

PURE COLD LIMITED TERMS AND CONDITIONS OF SALE AND SUPPLY OF GOODS AND SERVICES

These Conditions are subject to change and such changes will be notified by way of updates to these Conditions via www.purecold.co.uk They are incorporated by reference into any Contract (as defined below) unless otherwise expressly agreed in writing by the Parties.

The Customer's attention is particularly drawn to the provisions of clause 13 (Limitation of liability).

1. Interpretation

The following definitions and rules of interpretation apply in these Conditions.

1.1 Definitions:

Business Hours: 8.00am – 5.00pm on a Business Day, unless otherwise stated in customer correspondence from Pure Cold.

Business Day: a day (other than a Saturday, Sunday or public holiday) when banks in London (and the capital city in the country in which Services are being performed, if not the UK) are open for business.

CDM Regulations: the Construction (Design and Management) Regulations 2015

Commencement Date: has the meaning given in clause 2.2.

Conditions: these terms and conditions as amended from time to time in accordance with clause 17.8.

Contract: the contract between the Supplier and the Customer 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 shall be construed accordingly

Controller, processor, data subject, personal data, personal data breach, processing and appropriate technical measures: as defined in the Data Protection Legislation

Customer: the person or firm who purchases the Goods and/or Services from the Supplier.

Data Protection Legislation: the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications); and the guidance and codes of practice issued by the relevant data protection or supervisory authority and applicable to a party.

Deliverables: the deliverables set out in the Quotation produced by the Supplier for the Customer.

Delivery Location: has the meaning given in clause 4.1.

Enhanced Warranty Cover: means a warranty for 12 months, on the basis of parts and labour.

Equipment & Site Conformance Policy: has the meaning as shown at Annex A

Force Majeure Event: has the meaning given to it in clause 16.

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

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

Hot Works: any process that can be a source of ignition when flammable material is present or can be a fire hazard regardless of the presence of flammable material in the workplace. Common hot work processes are welding, soldering, cutting and brazing when flammable materials are present the processes such a grinding and drilling also become hot work processes.

Intellectual Property Rights: patents, utility models, 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 and trade dress, 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: means:

- i. the Customer's order for the supply of Goods and/or Services as set out in the Customer's written purchase order form; or
- ii. the Customer's written acceptance of the Supplier's Quotation, as the case may be; or
- iii. by email confirmation of authorised representative of the Supplier, a Customer order expressed verbally by a senior manager for the Customer.

Premises: means the Customer premises or location where the Goods will be installed and operational.

Programme of Work: means any of the following:

- i. Date or dates specified in an Order;
- ii. A programme of works issued by or on behalf of the Customer and provided to the Supplier;
- iii. A roll-out programme issued by or on behalf of the Customer and provided to the Supplier;

Quotation: The Supplier's written quotation for the Goods and or Services

Services: the services, including the Deliverables, supplied by the Supplier to the Customer as set out in the Service Specification.

Service Specification: the description or specification for the Services provided in writing by the Supplier to the Customer.

Supplier: PURE COLD LIMITED registered in England and Wales with company number 04195747

Supplier Materials: has the meaning given in clause 8.1(h).

UK Data Protection Legislation: all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive (2002/58/EC) (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended

1.2 Interpretation:

- (a) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- (b) A reference to a party includes its personal representatives, successors and permitted assigns.

- (c) 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.
- (d) Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- (e) A reference to **writing** or **written** includes email and any electronic uploads or scans of documents or information on Customer or Supplier specified IT systems

2. Basis of contract

- 2.1 The Order constitutes an offer by the Customer to purchase Goods and/or Services in accordance with these Conditions.
- 2.2 The Order shall only be deemed to be accepted when the Supplier internally actions steps to fulfil that Order or issues written acceptance of the Order at which point and on which date the Contract shall come into existence (**Commencement Date**).
- 2.3 Any samples, drawings, descriptive matter or advertising issued by the Supplier and any descriptions of the Goods or illustrations or descriptions of the Services contained in the Supplier's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Services and/or Goods described in them. They shall not form part of the Contract or have any contractual force.
- 2.4 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.5 Any quotation given by the Supplier shall not constitute an offer, and is only valid for a period of 60 Business Days from its date of issue.
- 2.6 For the avoidance of doubt, in the event that a Customer issues a stock, firm or future requirements purchase order against a Quotation made by the Supplier, the detail of the Order shall be binding on the Customer.
- 2.7 No Order which has been accepted by the Supplier may be cancelled by the Customer except with the agreement in writing of the Supplier and on terms that the Customer shall pay the Supplier in full for all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Supplier as a result of cancellation.
- 2.8 With the exception of the detail set out in the Quotation, which shall take precedence in the event of any conflict (including with the detail of any Order issued by the Customer), these Terms of Supply apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.9 All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.

3. Goods

- 3.1 The Goods are described in the Quotation and further detail may be added in any issued Goods Specification.

3.2 To the extent that the Goods are to be manufactured in accordance with a Goods Specification supplied by the Customer, the Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including 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 reasonable professional costs and expenses) suffered or incurred by the Supplier arising out of or in connection with any claim made against the Supplier for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Supplier's use of the Goods Specification. This clause 3.2 shall survive termination of the Contract.

3.3 The Supplier reserves the right to amend the Goods Specification if required by any applicable statutory or regulatory requirement, and the Supplier shall notify the Customer in any such event.

4. Delivery of Goods

4.1 The Supplier shall deliver the Goods to the location set out in the Quotation or Order or such other location as the parties may agree (**Delivery Location**) at any time after the Supplier notifies the Customer that the Goods are ready.

4.2 Delivery of the Goods shall be completed on the later of:

- (a) completion of unloading of the Goods at the Delivery Location.
- (b) The practical completion (meaning the Goods are fit for their intended purpose) of those parts of the installation of the Goods for which the Supplier is responsible.

4.3 Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

4.4 If the Supplier fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. The Supplier shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions for the Goods or any relevant instruction related to the supply of the Goods.

4.5 If the Customer fails to accept or take delivery of the Goods within thirty Business Days of the Supplier notifying the Customer that the Goods are ready for delivery in accordance with the Customers' project programme as notified to the Supplier and against which the Goods were initially procured, then except where such failure or delay is caused by a Force Majeure Event or by the Supplier's failure to comply with its obligations under the Contract in respect of the Goods, then the Supplier may at its discretion apply the following:

- (a) Delivery of the Goods shall be deemed to have been completed at 9.00 am on the thirtieth Business Day following the day on which the Supplier notified the Customer that the Goods were ready and payment provisions of clause 9.4 and 9.5 shall apply; and
- (b) the Supplier shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).

4.6 Notwithstanding clause 4.5 above, in the event that the Goods have been manufactured to the Customer's specific and bespoke requirements and are not commercially available off the shelf units, then the Customer commits to pay for such Goods in a Force Majeure Event on the basis that payment terms will be extended by sixty Business Days.

- 4.7 If sixty Business Days after the day on which the Supplier notified the Customer that the Goods were ready for delivery in accordance with the Customers' project programme as notified to the Supplier and against which the Goods were initially procured the Customer has not accepted delivery of them, the Supplier may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.
- 4.8 If the Customer pays for the Goods but does not take delivery and does not pay the Supplier for the costs associated with the storage of the Goods, then the Supplier may sell sufficient of the Goods from time to time to pay for the storage and will have no liability to replace the Goods sold that the Customer has paid for.
- 4.9 If the Supplier delivers up to and including 5% more or less than the quantity of Goods ordered the Customer may not reject them, but on receipt of notice from the Customer that the wrong quantity of Goods was delivered, the Supplier shall make a pro rata adjustment to the invoice for the Goods. This clause does not apply to Refrigerated Display Cabinets
- 4.10 The Supplier may deliver the Goods by instalments, phased delivery or against bulk orders over a period of time which shall be invoiced and paid for separately (or credited against monies received from the Supplier by a Customer). Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment or phase shall not entitle the Customer to cancel the overall contract.

5. Quality of Goods

- 5.1 Subject to Clause 5.7, the Supplier warrants that on delivery, and for a period of 12 months from the date of delivery (**warranty period**), the Goods shall:
- (a) conform in all material respects with the Goods Specification; and
 - (b) be free from material defects in design, material and workmanship.
 - (c) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended); and
 - (d) be fit for any purpose held out by the Supplier in technical data-sheets.
- 5.2 Subject to clause 5.4 and 5.7, where Enhanced Warranty Cover applies, the Supplier shall, where the Supplier has provided such Goods on the basis of their providing services of installation and commissioning, at its option, either (i) repair or replace the defective Goods, or (ii) refund the price of the defective Goods in full, if:
- (a) the Customer gives notice in writing during the warranty period within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 5.1;
 - (b) the Supplier is given a reasonable opportunity of examining such Goods; and
 - (c) the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Customer's cost.
- 5.3 In respect of supply of Goods where the Customer has not paid for Enhanced Warranty Cover, then at the Supplier's discretion the Supplier may provide the spare parts required to repair the defective Goods at its cost such replacement of the defective part being undertaken by the Customer or its representative at the Customer's cost and liability.
- 5.4 The Supplier shall not be liable for the Goods' failure to comply with the warranty in clause 5.1 and 5.7 if:
- (a) the Customer makes any further use of such Goods after giving a notice in accordance with clause 5.2;

- (b) the defect arises because the Customer or its agent failed to follow the Supplier's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice;
- (c) the defect arises as a result of the Supplier following any drawing, design or Goods Specification supplied by the Customer;
- (d) the Customer alters or repairs such Goods without the written consent of the Supplier;
- (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; or
- (f) the Goods differ from the Goods Specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards.

5.5 Except as provided in this clause 5, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.1.

5.6 The terms of these Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.

5.7 The warranty provided in this Clause 5 shall be qualified as follows:

- (a) Parts only warranty for 12 months;
- (b) Parts and labour only offered by exception provided that the Customer has paid for this uplifted warranty cover;
- (c) No warranty will be provided on compressors supplied as loose (rather than integrated) items; and
- (d) In the event that Goods are supplied and delivered in Asia or Oceania regions the liability is for parts to be available FOC ex works China only.

6. Title and risk

6.1 The risk in the Goods shall pass to the Customer:

- (a) on completion of delivery; or
- (b) unless Clause 6.7 applies, in instances where the Customer has paid for Goods but has requested the Supplier to store the Goods, on the Goods entering storage for the Customer; or
- (c) where Clause 6.7 applies, from when the Customer stops paying the Supplier for the insurance for the Goods or completion of delivery, whichever occurs first.

6.2 Title to the Goods shall not pass to the Customer until:

- (a) the Supplier receives payment in full (in cash or cleared funds) for the Goods and any other goods that the Supplier has supplied to the Customer in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums; and
- (b) the Customer resells the Goods, in which case title to the Goods shall pass to the Customer at the time specified in clause 6.4.

6.3 Until title to the Goods has passed to the Customer, the Customer shall:

- (a) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;

- (b) not remove, deface or obscure any identifying mark relating to the Goods;
- (c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on the Supplier's behalf from the date of delivery;
- (d) notify the Supplier immediately if it becomes subject to any of the events listed in clause 14.2(b) to clause 14.2(d); and
- (e) give the Supplier such information relating to the Goods as the Supplier may require from time to time.
- (f) not remove the Goods from the Site where they were delivered and installed.
- (g) not modify the Goods in any way other than, in the case of refrigeration cabinets, the temperature and timer settings and connection to appropriate services to allow the refrigerated cabinet to work

6.4 Subject to clause 6.5, the Customer may resell or use the Goods in the ordinary course of its business (but not otherwise) before the Supplier receives payment for the Goods. However, if the Customer resells the Goods before that time:

- (a) it does so as principal and not as the Supplier's agent; and
- (b) title to the Goods shall pass from the Supplier to the Customer immediately before the time at which resale by the Customer occurs.

6.5 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 14.2(b) to clause 14.2(d), then, without limiting any other right or remedy the Supplier may have:

- (a) the Customer's right to resell Goods or use them in the ordinary course of its business ceases immediately; and
- (b) the Supplier may at any time:
 - (i) require the Customer to deliver up all Goods in its possession which have not been resold, or irrevocably incorporated into another product; and
 - (ii) if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

6.6 In the event that the Supplier supplies Goods on the basis of hire or lease purchase, then separate terms and conditions will apply.

6.7 The Customer may at its option elect to pay the Supplier to maintain insurance for Goods which the Customer requests the Supplier stores. In such instance, the Supplier will obtain insurance from the Suppliers' insurer and use reasonable endeavours to have the interest of the Customer noted on such policy as regards the Goods in storage.

7. Supply of Services

7.1 The Supplier shall supply the Services to the Customer in accordance with the Service Specification in all material respects.

7.2 The Supplier shall use all reasonable endeavours to meet any performance dates for the Services specified in the Quotation or any Programme of Work but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services. For the avoidance of doubt, the date of fulfilment of a Customer's Order provided to the Supplier shall not be less than the lead time for the Goods.

7.3 The Supplier reserves the right to amend the Service Specification if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event.

7.4 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.

8. Customer's obligations

8.1 The Customer shall:

- (a) ensure that the terms of the Order and any information it provides in the Service Specification and the Goods Specification are complete and accurate;
- (b) co-operate with the Supplier in all matters relating to the Goods and Services;
- (c) provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer's premises, and other facilities as reasonably required by the Supplier to provide the Goods and Services;
- (d) provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Goods and Services, and ensure that such information is complete and accurate in all material respects;
- (e) prepare the Customer's premises or nominated location for the supply of the Goods and Services, including ensuring that the floor loading is adequate for the Goods supplied and that all appropriate and necessary structural surveys and other assessments have been undertaken, on the basis of their being stocked fully with food and/or beverage (as applicable);
- (f) obtain and maintain all necessary licences, permissions and consents which may be required for the Goods and Services before the date on which the Services are to start;
- (g) comply with all applicable laws, including health and safety laws;
- (h) notify the Supplier of any asbestos present in the areas of the buildings or Premises in which the Supplier or its agents will be working or passing through and ensure its full compliance with applicable laws as regards the Suppliers (or its contractors, employees and authorised representatives) access to Premises as regards asbestos regulations;
- (i) notify the Supplier if the Premises will be governed by the CDM regulations whilst they are delivering to or installing on such Premises;
- (j) keep all materials, equipment, documents and other property of the Supplier (**Supplier Materials**) at the Customer's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation; and
- (k) ensure compliance with the Equipment and Site Conformance Policy (see Annex A);
- (l) ensure that the Goods are used safely and properly, without risks to health to person or damage to property;
- (m) in the event that the Supplier is required to undertake Hot Works, be responsible for the local isolation of the fire alarm and/or sprinkler system to prevent its activation through our Hot Works; and
- (n) comply with any additional obligations as set out in the Service Specification and the Goods Specification.

- 8.2 If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):
- (a) without limiting or affecting any other right or remedy available to it, the Supplier shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;
 - (b) the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 8.2; and
 - (c) the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

9. Charges and payment

9.1 The price for Goods:

- (a) shall be the price set out in the Quotation or, if no price is quoted, the price set out in the Supplier's published price list as at the date of delivery; and
- (b) shall except as set out in the Quotation be exclusive of all costs and charges of storage, transport of the Goods, which shall be invoiced to the Customer.

9.2 The charges for Services shall be calculated on a time and materials basis:

- (a) the charges shall be calculated in accordance with the Supplier's fee rates, as set out in the Quotation, which shall include information and applicability on overtime and out of hours rates;
- (b) the Supplier shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom the Supplier engages in connection with the Services including travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by the Supplier for the performance of the Services, and for the cost of any materials.

9.3 The Supplier reserves the right to:

- (a) increase the charges for the Services on an annual basis with effect from each anniversary of the Commencement Date in line with the percentage increase in the Retail Prices Index in the preceding 12-month period and the first such increase shall take effect on the first anniversary of the Commencement Date and shall be based on the latest available figure for the percentage increase in the Retail Prices Index;
- (b) increase the price of the Goods, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Goods to the Supplier that is due to:
 - (i) any factor beyond the control of the Supplier (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
 - (ii) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Goods Specification; or
 - (iii) any delay caused by any instructions of the Customer in respect of the Goods or failure of the Customer to give the Supplier adequate or accurate information or instructions in respect of the Goods.

- 9.4 Unless otherwise agreed in writing between the Customer and the Supplier, in respect of Goods, the Supplier shall at its discretion invoice the Customer on either:
- (a) The completion of unloading of the Goods at the Delivery Location;
 - (b) In instances where phasing of Delivery of Goods has been agreed in writing (including email) between the Customer (or its authorised representative) and the Supplier, at the end of each month in respect of Goods delivered in that month;
- 9.5 In respect of Services, including storage, the Supplier shall invoice the Customer in accordance with the Quotation or monthly in arrears
- 9.6 Unless otherwise agreed in writing between the Customer and the Supplier, the Customer shall pay each invoice submitted by the Supplier:
- (a) within 30 days of the date of the invoice or in accordance with any credit terms agreed by the Supplier and confirmed in writing to the Customer; and
 - (b) in full and in cleared funds to a bank account nominated in writing by the Supplier, and
- time for payment shall be of the essence of the Contract.
- 9.7 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, 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 Services or Goods at the same time as payment is due for the supply of the Services or Goods.
- 9.8 If the Customer fails to make a payment due to the Supplier under the Contract by the due date, then, without limiting the Supplier's remedies under clause 14 (Termination), the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 9.8 will accrue each day at 6% a year above the Bank of England's base rate from time to time, but at 6% a year for any period when that base rate is below 0%.
- 9.9 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

10. Intellectual Property Rights

- 10.1 All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Customer) shall be owned by the Supplier.
- 10.2 The Customer grants the Supplier a fully paid-up, non-exclusive, royalty-free non-transferable licence to copy and modify any documentary materials provided by the Customer to the Supplier for the term of the Contract for the purpose of providing the Services to the Customer.
- 10.3 A party (**'receiving party'**) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the receiving party by the other party (**'disclosing party'**), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products and services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under the

Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Contract. The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction.

- 10.4 The specifications and designs of the Goods or the Services (including the copyright, design right or other intellectual property in them shall as between the parties be the property of the Supplier and shall not be disclosed by the Customer to any third party without the Supplier's written consent and the Customer shall indemnify the Supplier against any loss or claim arising out of any such unauthorised disclosure.
- 10.5 Where any designs or specifications have been supplied by the Customer for manufacture by or to the order of the Supplier then the Customer warrants that the use of those designs or specifications for the manufacture, processing, assembly or supply of the Goods or the Services shall not infringe the rights of any third party.
- 10.6 This clause 10 shall survive termination of the Contract.

11. Data protection

- 11.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 11 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation. In this clause 11, **Applicable Laws** means (for so long as and to the extent that they apply to the Supplier) the law of the European Union, the law of any member state of the European Union and/or Domestic UK Law; and **Domestic UK Law** means the UK Data Protection Legislation and any other law that applies in the UK.
- 11.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the controller and the Supplier is the processor.
- 11.3 Without prejudice to the generality of clause 11.1, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the personal data to the Supplier for the duration and purposes of the Contract.
- 11.4 The Customer consents to the Supplier appointing a third-party processor of personal data under the Contract. The Supplier confirms that it has entered or (as the case may be) will enter with the third-party processor into a written agreement substantially on that third party's standard terms of business and in either case which the Supplier confirms undertakes reflect and will continue to reflect the requirements of the Data Protection Legislation. As between the Customer and the Supplier, the Supplier shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause 11.

12. Confidentiality

- 12.1 Each party undertakes that it shall not at any time during the Contract, and for a period of five years after termination of the Contract, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 12.2.
- 12.2 Each party may disclose the other party's confidential information:
- (a) to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 12; and

- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

12.3 Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

13. Limitation of liability: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.

13.1 The Supplier has obtained the following insurances to cover its own legal liability for claims as follows:

- (a) Employer liability insurance for £10million any one claim;
- (b) Public liability insurance for £10million any one claim;
- (c) Product liability insurance £10million any one claim;
- (d) Professional indemnity insurance £2million in the aggregate including all costs.

The limits and exclusions in this clause reflect the maximum insurance cover the Supplier has been able to arrange. The Customer is responsible for making its own arrangements for the insurance of any excess loss or any additional level of cover it considers appropriate to put in place. The Supplier shall not increase the insurance coverage limits unless the Finance Director for the Supplier has agreed in writing special terms to do so.

13.2 The restrictions on liability in this clause 13 apply to every liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

13.3 Nothing in the Contract limits any liability which cannot legally be limited, including but not limited to liability for:

- (a) death or personal injury caused by negligence or the negligence of its employees, agents or subcontractors;
- (b) fraud or fraudulent misrepresentation; and
- (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession), both as amended from time to time.
- (d) defective products under Consumer Protection Act 1987, as amended.

13.4 Subject to clause 13.6, the Supplier's total liability to the Customer shall not exceed in respect of all breaches of duty occurring within any contract year, the cap.

13.5 In clause 13.4:

- (a) **cap.** The cap is the greater of £1 million and 200% of the total charges in the contract year in which the breaches occurred;
- (b) **contract year.** A contract year means a 12-month period commencing with the Commencement Date or any anniversary of it; and
- (c) **total charges.** The total charges means all sums paid by the Customer and all sums payable under the Contract in respect of goods and services actually supplied by the Supplier, whether or not invoiced to the Customer.

13.6 This clause 13.6 sets out specific heads of excluded loss and exceptions from them:

- (a) Subject to clause 13.3, the types of loss listed in clause 13.6(c) are wholly excluded by the parties, but the types of loss and specific losses listed in clause 13.6(d) are not excluded.
- (b) If any loss falls into one or more of the categories in clause 13.6(c) and also falls into a category, or is specified, in clause 13.6(d), then it is not excluded.
- (c) The following types of loss are wholly excluded:
 - (i) loss of profits;
 - (ii) loss of stock stored in Goods;
 - (iii) loss of refrigerants;
 - (iv) loss of sales or business;
 - (v) loss of agreements or contracts;
 - (vi) loss of anticipated savings;
 - (vii) loss of use or corruption of software, data or information;
 - (viii) loss of or damage to goodwill; and
 - (ix) indirect or consequential loss.
- (d) The following types of loss and specific loss are not excluded:
 - (i) sums paid by the Customer to the Supplier pursuant to the Contract, in respect of any Goods or Services not provided in accordance with the Contract;
 - (ii) wasted expenditure;
 - (iii) additional reasonable, justifiable and evidenced costs of procuring and implementing replacements for, or alternatives to, Goods or Services not provided in accordance with the Contract; and
 - (iv) losses incurred by the Customer arising out of or in connection with any proven third-party claim against the Customer which has been caused by the act or omission of the Supplier. For these purposes, third party claims shall include demands, fines, penalties, actions, investigations or proceedings, including those made or commenced by subcontractors, the Supplier's personnel, regulators and customers of the Customer.

13.7 The Supplier has given commitments as to compliance of the Goods and Services with relevant specifications in clause 5 and clause 7. In view of these commitments, the terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

13.8 Unless the Customer notifies the Supplier that it intends to make a claim in respect of an event within the notice period, the Supplier shall have no liability for that event. The notice period for an event shall start on the day on which the Customer became, or ought reasonably to have become, aware of the event having occurred and shall expire 3 months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.

13.9 This clause 13 shall survive termination of the Contract.

14. Termination

14.1 Without affecting any other right or remedy available to it, unless otherwise agreed in writing between an authorised representative for the Customer and Finance director for the Supplier, either party may terminate the Contract by giving the other party not less than 6 months' written notice.

14.2 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:

- (a) the other party commits a material breach of its obligations under the Contract and (if such breach is remediable) fails to remedy that breach within 70 days after receipt of notice in writing to do so;
- (b) 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;
- (c) 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; or
- (d) the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- (e) the other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.

14.3 Without affecting any other right or remedy available to it, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if:

- (a) the Customer fails to pay any amount due under the Contract on the due date for payment; or
- (b) there is a change of control of the Customer.

14.4 Without affecting any other right or remedy available to it, the Supplier may suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Customer and the Supplier if the Customer fails to pay any amount due under the Contract on the due date for payment, the Customer becomes subject to any of the events listed in clause 14.2(b) to clause 14.2(d), or the Supplier reasonably believes that the Customer is about to become subject to any of them.

15. Consequences of termination

15.1 On termination of the Contract:

- (a) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services and Goods supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt to include invoicing of Goods purchased by the Supplier for stock to satisfy the anticipated demands of the Customer;

- (b) unless the Supplier expressly states otherwise, the Customer shall return all of the Deliverables or Goods which have not been fully paid for. If the Customer fails to do so, then the Supplier may enter the Premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;
- (c) in respect of a Contract where the Customer has agreed with the Supplier for the Supplier to maintain a bulk stock of assembled and pre-assembled Goods at the Suppliers premises (whether in UK or elsewhere) on the basis that the Customer has pre-paid for such bulk stock of Goods, then:
 - (i) the Customer and Supplier will work in good faith to agree a delivery schedule for such bulk stock of Goods to the Customer's nominated UK location; and
 - (ii) costs of delivery to be for the Customer.

15.2 Termination or expiry of the Contract shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

15.3 Any provision of the Contract that expressly or by implication is intended to have effect after termination or expiry shall continue in full force and effect.

16. Force majeure

16.1 For the purposes of this Contract, **Force Majeure Event** means an event beyond the reasonable control of the Supplier including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), non-availability or failure of a utility (including gas, mains electricity, water) service or transport network (including shipping delays from manufacturing location), act of God, war, riot, civil commotion, global pandemic, national epidemic materially affecting supply chains, malicious damage, compliance with any law or governmental order, rule, regulation or direction, unavailability of Goods, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors. The Supplier shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event. If the Force Majeure Event prevents the Supplier from delivering Goods or providing any of the Services for more than 20 weeks, the Supplier shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Customer.

17. General

17.1 Assignment and other dealings

- (a) The Supplier may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.
- (b) The Customer shall not assign, transfer, novation, 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 the Supplier.

17.2 Notices.

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be:
 - (i) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or

- (ii) sent by email to the e-mail address of a Director of the Supplier.
- (b) Any notice or communication shall be deemed to have been received:
 - (i) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; and
 - (ii) if sent by pre-paid first-class post or other next working day delivery service, at 11.00 am on the third Business Day after posting or at the time recorded by the delivery service; and
 - (iii) if sent email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 17.2(b)(iii), business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.
- (c) This clause 17.2 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
- (d) A notice for court proceedings given under the Contract is not valid if sent by email.

17.3 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall 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 shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause 17.3 shall not affect the validity and enforceability of the rest of the Contract. If one party gives notice to the other of the possibility that any provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

17.4 **Waiver.** A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall 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 shall not constitute a waiver of that or any other right or remedy, nor shall 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 shall prevent or restrict the further exercise of that or any other right or remedy.

17.5 No partnership or agency. Nothing in the Contract is intended to, or shall 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.

17.6 **Entire agreement.**

- (a) 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.
- (b) Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misrepresentation based on any statement in the Contract.
- (c) Nothing in this clause shall limit or exclude any liability for fraud

17.7 **Third parties rights.**

- (a) 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.
- (b) The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.
- (c) The provisions of the Contracts (Rights of Third Parties) Act 1999 shall not apply to any person claiming under the Customer. In particular but without limitation any warranties given in these conditions are for the benefit of the Customer, being the original purchaser of the Goods and/or Services, only. Where the Customer is a re-seller the Customer is responsible for dealing with any warranty or other claims from its customers and shall keep the Supplier fully indemnified in this regard.

17.8 Variation. Except as set out in these Conditions, no variation of the Contract shall be effective unless it is agreed in writing and signed by the parties (or their authorised representatives).

17.9 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 shall be governed by and construed in accordance with the law of England and Wales.

17.10 Jurisdiction. Each party irrevocably agrees that the courts of England and Wales shall 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 Customer shall ensure compliance with the following policy. In the event of any non-conformance, the Supplier:

- (i) Reserves the right to:
 - (a) increase or alter its Fees/Charges or time to be charged; and/or
 - (b) suspend or amend dates for delivery and/or installation of the Goods or performance of the Services;
 - (ii) Warranties shall not apply to Goods delivered or Services performed; and
 - (iii) Shall not be responsible for any breach of the Terms of Supply on its part
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THE CUSTOMER SHALL ENSURE THAT:

1. The Equipment is operated by competent and trained Customer personnel.
2. The Customer has complied or procured its authorised representatives to comply with health and safety (including food safety and environmental) regulation relating to the Site and use of Goods.
3. Day-to-day general cleaning and maintenance recommended by manufacturers of the Goods and Site has been performed, including any recommendations for regular maintenance or servicing.
4. No strong acids or alkalis (except as recommended by the Supplier) are used in the cleaning of the Goods
5. The climatic conditions under which the Goods are operating are within the recommended parameters for the Goods. These are set out in ISO23953 and are for Climate Class 3 unless specifically stated otherwise
6. The air circulation around the Goods comply with the Suppliers recommendations
7. No failure or problems associated with main services -, gas, refrigerant, electricity, water, drainage or air conditioning impacting delivery, installation or operation of the Goods or Services performed on them.
8. Customer provision of all relevant information relating to the Goods to the Supplier which are relevant to delivery, installation or provision of Services.
9. Provision of health and safety briefings or other safe working conditions on site for Supplier Personnel.
10. Full and unfettered access to the Goods or uninterrupted, continuous connection to utilities (gas, refrigerant, mains electricity, drains or water) for Supplier Personnel (or to enable deliveries of Goods), for any reason.
11. Our ability to deliver, test, inspect, install and commission is dependent on access and Goods connection to the appropriate utilities on Site.
12. Goods not being damaged, operating performance reduced or any breakdown caused by (a) improper use, (b) malicious damage (c) inappropriate storage, siting (or re-siting) or transportation of Goods arranged by the Customer or its authorised representatives.
13. No damage caused to Goods as a result of relocation, adjustment or repair of such Goods by anyone other than the Supplier or their authorised representative.
14. No hard water supply or lack of water treatment causing lime-scale build-up or other damage to Goods.
15. Legacy, obsolete or illegal refrigerants being used or required for the Goods (the Supplier does not supply such refrigerants).
16. No modifications or other adaptations to Goods without manufacturer written approval.
17. No postponement of Site opening, including inability to test the Goods for commissioning or other purposes.
18. No Client or their authorised representatives (including fit-out contractor, design team or other property consultant) design, site or layout requirement prevent the Goods from operating in line with manufacturer minimum standards.
19. Suitable access to the site and/or Goods and no hindering the provision of the Services and/or delivery of Goods or Spare Parts.
20. Suitable power supply and correct wiring at the Premises.
21. Availability of motor rated fusing at the Premises to which the Goods will be connected where the Goods are integral refrigeration cabinets.
22. In-store merchandising being accordance with manufacturers guidelines (for example, covering equipment vents).