

## JS Air Curtains Limited - Terms and Conditions

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### 1. Definitions

1(i) In these terms and conditions the following words shall have the following meanings:

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| “the Company”   | means JS Air Curtains Limited   |
| “the Customer”  | means the person, firm or Company to whom this document is addressed  |
| “the Equipment” | means the goods to be purchased by or Services to be provided to the Customer   |
| “the Services”  | means any work provided to the Customer by the Company including but not limited to installation, commissioning, servicing and maintenance work   |
| “the Contract”  | means the contract into which these terms and conditions are incorporated and by which the Customer purchases the equipment or services from the Company.   |
| “Losses”        | 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 professional costs and expenses). |
| “the Order”     | the Customer's order for the supply of the Equipment and/or Services, as set out in the Customer's purchase order form, or the Customer's written acceptance of the Supplier's quotation, or overleaf, as the case may be.  |
| “the Terms”     | means the terms and conditions of sale are set out herein.  |

1(ii) 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 successors and permitted assigns; (c) a reference to legislation or a legislative provision is a reference to it as amended or re-enacted. A reference to legislation or a legislative provision includes all subordinate legislation made under that legislation or legislative provision; (d) any words following the terms **including, include, in particular, for example** or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms; (e) clause headings shall not affect the interpretation of this Contract; and (f) a reference to **writing** or **written** excludes fax [and email OR but not email].

### **SAFETY INFORMATION ABOUT THE USE OF THE GOODS IS PROVIDED AND IT IS YOUR RESPONSIBILITY TO BRING THIS TO THE ATTENTION OF THE USER OF THE GOODS.**

### 2. General

2(i) Any Quotation or tender response provided by the Company does not constitute an offer, may be withdrawn or amended at any time and is automatically withdrawn on the 30<sup>th</sup> day from its date unless otherwise stated in the same. The Order constitutes an offer by the Customer to purchase the Equipment and/or Services in accordance with these Terms. The Order shall only be deemed to be accepted when the Company issues written acceptance of the Order at which point and on which date the Contract shall come into existence. All orders are accepted subject to these Terms which may not be altered without the written agreement of the Company. Any contrary or additional terms that the Customer seeks to incorporate or impose are excluded.

2(ii) Any catalogues, technical circulars, price lists and other materials published by the Company are for general guidance only, and any information included in these documents shall not constitute representations by the Company and the Company shall not be bound by it. If the Customer requires advice in relation to the Equipment a specific request for advice should be made and any advice given in writing by the Company in response to such a request shall be subject to these Terms.

2(iii) The Company may make changes to the specification of the Equipment which do not materially affect its quality or performance or supply Equipment of equivalent or approximately equivalent performance if the Equipment referred to in the Order is no longer readily available at the time of delivery or if required by any applicable statutory or regulatory requirement.

2(iv) Orders may be cancelled only with the Company's written agreement and the Customer will indemnify the Company against all Losses suffered or incurred by the Company arising out of or in connection with such cancellation. Any cancellation of the Equipment ordered (which includes the Services ordered) shall be subject to the following charges:

- (a) Equipment delivered from stock, capable of resale – minimum 25% of Order value
  - (b) Non-stock Equipment, which is suited to resale – 50% of Order value
  - (c) Non-stock Equipment which is not suited to resale – subject to the Company's discretion, no less than 50% of Order value
  - (d) Services – subject to the Company's discretion but no less than 25% of order value
- Unused Equipment will be accepted for return at the Company's discretion and on terms agreed with the Company.

### 3. Delivery

3(i) The risk in the Equipment passes to the Customer when the Equipment leaves the Company's premises, and the Customer should insure accordingly.

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3(ii) The Company shall at the Customer's cost deliver to the address nominated. It is the Customer's responsibility to ensure accurate instructions and safe and adequate access to enable delivery to be effected.

3(iii) If the Customer fails to take delivery of the Equipment, a storage fee of two point five percent (2.5%) of the total invoice value per week or part week may be charged until actual delivery takes place, and charge the Customer or all related costs and expenses (including insurance) Subject to a maximum term of four (4) weeks storage.

3(iv) Delivery dates are given in good faith but are estimates only. Time for delivery shall not be of the essence of the Contract.

3(v) The Company shall not be liable for any damages whatsoever whether direct or consequential (including for the avoidance of doubt any liability to any third party) resulting from any delay in delivery of the Equipment and/or Services or failure to deliver the Equipment and/or Services in a reasonable time whether such delay or failure is caused by the Company's negligence or otherwise howsoever.

3(vi) The Company reserves the right to make delivery by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment or the Contract as a whole .

3(vii) Specific testing of the Equipment can be provided upon reasonable request and will be undertaken in the Customer's presence and at the Customer's cost. Time taken for specific testing will be added to any time quoted for delivery.

### 4. Price and Payment

4(i) The ex-works price of the Equipment and/or the Services shall be as quoted (subject to the validity of the quotation) or agreed in writing by the Company and is exclusive of VAT.

4(ii) Prices quoted or agreed are applicable to the quantity specification, delivery dates and information provided by the Customer.

4(iii) In respect of Equipment, the Company shall invoice the Customer on or at any time after completion of delivery. In respect of Services, the Company shall invoice the Customer on completion of the Services.

4(iv) The Customer shall pay each invoice submitted by Company:

- a) within thirty (30) days of the date of the invoice unless otherwise agreed between the parties (**Due Date**); and
- b) in full and in cleared funds to a bank account nominated in writing by the Company, and time for payment shall be of the essence of the Contract.

4(v) Any increase in the costs of the Equipment or the Services to the Company between the date of the Order and the date of delivery of the Equipment and/or the Services may be passed on to the Customer.

4(vi) 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).

4(vii) 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**) which the Customer shall pay to the Company at the relevant rate on receipt of a valid VAT invoice from the Company.

4(viii) If the Customer fails to make a payment due to the Company under the Contract by the due date, then, the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment on a daily basis at the greater of the interest which applies pursuant to the Late Payment of Commercial Debts (Interest) Act 1988 and 5% a year above the Base Rate of the Bank of England pursuant to the Late Payment of Commercial Debts (Interest) Act 1988

### 5. Inspection

5(i) The Customer shall inspect the Equipment at the place and time of unloading but nothing in these Terms shall require the Customer to break packaging and/or unpack Equipment which is intended to be stored before use.

5(ii) Unless the Customer advises the Company in writing within 5 (five) working days of unloading of any claim for loss, damage (accompanied with the delivery note, signed by delivery driver stating any visible defect in the goods), short delivery or failure to conform to the Contract apparent on inspection or inspection in Equipment will be deemed to have been delivered in accordance with the delivery documents and the Customer shall not be entitled and waive any right to reject the Equipment.

5(iii) The Company's liability for loss, damage, short delivery or failure of the Equipment to conform to the Contract which is apparent on inspection is limited to supplying the Equipment as ordered or crediting part of the purchase price and the Company shall not be liable for any damages whatsoever. The Customer remains liable to pay the full invoice price of the Equipment delivered in accordance with the Contract. Any other claim for damages is subject to Clause 9.

### 6. Title

6(i) The title to the Equipment shall not pass to the Customer until the earlier of the date on which:

- a) the Company receives payment in full (in cash or cleared funds) for the Equipment and any other goods that the Company has supplied to the Customer in respect of which payment has become due, in which case title to the Equipment shall pass at the time of payment of all such sums; and
- b) the Customer resells the Equipment, in which case title to the Equipment shall pass to the Customer at the time specified in clause 6(iv).

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6(ii) If the Customer alters the Equipment by subjecting it to any manufacturing process or incorporating it into another product ("Altered Equipment") until payment is made under Clause 6(i) the Company shall retain title to the Equipment and the Altered Equipment in common with any other owner other than the Customer of the property in the Altered Equipment.

6(iii) Until title to the Equipment passes to the Customer, the Customer shall:-

- (a) hold the Equipment and the Altered Equipment as the Company's fiduciary agent and bailee;
- (b) store the Equipment and the Altered Equipment separately from any other equipment and property of the Customer or other persons and in accordance with recommendations from the Company, so that they remain readily identifiable as the Company's property;
- (c) not interfere with, remove, deface or obscure any identification marks, labels, batch numbers, or serial numbers, or packaging on or relating to the Equipment;
- (d) maintain the Equipment and any materials or goods associated with the Services provided by the Company, in satisfactory condition and keep them adequately insured against all risks for their full price on the Company's behalf from the date of delivery against loss or damage arising from any cause whatsoever. The Customer shall produce to the Company on demand the policies of such insurance and receipts of premiums paid thereon.
- (e) notify the Supplier immediately if it becomes subject to any of the events listed in clause 10(ii)(d) to clause 10(ii)(f); and
- (f) give the Company such information as the Company may reasonably require from time to time relating to: (i) the Equipment, and (ii) the ongoing financial position of the Customer.

6(iv) Subject to clause 6(vi), the Customer may resell or use the Equipment and the Altered Equipment in the ordinary course of the its business (and not otherwise) before the Company receives payment for the Equipment. However, if the Customer resells the Equipment and/or the Altered Equipment before that time:

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

6(v) If the Equipment and the Altered Equipment are to become affixed to any land building or other equipment the Customer must ensure that they are capable of removal without material injury to the land building or other equipment and the Customer shall take all necessary steps to prevent title to the Equipment and the Altered Equipment from passing to the owner or landlord of such land building or other equipment.

6(vi) At any time before title to the Equipment and/or the Altered Equipment passes to the Customer, the Company may:

- a) by notice in writing, terminate the Customer's right under clause 6(iv) to resell the Equipment and/or the Altered Equipment or use them in the ordinary course of its business; and
- b) require the Customer to deliver up all Equipment and/or the Altered Equipment in its possession that have not been resold, or irrevocably incorporated into another product and if the Customer fails to do so promptly, the Company, its employees or agents, may with such transport as is necessary enter upon any premises or vehicle owned or occupied by the Customer or to which the Customer has access and where the Equipment and the Altered Equipment may be or is believed to be situated in order to recover them.

6(vii) The title to any drawings illustrations or descriptive material (hereinafter referred to as the "Documents") submitted by the Customer shall remain its property. All title and any intellectual property rights in any Documents submitted by the Company, or in connection with the provision of the Equipment and/or Services (other than intellectual property rights in any materials provided by the Customer), shall remain the property of the Company.

### 7. Services and Customer's obligations

7(i) Where the Company has agreed to commission the Equipment and/or any goods or perform any other services including but not limited to service work and maintenance, the Customer shall ensure that:

- (a) the Company, its employees, agents, consultants and subcontractors, has access to the Customer's premises, office accommodation and other facilities as required by the Company to provide the Services including provision of access/lifting equipment if the site is not on the ground floor;
- (b) adequate access relevant to the size of the Equipment is provided;
- (c) Customer's premises are ready for the provision of the Services in accordance with the Company's instructions ;
- (d) the programme of works and access to the site allows for completion of the Services within normal working hours;
- (e) the provision of the Services will not be prevented, delayed or interrupted;
- (f) adequate lighting, heating, power, water and drainage supplies are provided;
- (g) specified building, plumbing and electrical works defined by the Company as a Customer responsibility are complete and in accordance with the relevant specification;
- (h) the supply of scaffolding, ladders, mobile access platforms, hoisting and/or lowering gear required by the Customer for the execution of the Services is complete and correctly sited;
- (i) a safe and appropriate working environment in accordance with the British Standard Code of Practice for safe working in occupied and unoccupied parts of the site is provided for the Company's employees and agents;

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(j) the terms of the Order [and any information it provides in the Service Specification [and the Equipment Specification]] are complete and accurate;

(k) it co-operates with the Company in all matters relating to the Services;

(l) it provides the Company with such information and materials as the Company may reasonably require in order to supply the Services, and ensure that such information is complete and accurate;

(m) it obtains and maintains all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;

(n) it complies with all applicable laws, including health and safety laws;

(o) it keeps all materials, equipment, documents and other property of the Company (**Company Materials**) at the Customer's premises in safe custody at its own risk, maintain the Company Materials in good condition until returned to the Company, and not dispose of or use the Company Materials other than in accordance with the Company's written instructions or authorisation; and

(p) it complies with any additional obligations as set out in the Service Specification [and the Goods Specification.

7(ii) If (a) in the Company's sole discretion, any of the provisions of clause 7(i) are not met, and/or (b) if the Company'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"); the Company shall not be liable to the extent that it is delayed or prevented from performing any of its obligations and may suspend performance of the Services without any liability by notice in writing to the Customer until the Customer remedies the Customer Default;

(a) the Customer shall reimburse the Company on demand for any costs or losses sustained or incurred by the Company arising directly or indirectly from the Customer Default, including costs incurred in completing the Services (including but not limited to travel and overtime rates for labour); and

(b) the Company shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Company's failure or delay to perform any of its obligations and/or any suspension as set out in this clause 7(ii)

7(iii). Where the price quoted for the Services is based on particulars supplied by the Customer, any materials or additional services required which were not apparent from those particulars will be subject to an additional charge including but not limited to travel and overtime rates for labour.

7(iv) In the event of determination of the Services only by the Customer, such determination shall be in writing by registered or recorded post giving full reasons for such determination. In the event of such determination for whatever cause the Company shall be entitled to be paid any design costs, the total value of the work begun and/or completed up to the date of determination, the cost of materials and goods obtained by the Company for the Services, the cost of removal from the Customer's site of any of the Company's property and any direct loss and/or expense caused to the Company by the Customer whether by determination or otherwise under these Terms. For the avoidance of doubt, this clause does not affect the Company's obligation to deliver the Equipment or the Customer's obligation to pay the price of the Equipment. The Company may take possession of and shall have lien upon all goods and materials which may have become the property of the Customer until payment of all monies due to the Company by the Customer.

### 8. Variations

8(i) "Variation" means any alteration or modification of the design, composition, quality or quantity of the Equipment and/or the Services and includes any addition, omission or substitution and any alteration to the programme of works requested by the Customer.

8(ii) All Variations must be requested in writing by the Customer (or where requested verbally, confirmed in writing by the Company) and shall not be binding unless agreed by the Company in writing, in which case, the Customer shall pay the cost of the Variation and all additional costs and expenses incurred by the Company including the provision of labour at the Company's day work rates, details of which are available on request.

8(iii) If it is not reasonably possible to estimate the value of a Variation before the Company complies with the request, or if the request is complied with before the cost of the Variation has been agreed, then the cost of the Variation shall be charged on the basis of the Company's day work travel and overtime rates together with the cost of additional materials and services at the Company's rate current at the time the Variation was carried out.

### 9. Defective Equipment

9(i) Warranty is for the period of 24 months, on parts and equipment only, from date of delivery. In this clause "the Defect" shall mean the condition and/or any attributes of the Equipment and/or any other circumstances which but for the effect of these Terms would have entitled the Customer to damages.

9(ii) Subject to clause 9(iii), in the event that a Defect in the Equipment arises, the Company shall, at its sole discretion, repair or replace the defective Equipment (parts or equipment only), or refund the price of the defective Equipment in full or in part (where appropriate), and this shall be the Customer's exclusive remedy in respect of the same.

9(iii) The Company will not be liable under Clause 9(ii):-

(a) If the Defect would have been apparent on a reasonable inspection under Clause 5(i) these Terms at the time of unloading unless the Company is given written notice within 5 working days of the time of unloading, accompanied with the delivery note, signed by the delivery driver stating any visible defect in the goods.



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(b) Unless the Defect is discovered within 24 months from the date of delivery and the Company is given written notice of the Defect within 10 working days of it being discovered unless after discovery of the Defect the Company is given a reasonable opportunity to inspect the Equipment before it is used or in any way interfered with. The Company acknowledges that the cost of suspending works is relevant to the determination of what is a reasonable opportunity and this sub-clause shall not apply to any works affecting the Equipment which it may be reasonably necessary to carry out in the interests of safety and/or as emergency measures

(c) if the Defect arises from fair wear and tear

(d) if the Defect arises from the Customer's negligence, misuse, alteration, or repair of the Equipment storage of the Equipment in unsuitable conditions or abnormal working conditions;  
and/or

(e) if the Defect is caused by the Customer's or any third party's failure to assemble the Equipment in accordance with the Company's prescribed methods and our technical information brochures.

9(iv) if the Equipment is supplied to a drawing, design, measurement or specification provided in writing by the Company, then subject to Clause 10(ii) of these Terms, the Company's liability shall be limited to the exclusive remedy set out in clause 9(ii).

9(v) The Company will not be liable under Clause 9(iv) if:-

(a) Material information is withheld concealed or misrepresented by the Customer; and/or

(b) the drawing design measurement or specification provided by the Company is not in writing.

9(vi) If the Equipment is supplied manufactured or processed to the drawing design measurement or specification of the Customer then:-

(a) the Company shall not be under any liability under Clause 9(ii) of these Terms as the case may be except in the event of:

(i) fraudulent misrepresentation by the Company;

(ii) misrepresentation where the representation was made or confirmed in writing by the Company; or

(iii) non-compliance with such drawing design measurement or specification; or breach of a written warranty signed by the Company that the Equipment is fit for that purpose,

(b) the Customer shall indemnify and keep indemnified the Company against all Losses suffered or incurred by the Company arising out of or in connection with:-

(i) any claim made against the Company for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Company's use of the Customer's drawing design measurement or specification ; and/or

(ii) arising from any such manufacturing or processing including but not limited to any Defect in the Equipment.

This indemnity will be reduced in proportion to the extent that such losses damage costs and expenses are due to the Company's negligence.

### 10. Limitation of Liability

10(i) The restrictions on liability in this clause 10 apply to every liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, breach of statutory duty, restitution or otherwise.

10(ii) Nothing in the Contract limits any liability which cannot legally be limited, including liability for:

a) death or personal injury caused by negligence;

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).

10(iii) Subject to clause 10(ii), the Company shall not be liable for the following types of losses:

d) loss of profits;

e) loss of sales or business;

f) loss of agreements or contracts;

g) loss of revenues or anticipated savings;

h) loss of use or corruption of software, data or information;

i) loss of or damage to goodwill; and

j) any special, indirect or consequential loss.

10(iv) Subject to clause 10(ii), the Company's total liability to the Customer arising out of in relation to this Contract shall not exceed the insurance cover held by the Company.

10(v) 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

### 11. Termination

11(i) "Associated Company" means the Customer's subsidiary or holding company as defined in section 1159 of the Companies Act 2006.

11(ii) Without affecting any other right or remedy available to it, the Company may terminate the Contract with

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immediate effect by giving written notice to the Customer party if:

- a) the Customer fails to pay any amount due under the Contract on the due date for payment or the Customer's credit limit is exceeded;
- b) there is a change of Control of the Customer. Control has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression change of Control shall be interpreted accordingly;
- c) the Customer commits a material breach of its obligations under the Contract and (if such breach is remediable) fails to remedy that breach within [14] days after receipt of notice in writing to do so;
- d) the Customer 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), obtaining a moratorium, 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;
- e) the Customer suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- f) the Customer's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy.

11(iii) Without affecting any other right or remedy available to it, 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 10(ii) or the Company reasonably believes that the Customer is about to become subject to any of them, the Company may:

- a) require payment in cleared funds in advance of further deliveries of Equipment;
- b) suspend the supply of Services or all further deliveries of the Equipment under the Contract or any other contract between the Customer and the Company; and/or
- c) without prejudice to the generality of clause 6 of these Terms (*Title*), exercise any of the Company's rights pursuant to clause 6; and/or
- d) terminate this or any other part contract with the Customer or any Associated Company without liability on the Company's part.

11(iv) On termination of the Contract:

- a) the Customer shall immediately pay to the Company all of the Company's outstanding unpaid invoices and interest under this Contract any other contract between the parties and, in respect of Services and Equipment supplied but for which no invoice has been submitted, the Company shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- b) the Customer shall return all of the Company Materials and any Equipment which has not been fully paid for. If the Customer fails to do so, then the Company may enter the Customer's 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.

11(v) 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.

11(vi) 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.

### 12. Export Terms

12(i) Where the Equipment is supplied for export from the United Kingdom the provisions of this clause 12 shall apply notwithstanding any provision of these Terms unless otherwise agreed in writing by the Company.

12(ii) In any case where Equipment is sold CIF or FOB or on the basis of any other international trade term the meaning of such terms contained in Incoterms (2022) shall apply but if there is any conflict between the provisions of Incoterms and these Terms, the latter shall prevail.

12(iii) In the case of any sale of Equipment FOB the Company shall be under no obligation to give the Customer notice specified in section 32(3) of the Sale of Goods Act 1979.

12(iv) The Customer shall be responsible for arranging for inspection of the Equipment at the Company's premises before shipment. The Company shall have no liability for any claim in respect of any defect in the Equipment which would have been apparent on inspection and which is made after shipment or in respect of any damage during transit.

(a) Payment of all amounts due to the Company shall be made by irrevocable letter of credit opened by the Customer in favour of the Company and confirmed by a United Kingdom clearing bank acceptable to the Company or, if the Company has agreed in writing by acceptance by the Customer and delivery to the Company of a bill of exchange drawn on the Customer payable 30 days after sight to the order of the Company at such a branch of Barclays Bank Plc in England as may be specified in the bill of exchange.

(b) The Customer's Order will not be accepted by the Company until the Company has evidence of the letter of credit

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or bill of exchange as the case may be. All costs and charges incurred by the Company in negotiating and accepting payment methods shall be added to the price of the Equipment.

(c) This clause 12 shall also apply if the Customer is resident outside the United Kingdom.

### 13. Data Protection

13(i) Both parties will comply with all data protection and privacy legislation in force from time to time.

### 14. Confidentiality

14(i) Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, assets, affairs, customers, clients or suppliers of the other party or of any member of the group of companies to which the other party belongs, except as permitted by clause 14(ii).

14(ii) Each party may disclose the other party's confidential information:

- a. to its employees, officers, representatives, contractors or subcontracts or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with the Contract. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 14; and
- b. as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

14(iii) No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.

### 15. General

#### 15(i) Force Majeure.

- a) "Force Majeure Event" means any circumstance not within the Company's reasonable control, including: (a) acts of God, flood, drought, earthquake or other natural disaster; (b) epidemic or pandemic; (c) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations; (d) nuclear, chemical or biological contamination or sonic boom; (e) any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent; (f) collapse of buildings, fire, explosion or accident; (g) any labour or trade dispute, strikes, industrial action or lockouts; (h) non-performance by suppliers or subcontractors; (i) interruption or failure of utility service; (j) difficulties in obtaining materials, parts components labour or fuel; and (h) power failure or breakdown in machinery or vehicles.
- b) Neither party shall be in breach of the Contract or otherwise liable for any failure or delay in the performance of its obligations if such delay or failure results from a Force Majeure Event. The time for performance of such obligations shall be extended accordingly.

15(ii) **Waiver.** A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.

15(iii) **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract. If any provision or part provision of the Contract is deemed deleted under this clause 15(iii) the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the commercial result of the original provision.

15(iv) If the Housing Grants Construction & Regeneration Act 1996 Part II applies to this Contract the Scheme under the Act shall apply and take precedence in the event of conflict between the Scheme and these Terms.

15(v) **Assignment.** The Company 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. The Customer shall 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.

#### 15(vi) Notices.

- a) Any notice 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 email addresses set out in the **[Order]** or as communicated between the parties.
- b) Any notice shall be deemed to have been received:

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- i. if delivered by hand, at the time the notice is left at the proper address;
  - ii. if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or
  - iii. if sent by 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 15(vi), 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 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.

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

15(viii) **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.

15(ix) **Entire agreement.** The Contract constitutes the entire agreement between the parties. Each party acknowledges that in entering into the Contract it does not rely on 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 misstatement based on any statement in the Contract.

15(x) **Third party rights.** 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(xi) **Rights and remedies.** Except as expressly provided in this Contract, the rights and remedies provided under this Contract are in addition to, and not exclusive of, any rights or remedies provided by law.

15(xii) **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. For the avoidance of doubt, the rules of conflict of private international law and the United Nations Convention on Contracts for the International Sale of Goods (CISG) are expressly excluded from this Contract.

15(xiii) **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.

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Last modified: 18.11.2024

Reviewed: TJFL

Approved: TOFL