

Standard terms and conditions

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1. Definitions and interpretation

1.1 In these Conditions (unless the context otherwise requires) the following words and phrases shall have the following meanings:

"Company" means Thermodial Limited registered in the Republic of Ireland and under company 117256 whose registered office is at Unit 9, Block A, Centrepoint Business Park, Oak Road, Dublin 12.

"Conditions" means these standard terms and conditions of sale;

"Confidential Information" means all information which is disclosed before or after the date of the Contract by one party to the other however conveyed and would appear to a reasonable person to be confidential which relates to the business, products, developments, trade secrets, know-how, personnel, customer and suppliers of the party disclosing it and all information derived from the above together with the existence or provisions of the Contract and the negotiation relating to it;

"Contract" means any contract between the Company and the Customer for the sale and purchase of the Goods and (if applicable) the Services incorporating these Conditions and the;

"Customer" means the person, firm or company named in the Quotation to whom the Company has agreed to supply the Goods and (if applicable) the Services in accordance with the Contract;

"Goods" or "Materials" means the goods described in the Quotation to be supplied by the Company to the Customer (including any part or parts of them);

"Price" means the sum payable by the Customer to the Company for the supply of the Goods and (if applicable) the Services as set out in the Quotation;

"Quotation" means the quotation issued by the Company to the Customer giving details of the Price, the Goods and (if applicable) the Services and the Materials;

"Services" means the Services (if any) to be provided by the Company for the Customer as described in the Quotation;

"Site" means the site described in the Quotation;

"VAT" means value added tax and includes any substituted or replacement tax; and

"Working Day" means any day (other than a Saturday, Sunday or statutory holiday) when banks are open for business in Dublin.

1.2 In these Conditions (unless the context otherwise requires):

1.2.1 Any reference to a legislative provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it;

1.2.2 Words in the singular include the plural and in the plural include the singular;

1.2.3 A reference to one gender includes a reference to the other gender;

1.2.4 Condition headings are for reference only and shall not affect the interpretation of these Conditions;

1.2.5 The words "including" and "include" and words of similar effect shall not be deemed to limit the general effect of the words to which they relate; and

1.2.6 Reference to any document shall be construed as a reference to it as varied or supplemented.

2. Application of the conditions

2.1 Subject to any variation under Condition 2.3 the Contract shall be on these Conditions incorporating any specific terms identified by the Company in the Quotation to the exclusion of all other terms and conditions.

2.2 No terms or conditions endorsed on, delivered with or contained in the Customer's purchase order, confirmation of order or other document shall form part of the Contract.

2.3 These Conditions apply to the supply by the Company of the Goods and, (if applicable), the Services. Save in respect of clauses 6.3, 7.2, 11.7, and 11.8, any variation to the Contract and any representations about the Goods shall have no effect unless agreed by the Company and the Customer. The Customer acknowledges that

it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in the Contract. Nothing in this Condition 2.3 shall exclude or limit the Company's liability for fraudulent misrepresentation.

2.4 In the event of any inconsistency between any of the provisions of these Conditions, the Quotation and any other document forming part of the Contract, the provisions of these Conditions shall prevail.

3. Acceptance of quotation

3.1 Acceptance of the Quotation by the Customer shall be deemed to be an offer by the Customer to purchase the Goods and (if applicable) the Services, subject to these Conditions.

3.2 The Customer shall be responsible for ensuring that the terms of the Quotation (including but not limited to the quantity and description of the Goods and Customer's requirements for the installation of the Goods on the Site) and its order are complete and accurate.

3.3 Notwithstanding the provisions of Condition 3.2 the Company reserves the right to correct any typing or clerical or other bona fide error appearing in the Quotation or in any order placed by the Customer at any time up to the date of acceptance of the Customer's order by the Company pursuant to Condition 3.4.

3.4 Any Quotation is valid for a period of 45 days only from its date, provided that the Company has not previously withdrawn it and subject to any review and negotiation of the Quotation between the parties.

3.5 In the event that the Customer wishes to cancel any order accepted by the Company in accordance with clause 3.4, the Customer must give written notice to the Company and the Company shall be entitled to charge the Customer the following cancellation fees: written notice received by the Company 90 or more Working Days before the delivery date - 30% of the Price or the costs incurred by the Company in selling the Goods or any bespoke materials used to manufacture the Goods,

whichever the Company shall in its sole discretion determine as being the higher; written notice received by the Company 45 - 89 Working Days before the delivery date - 70% of the Price; or written notice received by the Company on or less than 44 Working Days before the delivery date - 98% of the Price.

4. Description

4.1 The quantity and description of the Goods and (if applicable) the Services shall be as set out in the Quotation unless varied by the Company's acknowledgement of order.

4.2 All samples, drawings, descriptive matter, specifications and advertising materials issued by the Company and any descriptions or illustrations contained in the Company's catalogues or brochures are issued or published for the sole purpose of giving the Customer an approximate idea of the Goods described in them.

5. Supply of services

5.1 The Customer shall be responsible for obtaining all permissions, consents, approvals and licences required to enable the Company to carry out the Services including but not limited to planning permissions, building regulations consents and bye-law approvals and the consents of any third parties having interests or rights in or over the Site ("Requisite Consents").

5.2 The Customer shall:

5.2.1 Ensure that any structure to which the Goods are to be annexed has been correctly designed and soundly constructed and is suitable for the Goods to be so annexed; and

5.2.2 Notify the Company in writing of any relevant conditions on the Site (including but not limited to the position of concealed services or any structures) that may affect the performance of the Services by the Company.

5.3 The Company may at any time make any changes to the Services which are necessary to comply with any applicable safety or other statutory requirements or which do not materially affect the nature or quality of the Services.

5.4 Unless otherwise stated in the Quotation the Customer shall give the Company not less than 10 Working Days' notice in writing of the date when the Company may commence performance of the Services on the Site ("Commencement Date"). If after the Commencement Date:

5.4.1 The Site is not ready for the Company or any employees of the Company or subcontractor or agent appointed by the Company to commence performance of the Services; or

5.4.2 The performance of the Services is delayed by any reason outside the control of the Company;

5.4.3 The Customer shall reimburse the costs and expenses incurred by the Company as a result.

5.5 The Customer acknowledges that it is responsible for the security of the Site and the safety of all persons entitled to be on the Site including but not limited to any employees, sub-contractors and agents of the Company engaged in performing the Services on behalf of the Company.

5.6 The Company reserves the right upon termination of the service contract to review the contract in terms of the service carried out and invoice the customer on a pro rata basis, based on the percentage of contract completion.

6. Supply of goods

6.1 Subject to Condition 6.2 the quantity and description of the Goods shall be as set out in the Quotation and Contract.

6.2 The Company reserves the right to vary the specification (contained in the Quotation) of any of the Goods at any time without the Customer's consent, provided that:

6.2.1 The variations do not affect any performance criteria set out in the Quotation;

6.2.2 The variations will not cause the Goods to contravene the Requisite Consents or any applicable statutory requirements;

6.2.3 Any substitute materials used are of an equal or better quality and suitability to those originally specified in the Quotation; and

6.2.4 The Company informs the Customer of the variations promptly in writing.

7. Delivery of goods

7.1 Unless specified in the Quotation or otherwise agreed in writing by the Company delivery of the Goods shall take place at the Site and the cost of delivery shall be included in the Price.

7.2 If the Site is situated outside the Republic of Ireland the Goods are sold FOB and subject to any other specific terms contained in the Quotation.

7.3 Any dates specified by the Company for delivery of the Goods are intended to be an estimate and time for delivery shall not be made of the essence by notice. If no dates are so specified, delivery shall be within a reasonable time.

7.4 Subject to the other provisions of the Contract the Company shall not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods (even if caused by the Company's negligence), nor shall any delay entitle the Customer to terminate or rescind the Contract unless such delay exceeds 180 days.

7.5 If for any reason the Customer fails to accept delivery of any of the Goods when they are ready for delivery or the Company is unable to deliver the Goods because the Customer has not provided appropriate instructions, documents, drawings, licences or authorisations:

7.5.1 Risk in the Goods shall pass to the Customer (including for loss or damage caused by the Company's negligence);

7.5.2 The Goods shall be deemed to have been delivered; and

7.5.3 The Company may store the Goods until delivery whereupon the Customer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).

7.6 If the Customer fails to accept delivery of any of the Goods within 3 months of the date when they are ready for delivery, then without prejudice to Condition 7.5 the Company shall have the right to serve notice on the Customer requiring the Customer to remove the Goods within a further period of 5 Working Days failing which the Company shall be entitled to arrange for delivery of the Goods to the Customer's place of business and charge the Customer for the costs incurred in relation to such delivery.

7.7 The Company may deliver the Goods by separate instalments as specified in the Quotation or as otherwise agreed in writing by the Company and the Customer. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the Contract.

8. Risk/title

8.1 The Goods are at the risk of the Customer from the time of delivery.

8.2 Ownership of the Goods shall not pass to the Customer until the Company has received in full (in cash or cleared funds) all sums due to it in respect of such Goods.

8.3 Until ownership of the Goods has passed to the Customer, the Customer shall:

8.3.1 hold the Goods on a fiduciary basis as the Company's bailee;

8.3.2 store the Goods (at no cost to the Company) separately from all other goods of the Customer or any third party in such a way that they remain readily identifiable as the Company's property;

8.3.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and

8.3.4 maintain the Goods in satisfactory condition and keep them insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company. On request from the Company, the Customer shall produce the policy of insurance relating to the Goods to the Company.

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

8.4.1 has a winding up or bankruptcy order made against it; or

8.4.2 has appointed to it a receiver or examiner

8.4.3 enters into an agreement, compromise or composition in satisfaction of its debts with its creditors or any class of them; or

8.4.4 passes a resolution or makes a determination for it to be wound up; or

8.4.5 Has appointed to it an administrator or administrative receiver; or

8.4.6 Being a partnership, in addition to the above, suffers bankruptcy orders being made against all of its partners; or

8.4.7 Has appointed to it an examiner

8.4.8 Has appointed to it an examiner or statutory receiver

8.4.9 Suffers or allows any execution whether legal or equitable to be levied on his/its property or obtained against him/it; or

8.4.10 fails to observe or perform any of his/its obligations under the Contract or any other contract between the Company and the Customer;

8.4.11 ceases to trade; or

8.4.12 encumbers or in any way charges any of the Goods.

8.5 The Company shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Company.

8.6 The Customer grants the Company, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in

order to inspect them, or, where the Customer's right to possession has terminated, to recover them.

8.7 Where the Company 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 the Company to the Customer in the order in which they were invoiced to the Customer.

8.8 On termination of the Contract howsoever caused, the Company's (but not the Customer's) rights contained in this Condition 8 shall remain in effect.

9. Price

9.1 Unless otherwise agreed, the Customer shall pay the Price and any additional sums which are agreed between the Customer and the Company for the supply of the Goods and (if applicable) the Services or which, in the Company's sole discretion, are required as a result of the Customer's instructions or lack of instructions, or any other cause attributable to the Customer.

9.2 The Price and any other sums payable by the Customer for the supply of the Goods and, (if applicable) the Services, are exclusive of VAT which amounts the Customer shall pay in addition when payment for the Goods and the Services is due.

10. Payment

10.1 The Customer shall pay the Price in Euro on the due dates referred to in the Quotation by BACS, CHAPS or other electronic transfer into the bank account of the Company notified to the Customer in writing or by such other method agreed between the parties.

10.2 The due date for payment of the Price or any additional sums payable by the Customer under the Contract shall be the date of issue of the Company's invoice;

10.3 unless it has given an effective notice of intention to withhold payment not later than 14 days before the final date for payment. Such notice of intention to withhold payment must specify:

10.4 If payment is not made on the due date, the Company reserves the right, without limiting any other rights it may have, to claim interest in accordance with the The Prompt Payment of Accounts Act 1997 and European Communities (Late Payment in Commercial Transactions) Regulations 2002.

10.5 If the Customer requests that the Company makes any variation to the Quotation, the Company shall be entitled to adjust the Price and programme in respect of the Goods in order to give effect to such variation.

10.6 The Company shall be entitled to make any changes to the payment terms in this clause 10.4 and/or the Quotation, which it deems necessary, in its absolute discretion, as a result of changes to the Company's credit insurance terms and conditions.

10.7 The Company shall be entitled to make any changes to the payment terms in this Clause 10 and/or the Quotation, which it deems necessary, in its absolute discretion, in cases where the services being provided by the Company include the provision of maintenance and if the Customer cancels or purports to cancel the Contract before its completion.

11. Standard of services

Subject always to the provisions of these Conditions, the Company shall carry out the Services (if applicable):

11.1 in accordance with the Quotation at the intervals and within the times referred to in the Quotation;

11.2 with the skill and care reasonably to be expected of a contractor experienced in carrying out services of a comparable size, scope, complexity and purpose to the Services; and

11.3 in accordance with all Requisite Consents, provided always that the Customer has previously supplied a copy of such Requisite Consents to the Company.

12. Quality of the goods

12.1 Where pursuant to the Contract, the Company supplies to the Customer any Goods the Company does not give any warranty, guarantee or other assurance as to their quality, fitness for purpose or otherwise, but shall, where possible, assign to the Customer the benefit of any warranty, guarantee or indemnity given by the person manufacturing such goods.

13. Limitation of liability

13.1 Subject to Conditions 7 and 12, the following provisions set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, sub-contractors and agents) to the Customer in respect of:

13.1.1 any breach of the Contract;

13.1.2 any use made by the Customer of any of the Goods; and

13.1.3 any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.

13.2 The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in the Contract.

13.3 Nothing in the Contract excludes or limits the liability of the Company:

13.4 for death or personal injury caused by the Company's negligence; or

13.4.1 for any matter which it would be illegal for the Company to exclude or attempt to exclude its liability; or

13.4.2 for fraud, deceit or fraudulent misrepresentation.

13.5 Subject to Condition 13.3 and Condition 13.4:

13.5.1 the Company shall not be liable to the Customer for any pure economic loss, loss of actual or anticipated profits, loss of business, loss of business opportunity, depletion of goodwill, loss of or damage incurred by the Customer as a result of any third party claims, loss of anticipated savings, injury to reputation or otherwise, in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract; and

13.5.2 the Company shall have no liability to the Customer for any loss, damage, costs, expenses or other claims for compensation.

14. Assignment and sub-contracting

The Company may assign or subcontract the Contract or any part of it to any person, firm or company. The Customer shall not be entitled to assign or subcontract the Contract or any part of it without the prior written consent of the Company.

15. Force majeure

15.1 The Company shall not be liable to the Customer 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 Company's obligations in relation to the supply of the Goods and/or the Services if the delay or failure was due to any Force Majeure Event affecting the Company or results directly or indirectly from any act or omission of the Customer. If the event or circumstances giving rise to the Company's delay or failure to perform its obligations continues for a continuous period in excess of 180 days, the Customer shall be entitled to give notice in writing to the Company to terminate the Contract.

15.2 In this clause 15, "Force Majeure Event" means an event beyond the reasonable control of the Company including, but not limited to, strike, lock-out, labour dispute, act of God, war, riot, civil commotion, malicious damage, compliance with a law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm, difficulty or increased cost in obtaining workers, goods or transport and other circumstances affecting the supply of Goods and/or Services.

16. Termination

16.1 Without prejudice to any other rights or remedies to which it may be entitled, the Company may give written notice to the Customer terminating the Contract with immediate effect if:

16.1.1 the Customer commits a material breach of any of the terms of the Contract .

16.1.2 the Customer fails to make payment of any amount payable under the Contract on the due date

16.1.3 there is a change of control of the Customer; or

16.2 The Company shall also be entitled to terminate the Contract immediately with no notice if the customer

16.2.1 has a winding up or bankruptcy order made against it; or

16.2.2 enters into an agreement, arrangement, compromise or composition in satisfaction of its debts with its creditors or any class of them; or

16.2.3 has appointed to it a receiver, statutory receiver or examiner

16.2.4 passes a resolution or makes a determination for it to be wound up; or

16.2.5 has appointed to it an administrator or administrative receiver; or

16.2.6 being a partnership, in addition to the above, suffers bankruptcy orders being made against all of its partners; or

16.2.7 suffers or allows any execution whether legal or equitable to be levied on his/its property or obtained against him/it; or

16.2.8 the Customer ceases to trade

17. Consequences of termination

Upon termination of the Contract all rights and obligations of the parties shall cease to have effect immediately except that termination shall not affect accrued rights and obligations of the parties under the Contract at the date of termination or any express obligations in the Contract of a continuing nature.

18. Intellectual property rights

If the Company or any of its employees or agents design the Goods pursuant to a commission from the Customer (whether to fulfil an order or otherwise), any intellectual property rights created in relation to such Goods shall vest in the Company and the Customer shall do or procure the execution (as a deed or otherwise) of all such documents as may from time to time be necessary to give full effect to the Condition 18.

19. Confidentiality

19.1 All Confidential Information by the Company to the Customer or otherwise obtained or developed by the Customer relating to the Company, shall be kept secret and confidential by the Customer throughout the term of the Contract and for the 3 years following its termination or expiry and shall not be used or disclosed other than for the purposes of the proper performance of the Contract or with the prior written consent of the Company.

19.2 The obligations of confidentiality in this clause 19 shall not extend to any matter which the Customer can show:

19.2.1 is in, or has become part of, the public domain other than as a result of a breach of the obligations of confidentiality under the Contract;

19.2.2 was independently disclosed to it by a third party entitled to disclose the same;
or

19.2.3 is required to be disclosed under any applicable law, or by order of a court or governmental body or authority or competent jurisdiction.

20. Notices

A notice required or permitted to be given by either party to the other under the Contract shall be in writing and delivered by hand or sent by pre-paid first class post or

sent by fax or by electronic mail to the registered office from time to time of the Company or Customer (as appropriate).

21. Governing law

The Contract and any matter arising from or in connection with it shall be governed by and construed in accordance with the law of The Republic of Ireland.

22. Disputes

22.1 The parties agree to seek to resolve any dispute which arises during the continuance of this Agreement or upon or after its determination amicably and in good faith by negotiation in the first instance.

22.2 If the dispute continues to be unresolved then the parties agree to attempt to settle it by mediation within 15 days of one party notifying the other that mediation is sought.

22.3 If the identity of a mediator cannot be agreed by the parties the mediator may be nominated by the President for the time being of the Law Society of Ireland on the application of either party.

22.4 If the dispute is not settled at mediation in accordance with this clause within a period of 20 working days or such longer period as may be mutually agreed after the appointment of a mediator, either party shall be entitled to resort to litigation.

22.5 The Irish courts shall have ultimate jurisdiction over any dispute or difference between the parties which arises out of or in connection with the Contract.

23. General

23.1 These Conditions together with the terms (if any) set out in the Quotation constitute the entire agreement between the parties, supersede any previous agreement or understanding between the parties. All other terms express or implied by statute or otherwise, are excluded to the fullest extent permitted by law.

23.2 Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.

23.3 Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.

23.4 Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Customer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.

23.5 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.

23.6 Each party shall bear its own costs and expenses incurred in relation to the negotiation, preparation, execution and implementation of the Contract.

23.7 Nothing in the Contract is intended to create a partnership or joint venture or legal relationship of any kind that would impose liability upon one party for the act or failure to act of the other party between the parties, or to authorise either party to act as agent for the other.

23.8 Thermodial does not share your personal information with any third parties. We reserve the right at times to use your details when communicating information, advice or offers specific to your business/sector. You can opt out of communications at any time by clicking 'SafeUnsubscribe' in our email for instant removal or by emailing info@thermodial.ie with "unsubscribe" in the subject line.

Additionally we may at times use information (inclusive of key performance indicators and images) on work undertaken on site to inform our website/marketing materials. This is to outline the positive nature of the works performed, which will be of benefit to both parties. Advice on content will be given prior to any publication.