacking, riot, revolution, insurrection, military intervention, civil disturbance, seizure, confiscation, expropriation or requisition;

8.8.3 any act, restriction, regulation, bye-law, directive, order, decree, judgment, mandatory or otherwise enforceable or recommended practice, statute, treaty, prohibition or other like measure of any kind on the part of any state, governmental, national, trans-national, EU, military or police, municipal, judicial, parliamentary or local authority or any other like body or institution having or operating pursuant to any statutory or other power, right or duty;

8.8.4 any import or export prohibition, restriction or other material regulation or embargo;

8.8.5 any strike, lock-out, working-to-rule or other industrial action or trade dispute (whether involving any agent(s), supplier(s), officer(s) or employee(s) of the Seller or of any third party);

8.8.6 any impossibility for the Seller of or any material difficulty, delay or unanticipated expense encountered or incurred by the Seller in obtaining any raw material(s), labour, fuel, part(s), component(s), licence or permit or other authority, industrial or intellectual property or other material right, premises, equipment or machinery; and

8.8.7 any breakdown or power failure (whether temporary or permanent) of or directly or indirectly affecting any machinery or equipment.

9. Insolvency of Buyer

9.1 This clause 9 applies if:-

9.1.1 the Buyer compounds or makes or proposes any voluntary arrangement with its creditors generally or any of them, or becomes subject to an administration order or petition or to any unsatisfied or unwithdrawn statutory demand for payment, judgment, arbitral or other award or court order, or (being an individual or firm) becomes subject to a bankruptcy or insolvency order or petition, or (being a company) becomes subject to petition, resolution or order for winding-up otherwise than voluntarily, lawfully and on a fully solvent basis for the purposes of amalgamation or reconstruction; or

9.1.2 an encumbrancer takes possession of, or a receiver (whether administrative or otherwise) is appointed in respect of, any of the property or assets of the Buyer, or any judgment, order, award, right, charge, lien, distress or execution is made, enforced, maintained, exercised, asserted or levied against any such property or asset; or

9.1.3 the Buyer ceases, or threatens to cease, to carry on its business or any material part(s) thereof, or any individual or corporate guarantor or surety of the Buyer seeks to limit, vary or determine any guarantee or other his or its financial or other material obligations or liabilities entered into, accepted or incurred on behalf or for the benefit or in support of the Buyer or suffers any event of the kind hereinbefore referred to in clause 9.1.1; or

9.1.4 the Seller reasonably apprehends that any of the events mentioned above in this clause 9.1 has occurred or is about to occur or in relation to or affecting the Buyer and notifies the Buyer in Writing accordingly.

9.2 If any of the events referred to in clause 9.1 occur, then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled forthwith to cancel the Contract or (at the Seller's absolute and unfettered discretion) to suspend any further deliveries under the Contract without thereby occasioning any liability to the Buyer, and if any or all of the Goods have then been delivered, but not paid for, then the price payable under the Contract or (as the case may be) the relative unpaid part of such price shall become immediately due from and payable by the Buyer in full and without deduction notwithstanding any previous agreement, understanding or arrangement between the parties to the contrary.

## 10. Export Terms

10.1 In the Conditions "Incoterms" means the international rules for the interpretation of trade terms of the International Chamber of Commerce as in force at the date when the Contract is made. Unless the context otherwise requires, any term or expression which is defined in or given a particular meaning by the rules or Incoterms shall have the same meaning in the Conditions, but, if there is any conflict between any rule of Incoterms on the one hand and any provision of the Conditions or (as the case may be) of the Contract on the other, then and in any and every such case the relevant such provision shall prevail.

10.2 Where the Goods are supplied for export from the United Kingdom, the provisions of this clause 10 shall (subject to any special and contrary terms agreed in Writing between the Buyer and the Seller) apply notwithstanding any other provision of the Conditions or of the Contract.

10.3 The Buyer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and for the payment of any and all taxes, levies, imposts, duties, fines, surcharges and penalties thereon.

10.4 Unless otherwise agreed in Writing between the Buyer and the Seller, the Goods shall be delivered FOB the air or sea port of shipment or (as the case may be) other the agreed place of delivery within the United Kingdom for onward carriage and the Seller shall be under no obligation to give notice under section 32(3) of the Sale of Goods Act 1979.

10.5 The Buyer shall be responsible for arranging for testing and inspection of the Goods at the Seller's premises before delivery of such Goods for shipment. The Seller shall have no liability for any claim in respect of any defect in the Goods which would or ought reasonably to have been apparent on such inspection (whether or not any such inspection actually takes place) and which claim is made after their delivery for shipment or, in any event, in respect of any loss, damage or delay howsoever occurring following such delivery or during transit.

10.6 Payment of all amounts due to the Seller shall be made by irrevocable letter of credit opened by the Buyer in favour of the Seller and confirmed by a bank in the United Kingdom acceptable to the Seller or, if the Seller has agreed in Writing on or before acceptance of the Buyer's order to waive this requirement, by acceptance by the Buyer and delivery to the Seller of a bill of exchange drawn on the Buyer and payable 60 days after sight to the order of the Seller at such branch of Midland Bank Plc in England as may be specified in such bill of exchange.

10.7 The Buyer undertakes not to offer any of the Goods for re-sale in any country or countries or other place or places notified by the Seller to the Buyer in Writing at or before the time the Buyer's order is accepted by the Seller or, as the case may be, the Seller's quotation is accepted by the Buyer in either case in accordance with and subject to the provisions of the Contract and not to sell the Goods to any person if the Buyer knows or has reason to believe that such person intends to re-sell the Goods in any such country or other place.

## 11. General

11.1 The Seller is a member of the group of companies whose holding company is H.I.H. Limited (reg. no. 2066451) (together "the Group") and accordingly the Seller may perform any of its obligations or exercise any of its rights hereunder by itself or through any other member of the group PROVIDED that any act or omission of any such other member shall hereby be deemed to be the act or omission only of the Seller AND PROVIDED that no such other member shall in any such case thereby acknowledge or undertake any duty or accept or incur any liability under the Contract or otherwise in relation to any of the Goods whether to the Buyer or to any third party or parties.

11.2 Any notice required or permitted to be given by either party to the other under the Conditions or the Contract shall be in Writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified in Writing pursuant to this provision to the party giving the notice, and every such notice shall be deemed duly served on the party to which it is properly so addressed and so despatched, delivered or transmitted on the second working day following its due despatch or (as the case may be) on the first working day following its due delivery or transmission as aforesaid.

11.3 Where appropriate in the Conditions or, as the case may be, in the Contract so far only as concerns any provision hereof or thereof relating to any liability or alleged liability of the Seller or relating to any express exclusion or limitation of such liability, the Seller hereby or, as the case may be, thereby contracts both for itself and (being duly authorised for the purpose in each case hereinafter mentioned in this clause 11.3) on behalf and for the benefit of each of its officers, employees and agents for the time being and every member for the time being of the Group as if each such individual and body were an additional party to and duly bound by the relevant such provision.

11.4 Without prejudice to the provisions of clause 11.3, wherever any reference is expressly made in the Conditions or in the Contract to any obligation or liability imposed on or, as the case may be, any right or benefit vested in any holding company or subsidiary (or, in the case of the Seller, imposed on or vested in the Group) whether as regards the Seller or as regards the Buyer, then and in any and every such case each of the parties hereby warrants and undertakes to the other that it has first duly obtained the respective authorities of all such of its associated companies so to contract as agent (or as the case may be, as trustee) and otherwise as may be necessary or appropriate whether in law or in equity, to the intent (so far as any and every applicable law and statute for the time being in force may require or permit) that each of its said associated companies shall be bound by and duly discharge every relevant such obligation and liability and that each of its said associated companies shall enjoy and be entitled duly to enforce every relevant such right and benefit as if all such associated companies of the Seller and of the Buyer respectively were themselves parties to and duly bound by the Contract and subject to the Conditions to the extent aforesaid in this clause 11.4 (but not further or otherwise).

11.5 No waiver or indulgence granted by the Seller of or in relation to any breach of any provision of the Contract on the part of the Buyer (which waiver or indulgence shall in every such case be treated as having been granted on a strictly "ex gratia" and "without prejudice" basis and may in any such case be subject to any condition or conditions as the Seller may see fit to impose in its sole and absolute discretion on the Buyer whether as to time, costs, interest or otherwise) shall be considered as a waiver of any subsequent, repeated or continuing breach whether of the same or any other such provision and whether or not of a new or different nature.

11.6 Each of the terms and conditions of the Contract and every part of each such term and condition shall hereby be deemed to be separate and severable so that, if any provision of the Conditions or any other such term or condition is held by any court, tribunal or other person or body of competent or otherwise mutually agreed authority to be invalid or unenforceable (whether in whole or in part) for whatsoever reason, then the validity of each of the other such provisions or other such terms or conditions or, as the case may be, the remainder of the offending such provision or the remainder of the other such offending term or condition shall not be thereby affected. The parties hereby agree that subject to the inherent powers and willingness of the relevant such court or tribunal or other such person or body so to do, any and every offending provision or other such offending term or condition of the kind aforesaid may be re-written or re-interpreted by the said court or tribunal or other such person or body with only such modifications as may be strictly necessary in order to render the same valid and enforceable in law (but not further or otherwise) in accordance with the express and agreed wishes and instructions of the parties under the Contract as hereby affirmed by each of them and so as to give the Contract and every part thereof (the terms and conditions of such Contract having been freely negotiated and agreed by the parties as each of them hereby affirms) full and proper business efficacy to the maximum extent permitted by any and every applicable law and/or statute.

11.7 Any and every dispute arising under or in connection with the Conditions or the Contract or relating to or arising from the sale of the Goods (except only in respect of any export sale or intended export sale affected by clause 10 in which case, unless the parties otherwise agree in Writing, the matter shall be referred by the parties in the first instance to the International Chamber of Commerce and determined exclusively in accordance with Incoterms and such Chamber's rules of procedure so far as may be applicable within and subject to such Chamber's competence so to determine, but otherwise without prejudice to the provisions of clause 11.8) shall be referred to arbitration in the United Kingdom by a single arbitrator appointed by agreement between the parties or, in default of such agreement, nominated on the application of either party by the presiding officer for the time being of The Chartered Institute of Arbitrators for determination subject to and in accordance with the provisions of the Arbitration Acts 1950 to 1979, and the costs of such arbitrator shall (unless he may otherwise determine) be borne equally by the parties. Subject and without prejudice as aforesaid in this clause 11.7, or if the Seller and the Buyer shall so agree in Writing at any material time or times hereafter by way of variation thereto whether in any particular case or generally, any and every such dispute shall be subject to the non-exclusive jurisdiction of the English Courts.

11.8 The Contract shall be governed by and construed in accordance with the Laws of England.

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