

Weatherite Air Conditioning Limited - Terms and Conditions of Purchase

These Conditions will apply to all contracts between Weatherite and the Supplier in relation to the purchase by Weatherite of any and all Goods and/or Services. The definitions used in these Conditions are set out in The Schedule.

1. BASIS OF CONTRACT

- 1.1 An Order will be contractually binding when submitted by Weatherite to the Supplier at which point and on which date the Contract will come into existence ("**Commencement Date**") unless the Supplier responds within 2 Business Days stating that it is declining the Order but the Supplier may not so respond if it has previously taken any steps to fulfil the same.
- 1.2 These Conditions apply to the Contract to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

- 1.3 All of these Conditions will apply to the supply of both Goods and Services except where the application to one or the other is specified.

2. SUPPLY OF GOODS

- 2.1 The Supplier will supply all Goods and/or Services ordered by Weatherite for the Price in accordance with these Conditions.

- 2.2 The Supplier will ensure that the Goods:

- 2.2.1 correspond with their description and any applicable Goods Specification;

- 2.2.2 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and fit for any purpose held out by the Supplier or made known to the Supplier by Weatherite, expressly or by implication, and in this respect Weatherite relies on the Supplier's skill and judgement;

- 2.2.3 where they are manufactured products, be free from defects in design, materials and workmanship and remain so for 12 months or any alternative warranty period given by the Supplier (whichever is longer) after delivery; and

- 2.2.4 comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods.

- 2.3 The Supplier will ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract.

- 2.4 Weatherite may inspect and test the Goods at any time before delivery. The Supplier will remain fully responsible for the Goods despite any such inspection or testing and any such inspection or testing will not reduce or otherwise affect the Supplier's obligations under the Contract.

- 2.5 If following such inspection or testing Weatherite considers that the Goods do not comply or are unlikely to comply with the Supplier's undertakings at clause 2.1, Weatherite will inform the Supplier and the Supplier will immediately take such remedial action as is necessary to ensure compliance.

- 2.6 Weatherite may conduct further inspections and tests after the Supplier has carried out its remedial actions and such process of inspection, testing and carrying of remedial actions will be repeated until Weatherite is satisfied that the Goods are compliant with the Supplier's undertakings at clause 2.1..

3. DELIVERY OF GOODS

- 3.1 The Supplier will ensure that:

- 3.1.1 the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition;

- 3.1.2 each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, the Order number (if any), the type and quantity of the Goods (including the code number of the Goods (where applicable)), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and

- 3.1.3 it states clearly on the delivery note any requirement for Weatherite to return any packaging material for the Goods to the Supplier. Any such packaging material will only be returned to the Supplier at the cost of the Supplier.

- 3.2 The Supplier will deliver the Goods:

- 3.2.1 on the date specified in the Order or, if no such date is specified, then within 7 days of the date of the Order and time will be of the essence in relation to delivery of Goods;

- 3.2.2 to the Delivery Location; and

- 3.2.3 during Weatherite's normal hours of business on a Business Day, or as instructed by Weatherite.

- 3.3 Delivery of the Goods will be completed on the completion of unloading of the Goods at the Delivery Location.

- 3.4 The Supplier will not deliver the Goods in instalments without Weatherite's prior written consent. Where it is agreed that the Goods are delivered by instalments, they may be invoiced and paid for separately. However, failure by the Supplier to deliver any one instalment on time or at all or any defect in an instalment will entitle Weatherite to the remedies set out in clause 5.1.

- 3.5 Title and risk in the Goods will pass to Weatherite on completion of delivery.

4. SUPPLY OF SERVICES

- 4.1 The Supplier will from the Commencement Date and for the duration of the Contract supply the Services to Weatherite in accordance with the terms of the Contract.

- 4.2 The Supplier will meet any performance dates for the Services specified in the Order or that Weatherite notifies to the Supplier and time is of the essence in relation to any of those performance dates.

- 4.3 In providing the Services, the Supplier will:

- 4.3.1 co-operate with Weatherite in all matters relating to the Services, and comply with all instructions of Weatherite;

- 4.3.2 perform the Services with the best care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade;

- 4.3.3 use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with the Contract;

- 4.3.4 ensure that the Services and Deliverables will conform with all descriptions and specifications set out in the Service Specification, and that the Deliverables will be fit for any purpose that Weatherite expressly or impliedly makes known to the Supplier;

- 4.3.5 provide all equipment, tools and vehicles and such other items as are required to provide the Services;

- 4.3.6 use the best quality goods, materials, standards and techniques, and ensure that the Deliverables, and all goods and materials supplied and used in the Services or transferred to Weatherite, will be free from defects in workmanship, installation and design;

- 4.3.7 obtain and at all times maintain all licences and consents which may be required for the provision of the Services;

- 4.3.8 comply with all applicable laws, regulations, regulatory policies, guidelines or industry codes which may apply to the provision of the Services;

- 4.3.9 observe all health and safety rules and regulations and any other security requirements that apply at any of Weatherite's premises;

- 4.3.10 hold all materials, equipment and tools, drawings, specifications and data supplied by Weatherite to the Supplier ("**Customer Materials**") in safe custody at its own risk, maintain Weatherite Materials in good condition until returned to Weatherite, and not dispose or use Weatherite Materials other than in accordance with Weatherite's written instructions or authorisation;

- 4.3.11 not do or omit to do anything which may cause Weatherite to lose any licence, authority, consent or permission upon which it relies for the purposes of conducting its business, and the Supplier acknowledges that Weatherite may rely or act on the Services; and

- 4.3.12 comply with any additional obligations as set out in the Service Specification.

5. CUSTOMER REMEDIES

- 5.1 If the Supplier fails to deliver the Goods and/or perform the Services by the applicable date, Weatherite will, without limiting or affecting other rights or remedies available to it, have one or more of the following rights:

- 5.1.1 to terminate the Contract with immediate effect by giving written notice to the Supplier;

- 5.1.2 to refuse to accept any subsequent performance of the Services and/or delivery of the Goods which the Supplier attempts to make;

- 5.1.3 to recover from the Supplier any and all costs incurred by Weatherite in obtaining substitute goods and/or services from a third party;

- 5.1.4 to require a refund from the Supplier of sums paid in advance for Services that the Supplier has not provided and/or Goods that it has not delivered; and

- 5.1.5 to claim damages for any additional costs, loss or expenses incurred by Weatherite which are in any way attributable to the Supplier's failure to meet such dates.

- 5.2 If the Goods are not delivered by the applicable date, Weatherite may, at its option, claim or deduct 10% of the Price of the Goods for each week's delay in delivery by way of liquidated damages, up to a maximum of 50% of the total Price of the Goods. If Weatherite exercises its rights under this clause 5.2 it will not be entitled to any of the remedies set out in clause 5.1 in respect of the Goods' late delivery.

- 5.3 If the Supplier has delivered Goods that do not comply with the undertakings set out in clause 2.1, then, without limiting or affecting other rights or remedies available to it, Weatherite will have one or more of the following rights, whether or not it has accepted the Goods:

- 5.3.1 to terminate the Contract with immediate effect by giving written notice to the Supplier;

- 5.3.2 to reject the Goods (in whole or in part) whether or not title has passed and to return them to the Supplier at the Supplier's own risk and expense;

- 5.3.3 to require the Supplier to repair or replace the rejected Goods, or to provide a full refund of the Price of the rejected Goods (if paid);

- 5.3.4 to refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;

- 5.3.5 to recover from the Supplier any expenditure incurred by Weatherite in obtaining substitute goods from a third party; and

- 5.3.6 to claim damages for any additional costs, loss or expenses incurred by Weatherite arising from the Supplier's failure to supply Goods in accordance with clause 2.1.

- 5.4 These Conditions will extend to any substituted or remedial services and/or repaired or replacement goods supplied by the Supplier.

- 5.5 Weatherite's rights under the Contract are in addition to its rights and remedies implied by statute and common law.

6. CUSTOMER'S OBLIGATIONS

- Weatherite will:

- 6.1 provide the Supplier with reasonable access at reasonable times to Weatherite's premises for the purpose of providing the Services; and

- 6.2 provide such necessary information for the provision of the Services as the Supplier may reasonably request.

7. CHARGES AND PAYMENT

- 7.1 The Price for the Goods will be inclusive of the costs of packaging, insurance and carriage of the Goods. No extra charges will be effective unless agreed in writing and signed by Weatherite.

- 7.2 The charges for the Services will be set out in the Order, and will be the full and exclusive remuneration of the Supplier in respect of the performance of the Services. Unless otherwise agreed in writing by Weatherite, the charges will include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.

- 7.3 In respect of the Goods, the Supplier will invoice Weatherite on or at any time after completion of delivery. In respect of Services, the Supplier will invoice Weatherite on completion of the Services. Each invoice will include such supporting information required by Weatherite to verify the accuracy of the invoice, including but not limited to the relevant purchase order number and such evidence as Weatherite requires to demonstrate that the Goods have passed any applicable or agreed quality or acceptance inspections or tests..

- 7.4 In consideration of the supply of Goods and/or Services by the Supplier, Weatherite will pay the invoiced amounts to a bank account nominated in writing by the Supplier within 60 days from the end of the month in which Weatherite received a correctly rendered invoice.

- 7.5 All amounts payable by Weatherite under the Contract are exclusive of amounts in respect of VAT. Where any taxable supply for VAT purposes is made under the Contract by the Supplier to Weatherite, Weatherite will, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Goods and/or Services at the same time as payment is due for the supply of the Goods and/or Services.

- 7.6 The Supplier will maintain complete and accurate records of the time spent and materials used by the Supplier in providing the Services, and the Supplier will allow Weatherite to inspect such records at all reasonable times on request.

- 7.7 Weatherite may at any time, without notice to the Supplier, set off any liability of the Supplier to Weatherite against any liability of Weatherite to the Supplier, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under the Contract. If the liabilities to be set off are expressed in different currencies, Weatherite may convert either liability at a market rate of exchange for the purpose of set-off. Any exercise by Weatherite of its rights under this clause 7.7 will not limit or affect any other rights or remedies available to it under the Contract or otherwise.

8. INTELLECTUAL PROPERTY RIGHTS

- 8.1 All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any Customer Materials) will be owned by the Supplier.

- 8.2 The Supplier grants to Weatherite, or will procure the direct grant to Weatherite of, a fully paid-up, worldwide, non-exclusive, royalty-free perpetual and irrevocable licence to copy and modify the Deliverables (excluding Customer Materials) for the purpose of receiving and using the Services and the Deliverables.

- 8.3 Weatherite grants the Supplier a fully paid-up, non-exclusive, royalty-free non-transferable licence to copy and modify any materials provided by Weatherite to the Supplier for the term of the Contract for the purpose of providing the Services to Weatherite.

- 8.4 All Customer Materials are the exclusive property of Weatherite.

9. INDEMNITY

- 9.1 The Supplier will indemnify Weatherite against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by Weatherite arising out of or in connection with:

- 9.1.1 any claim made against Weatherite for actual or alleged infringement of a third party's intellectual property rights arising out of, or in connection with, the manufacture, supply or use of the Goods, or receipt, use or supply of the Services (excluding Weatherite Materials);

- 9.1.2 any claim made against Weatherite by a third party for death, personal injury or damage to property arising out of, or in connection with, defects in the Goods, as delivered, or the Deliverables; and

- 9.1.3 any claim made against Weatherite by a third party arising out of or in connection with the supply of the Goods, as delivered, or the Services.

- 9.2 This clause 9 will survive termination of the Contract.

10. INSURANCE

- During the term of the Contract and for a period of 12 years thereafter, the Supplier will maintain in force, with a reputable insurance company, professional indemnity insurance, product liability insurance and public liability insurance to cover the liabilities that may arise under or in connection with the Contract, and will, on Weatherite's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.

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11. CONFIDENTIALITY

- 11.1 In this clause 11,
- 11.1.1 "Confidential Information" means all information of a confidential nature or which is identified by the party disclosing the same as confidential, (however recorded or preserved) disclosed by a party or its Representatives (as defined below) to the other party and that party's Representatives whether before or after the date of any Contract in connection with that Contract, its performance or the Goods or Services, including but not limited to:
- (a) any information that would be regarded as confidential by a reasonable business person relating to:
- (b) the business, assets, affairs, customers, clients, suppliers, [or] plans [, intentions, or market opportunities] of the disclosing party [(or of any member of the group of companies to which the disclosing party belongs)]; and
- (c) the operations, processes, product information, know-how, designs, trade secrets or software of the disclosing party [(or of any member of the group of companies to which the disclosing party belongs)]; and
- (d) any information developed by the parties in the course of performing a Contract.

However, the term "Confidential Information" does not include any information which (i) is in the public domain otherwise than by reason of a breach of this clause 11 or (ii) was available to the receiving party on non-confidential basis prior to its disclosure by the other party to the Contract; or (iii) is developed by the party receiving the same independently of the information disclosed to it by the other party.

- 11.1.2 "Representatives" means, in relation to a party, its employees, officers, contractors, subcontractors, representatives and advisers.
- 11.2 Each party undertakes that it will not disclose to any person any Confidential Information except as permitted by clause 11.3.
- 11.3 Each party may disclose the other party's Confidential Information:
- 11.4 to its Representatives who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party will ensure that those of its Representatives, to whom it discloses the other party's confidential information comply with this clause 11; and

12. TERMINATION

- 12.1 Without affecting any other right or remedy available to it, Weatherite may terminate the Contract:
- 12.1.1 with immediate effect by giving written notice to the Supplier if:
- (a) there is a change of control of the Supplier; or
- (b) the Supplier's financial position deteriorates to such an extent that in Weatherite's opinion the Supplier's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or
- (c) the Supplier commits a breach of clause 4.3.8,
- 12.1.2 for convenience by giving the Supplier 3 months' written notice.
- 12.2 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:
- 12.2.1 the other party commits a material breach of any term of the Contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified to do so;
- 12.2.2 the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction; or
- 12.2.3 the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business.

13. CONSEQUENCES OF TERMINATION

- 13.1 On termination of the Contract, the Supplier will immediately deliver to Weatherite all Deliverables whether or not then complete, and return all Customer Materials. If the Supplier fails to do so, then Weatherite may enter the Supplier's premises and take possession of them. Until they have been returned or delivered, the Supplier will be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract.
- 13.2 Termination of the Contract will not affect the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.
- 13.3 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination of the Contract will remain in full force and effect.

14. FORCE MAJEURE

Neither party will be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under it if such delay or failure results from events, circumstances or causes beyond its reasonable control. If the period of delay or non-performance continues for 6 weeks, the party not affected may

terminate this agreement by giving 7 days' written notice to the affected party.

15. GENERAL

15.1 Assignment and other dealings.

- 15.1.1 Weatherite may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with all or any of its rights and obligations under the Contract.
- 15.1.2 The Supplier will not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of Weatherite.

15.2 Notices.

- 15.2.1 Any notice or other communication given to a party under or in connection with the Contract will be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause 15.2, and will be delivered personally, or sent by pre-paid first class post or other next working day delivery service, commercial courier or fax.
- 15.2.2 A notice or other communication will be deemed to have been received: if delivered personally, when left at the address referred to in clause 15.2.1; if sent by pre-paid first class post or other next working day delivery service, at 1.00 pm on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax, one Business Day after transmission.
- 15.2.3 The provisions of this clause 15.2 will not apply to the service of any proceedings or other documents in any legal action.

- 15.3 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it will be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision will be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause 15.2.1 will not affect the validity and enforceability of the rest of the Contract.

- 15.4 **Waiver.** A waiver of any right or remedy under the Contract or by law is only effective if given in writing and will not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law will not constitute a waiver of that or any other right or remedy, nor will it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law will prevent or restrict the further exercise of that or any other right or remedy.

- 15.5 **No partnership or agency.** Nothing in the Contract is intended to, or will be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.

- 15.6 **Entire agreement.** The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

15.7 Third party rights.

- 15.7.1 Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

- 15.7.2 The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.

- 15.8 **Variation.** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, will be effective unless it is agreed in writing and signed by the parties or their authorised representatives.

- 15.9 **Governing law.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation will be governed by and construed in accordance with the law of England and Wales.

- 15.10 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales will have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.

The Schedule

DEFINITIONS AND INTERPRETATION

Part 1

In these Conditions, the following definitions apply:

Business Day: a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

Commencement Date: has the meaning given in 1.1.

Conditions: these terms and conditions as amended from time to time in accordance with clause 15.8.

Contract: the contract between Weatherite and the Supplier for the supply of Goods and/or Services in accordance with these Conditions.

Control: has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression **change of control** will be construed accordingly.

Customer Materials: has the meaning set out in clause 4.3.10.

Deliverables: all documents, products and materials developed by the Supplier or its agents, contractors and employees as part of or in relation to the Services in any form or media, including drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts).

Delivery Location: such location as is set out in the Order or as instructed by Weatherite before delivery.

Goods: the goods (or any part of them) set out in the Order.

Goods Specification: any specification for the Goods, including any related plans and drawings, that is agreed in writing by Weatherite and the Supplier.

Intellectual Property Rights: patents, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Order: Weatherite's order for the supply of Goods and/or Services, as set out Weatherite's purchase order form, or in Weatherite's written acceptance of the Supplier's quotation, or overleaf, as the case may be.

Price: the price for the Goods and/or Services as specified in the Order or such price as may be agreed between the parties from time to time. If the Price is not set out in the Order and not otherwise agreed between the parties, the Price will be the same as that in Weatherite's most recent Order for identical Goods and/or Services.

Services: the services, including any Deliverables, to be provided by the Supplier under the Contract as set out in the Service Specification.

Service Specification: the description or specification for Services agreed in writing by Weatherite and the Supplier.

Supplier: the person or firm from whom Weatherite purchases the Goods and/or Services.

VAT: valued added tax chargeable from time to time.

Weatherite: Weatherite Air Conditioning Limited registered in England and Wales with company number 01829910.

Part 2

In these Conditions, the following rules apply:

- A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- A reference to a party includes its successors and permitted assigns.
- A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.
- Any words following the terms including or include or any similar expression will be construed as illustrative and will not limit the sense of the words, description, definition, phrase or term preceding those terms.
- A reference to writing or written includes fax but not email.