



Terms and Conditions of Sale

Definitions

In these Conditions of Supply all references to:

- (i) "Seller" are to Hilotherm Limited whose registered office is at 10 Gibbet Hill Road, Coventry CV4 7AJ
- (ii) "Buyer" are to the person, firm or company by whom the order is given to the Seller.
- (iii) "goods" are to the goods which are the subject of the order.
- (iv) "supply" are to the supply for such goods and/or services.

2 - Entire Agreement

2.1 All contracts for supply shall be deemed to incorporate these Conditions which represent the complete agreement of the Seller and Buyer with regards to the supply except as otherwise specifically agreed in writing by the Seller (the contract for supply). These conditions shall override any terms and conditions stipulated, incorporated or referred to by the Buyer in any order, correspondence, negotiations or any other way.

2.2 Catalogues, price lists, advertisements and other published information are only indications of the type of products and services available and shall not form part of the contract for supply or any other contract with the Buyer nor be considered an offer, a collateral warranty or a representation inducing the same.

3 - Acceptance of Orders

3.1 An order on the Seller will be effective on acknowledgement of the order by the issue of an invoice to the Buyer. If the quotation provided by the Seller specifies that it is a bid in response to an invitation for bids the order or award shall constitute acceptance of the bid in accordance with the terms specified by the Seller.

3.2 Accepted orders are not subject to cancellation except upon

- (i) the written approval of the Seller and (ii) the payment of a fair and equitable charge to the Seller based upon the actual cost incurred by the Seller in respect of the order to the date cancellation is received and approved.

4 - Specifications

4.1 Where the Seller sets goods or performs services which are not its standard specification, in preparing and submitting a specification and/or written acceptance of the Buyer's order the Seller relies upon the Buyer supplying all necessary relevant and accurate particulars and information. Any errors or omissions contained in such particulars and information supplied at any time resulting in any loss or damage to the Buyer shall be the Buyer's sole responsibility.

4.2 Any drawings, illustrations, specifications or other material submitted by the Seller to the Buyer remain the property of the Seller and must not be communicated to a third party without the written permission of the Seller. A prospective Buyer has no right to disclose any information contained therein to a third party without the written consent of the Seller.

5 - Price and Payment Terms

5.1 The price and terms of payment for the supply shall be set out in the Seller's invoice and will be held for 30 days.

5.2 The Seller reserves the right by notice given at any time before delivery of the goods or performance of the services to vary the price if there is any increase or decrease in the Seller's general price list pertaining to such or similar goods or services or if there is any increase in the cost to the Seller due to any factor beyond its control, any change in delivery dates, quantities or specification of goods which is requested by the Buyer or any delay caused by the Buyer's instructions or failure to provide adequate information. Time of payment of the price shall be the essence of all contracts for supply.

5.3 Unless otherwise agreed in writing or set out in the quotation the Seller's prices do not include delivery charges. Where the Seller agrees to deliver the goods the Buyer will pay for the cost of transport, packaging and insurance.

5.4 The Seller reserves the right to suspend further deliveries or performance and/or to cancel allowance of further credit in the event of any payment not being made when due or if the Seller considers the financial circumstances of the Buyer have ceased to justify the terms allowed.

5.5 If the Buyer fails to make payment on the due date then, without prejudice to any other right or remedy, the Seller can:

- (i) cancel the contract and suspend further deliveries to the Buyer (ii) appropriate any payment made by the Buyer to such of the goods (or the goods supplied under any contract) as the Seller thinks fit (iii) charge the Buyer interest (both before and after any Judgment) on the amount unpaid at the rate of 5% above the Seller's bank's base rate from time to time or the statutory rate of interest payable on judgment debts whichever is the greater. The Seller reserves the right to claim interest under the Late Payment of commercial Debts (Interest) Act 1998

6 - Delivery and Non Delivery

6.1 Unless otherwise expressly provided in writing in the order, all sales include delivery to the Buyer's delivery address

6.2 If the Buyer fails to take delivery of the goods or fails to give adequate delivery instructions then without prejudice to any other right or remedy the Seller may:

- (i) invoice for all the goods ordered, store the goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage and interest at the rate indicated in Clause 5.8(i) until payment is made in full; or
 - (ii) sell the goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the price due under the Contract or charge the Buyer for any shortfall below the price under the Contract.
- 6.3 The quantity of any consignment of Goods as recorded by the Seller on despatch from the Seller's place of business shall be conclusive evidence of the quantity received by the Buyer on delivery unless the Buyer can provide conclusive evidence proving the contrary.
- 6.4 The Seller shall not be liable for any non-delivery of Goods (even if caused by the Seller's negligence) unless the Buyer gives written notice to the Seller of the non-delivery within 7 days of the date when the Goods would in the ordinary course of events have been received.
- 6.5 Any liability of the Seller for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods.

7 - Invoicing

7.1 Unless a proforma invoice is supplied the Seller may invoice the Buyer in respect of the supply of goods at the earlier of the following dates: the date the goods are despatched or the date the goods are ready for delivery (if they are held at the Seller's premises awaiting instructions from the Buyer).

7.2 The Seller may invoice the Buyer for the supply of services at the earlier of the following dates: the date of the commencement of performance thereof or such date agreed by the Buyer and the Seller if performance is delayed by the instructions of the Buyer, or by some reason beyond the control of the Seller.

8 - Passing of Property

8.1 No property in or title to the goods shall pass to the Buyer until their full price has been duly paid in cash to the Seller. Failure to pay the purchase price as aforesaid when due shall, without prejudice to any other remedies the Seller may have, entitle the Seller to repossess the goods or so much thereof as the Seller may determine from any premises where they may be or to which they may be attached. For the purpose of repossessing the goods or any part thereof the Buyer shall permit the Seller, its employees or agents upon such premises and the Buyer shall pay to the Seller the cost of removal and transport of the goods or any part thereof. Nothing in this Condition shall confer any right on the Buyer to return any of the goods or to refuse or delay payment thereof.

8.2 The Buyer shall not sell, purport to sell or part with possession of the goods until the property therein shall have passed to the Buyer provided that with the prior written consent of the Seller the Buyer may contract to re-sell the goods. In any such re-sale the Buyer shall as regards the subpurchaser act as principal but shall hold the proceeds of such re-sale in trust for the Seller in a separate bank account until the Seller has received the full purchase price due to the Seller.

9 - Statutory Liability

9.1 The Seller does not exclude or restrict any legal liability it may have for death, or personal injury resulting from the negligence of the Seller, its employees, agents or sub-contractors.

9.2 The Seller does not exclude or restrict any of its legal obligations arising under Section 12 of the Sale of Goods Act 1979 (as amended by the Sale and Supply of Goods Act 1994) and Section 2 of the Sale of Goods and Services Act 1982 and Part 1 of the Consumer Protection Act 1987.

10 - Warranties

10.1 The Seller warrants the goods against defects in, materials and workmanship for end users of the goods in accordance with the terms of and the Buyer shall be entitled to rely on such warranty solely for the purpose of any warranty claims made by purchasers acquiring goods from the Buyer as end users.

10.2 The above warranty shall not apply to any defect in the goods or deficiency in the services where such defect or deficiency is caused in whole or in part by:

- (i) the installation, storage, use, maintenance or repair of the goods in a manner reasonably considered by the Seller to be improper;
- (ii) the Buyer and/or any user of the goods or of products incorporating the goods and/or any third party called in by the Buyer and/or such user as aforesaid changing or adding to the goods without the express permission in writing of the Seller;
- (iii) any other act of the Buyer or any third party

10.2.2 The Seller shall be under no liability whatsoever for any loss or damage which results from or is caused by erroneous information or lack of information supplied by the Buyer as to the Seller's requirements in relation to the specification or use of the goods or services.

10.3 The Seller shall be under no liability whatsoever to repair, replace or make good any loss which results from defects or depreciation caused by damage in transit in circumstances outside the Seller's control; wear and, accidents, neglect, misuse, dampness, abnormal temperature or other conditions or circumstances beyond the Seller's control as stipulated in Clause 12 below.

(i) when any defective goods are replaced upon an exchange basis or defective goods are replaced or services are re-performed the provisions of this warranty clause shall apply to the re-performed services or replacement or repaired goods for the unexpired balance of the warranty period or the period of six months from the date of re-performance replacement or repair as the case may be whichever is the longer.

10.4 The above warranty provisions do not apply to any goods or services where it is impracticable or unsafe for the Seller to comply with the same.

10.5 All liability under the warranty provisions ceases at the expiration of the warranty period.

11 - Exclusions and limitations on warranties

11.1 The Buyer shall be entitled to the benefit of the aforementioned warranty which is given in lieu of and replaces, excludes and extinguishes all and every condition, representation or warranty whatsoever whether express or implied by statute, common law, trade usage, custom or otherwise.

11.2 It shall be the responsibility of the Buyer to determine the suitability of the goods and any services for their intended purpose and for actual application and their compliance with applicable laws, regulation codes and standards and the Buyer assumes all risks pertaining thereto.

11.3 Notwithstanding the exclusion of any warranty as to fitness for purpose contained in these Conditions, as a separate Condition the Buyer agrees that in circumstances where the Seller relies on the skill of the Buyer to judge whether goods or services are fit for the purpose for which they are purchased or provided the Seller shall accept no liability whatsoever with regards to that judgement or any matter arising from that judgement the Buyer will indemnify the Seller against any loss, damage, costs, claims or expenses arising there from.

11.4 If not notwithstanding the Seller's attempts to comply with the warranty the Seller is unable to do so the Seller shall pay monetary damages to the buyer not exceeding the amount received by the Seller for the defective goods, or as the case may be, the deficient services.

11.5 The Seller shall not be liable in respect of any loss or damage of whatsoever kind or however caused whether by reason of the negligence of the Seller or otherwise, to premises, plant or other physical property. In the event of legal liability being established the Seller shall not be liable to pay damages arising from the aforesaid loss or damage.

11.6 Save as expressly provided for in the contract for supply the Seller shall in no circumstances be liable for the following loss or damage however caused and however arising whether by reason of the Seller's negligence or otherwise, even if such loss or damage was or ought reasonably to have been, in the contemplation of the parties at the date of the contract for supply as being likely to occur: (i) economic loss, which shall include, without limitation, loss of profits, reputation, goodwill, business use, use of interest, services of employee or agent, anticipated savings, expenses rendered futile by the breach and expenses caused by the breach; (ii) any other consequential or indirect loss or damages; (iii) any claim made against the Buyer by any other party; In the event of legal liability being established the Seller shall not be liable to pay damages arising from the aforesaid loss or damage.

11.7 If, notwithstanding the provisions of Clauses 10 and 11 inclusive and Clause 12, the Seller shall in any circumstances whatsoever be held legally liable to the Buyer then; (i) the Buyer's sole rights of redress against the Seller shall be limited to damages; (ii) the Seller's total liability in respect of any goods and/or services notwithstanding the number of incidents for which the Seller is found legally liable shall in no circumstances exceed the amount received by the Seller for goods or services as the case may be.

12 - Events beyond the control of the Seller.

12.1 The Seller does not accept liability whatsoever under the contract for supply wherever and to the extent to which the fulfillment of the Seller's obligations is prevented frustrated impeded and/or delayed as a consequence of any 'force majeure' and/or any occurrence whatever beyond the control of the Seller, such to include, without prejudice to the generality of the foregoing: (i) act of God, fires, floods or other casualties; (ii) war, riots, civil commotion, embargoes, governmental regulations inability to obtain necessary materials from the Seller's usual sources of supply; (iii) shortage of transport facilities or delays in transit; (iv) existing or future strikes or other labour troubles affecting the performance thereof involving the Seller's employees, or employees of other and regardless of the responsibility or fault on the part of the employees; (v) failure in whole or in part of power supplies.

12.2 The Seller undertakes however to make every reasonable endeavour within its power to overcome difficulties arising in connection therewith but reserves the right to cancel suspend or vary its obligations under the contract of supply and in the event of shortages of goods or of available resources for their production storage or delivery or continued difficulty in rendering services arising from any of the events or circumstances referred to in Clause 12.1, the Seller reserves the right to allocate as it may think fit its available goods and resources and performance of services between customers and whom it has contractual obligations in respect thereof and shall not be obliged to purchase goods from third parties or sub-contract services to make good such shortages, or performance.

13 - Insurance

13.1 The precise limits of any appropriate insurance cover are primarily within the Buyer's knowledge thereby enabling the Buyer to effect his own insurance cover at more economic rates than the Seller. The Buyer agrees that insofar as the Buyer may require any insurance cover the Buyer shall effect the same, such to include without prejudice to the generality of the foregoing:

(i) damage to the physical property of any kind; (ii) economic and other consequential or indirect loss or damage; therefore the Buyer acknowledges and accepts that it is reasonable for the Seller to limit its legal liability and its liability to pay damages as set out in these conditions.

13.2 The Buyer hereby agrees and acknowledges that it will procure that the Buyer's insurers shall in no circumstances whatsoever have any rights or remedies against the Seller additional to those of the Buyer.

14 - Indemnity

The Buyer agrees to indemnify the Seller against any loss, damage, costs, claims or expenses incurred by the Seller in respect of liability established against the Seller by a third party arising out of or in connection with the contract of supply.

15 - Change in Buyer's Financial Circumstances

If the Buyer makes any composition or arrangement with creditors or, being in a company, goes into liquidation whether voluntary or compulsory or, being an individual or firm, if he or any partner commits any act of bankruptcy or if a Receiver is appointed in respect of any assets of the Buyer or if the Buyer fails duly to pay for any goods or services or to comply with any other requirement under any contract for supply or if the Seller considers in its absolute discretion that the financial circumstances of the Buyer do not justify any payment or credit terms or arrangement previously agreed the Seller may at its option either require payment in cash before dispatch of goods remaining to be delivered or performance of services remaining to be performed any may cancel further deliveries or work without prejudice to any other rights or remedies of the Seller and the Buyer shall remain liable for completed and partially completed deliveries and work to the same extent as required under these Conditions in the event of cancellation.

16 - Health and Safety.

16.1 The Buyer agrees to use the goods and obtain services for uses specified in the Seller's current sales literature or for other uses which the Seller has specifically notified in writing to the Buyer as being in the Seller's opinion free from risk to health and safety.

16.2 The Buyer agrees to pay due regard to any information or advice relating to the use of the goods or product of the services which the Seller may at any time furnish to it and agrees that before the goods are used it will, if requested by the Seller, furnish the Seller with a written undertaking to

any steps which the Seller may specify with a view to ensuring that the goods will be safe and without risk to health when used.

16.3 Any written undertaking given pursuant to Clause 16.2 above shall be deemed to have as if it formed part of the contract for supply.

17 - Delivery by Installments.

Each delivery or part delivery of any order shall be deemed to be sold under a separate contract. Neither failure on the Seller's part to make any delivery or part delivery in accordance with the contract for supply nor any claim by the Buyer in respect of such delivery or part delivery shall entitle the Buyer to reject the balance of the order.

18 - Patent Indemnity

When goods are made or adapted by the Seller in accordance with the Buyer's specifications, the Buyer shall indemnify the Seller against all costs, claims and expenses incurred by the Seller in respect of the infringement or alleged infringement by such goods of any patents, registered designs, trademarks or other rights belonging to third parties.

19 - Buyer's Property

Any material or property of the Buyer or material or property supplied to the Seller by or on behalf of the Buyer is supplied entirely at the Buyer's risk and the Seller will not be liable or held responsible for any loss or damage to such material or held responsible for any loss or damage to such material or property whether or not attributable to the acts, defaults, or negligence of the Seller or any of the Seller's employees or agents.

20 - Assignment

The Buyer shall not assign or otherwise transfer any contract for supply or any part thereof or any benefit or interest therein or there under without the prior written consent of the Seller. Any such attempted assignment or transfer by the Buyer without the written consent of the Seller is void.

21 - Waiver

The rights of the Seller shall not be prejudiced or restricted by any indulgence or forbearance extended to the Buyer and no waiver of any breach shall operate as a waiver of any subsequent breach and shall only apply to the individual contract for supply in relation to which it is made.

22 - Severability

If any term or condition herein or part thereof is held to be invalid for any reason by any Court or competent authority it is to that extent to be deemed removed from the contract for supply without prejudice to the validity or other effectiveness of the remaining terms and conditions thereof.

23 - English Law

The formation, construction and performance of all contracts for supply shall be governed in all respects by English Law. The Buyer and the Seller hereby agree to submit to the non-exclusive jurisdiction of the English Courts.

To request an electronic version of the Terms of Sale please email info@hilotherm.co.uk