

S&G AIR CONDITIONING CONTRACTS LIMITED LTD - TERMS & CONDITIONS OF SUPPLY AND/OR FITTING OF GOODS

In these Conditions:

1.1 The “**Buyer**” means the person(s), firm or company who buys or agrees to buy the Goods from the Seller;

The “**Contract**” means any contract between the Seller and the Buyer for the sale and purchase of Goods incorporating these conditions;

The “**Goods**” shall mean items supplied under the Contract and services;

The “**Seller**” means **S & G Air Conditioning Contracts Limited** whose Registered Office is at 29d Park Road, Barry, Vale of Glamorgan CF62 6NX (Company Registration Number 04686200)

1.2 Subject to any modification in accordance with this clause the Contract will be on these Conditions and supersedes all previous or contemporaneous oral or written statements (including any terms or conditions the Buyer purports to apply under a purchase order, confirmation of order, specification or other document). No modification or additions to the Contract or these Conditions shall be binding unless in writing and signed by both parties. Representations about the Goods shall not have any effect unless expressly agreed in writing signed on behalf of the Seller. The Contract is personal to the Buyer and may not be assigned without the Seller’s written consent.

1.3 Each order for Goods by the Buyer from the Seller shall be deemed to be an offer by the Buyer to purchase such Goods from the Seller subject to these Conditions.

1.4 No order placed by the Buyer shall be deemed to be accepted by the Seller until a written acknowledgement of the order is issued by the Seller or, if earlier, the Seller delivers the Goods to the Buyer.

2. Price and Payment

2.1 The price shall be as stated and is exclusive of taxes and any other governmental charges including, but not limited, to Value Added Tax.

2.2 Goods in addition to those specified in the Contract will be provided upon receipt of the Buyer’s written acknowledgement and shall be paid for as an extra and subject to these Conditions.

2.3 Payment shall be made thirty (30) days after the date of the invoice and shall be issued on or at any time after delivery. The Seller reserves the right to require cash or other alternative method of payment prior to delivery of the Goods if the Seller determines that continuance of thirty day payment terms in the Buyer’s favour is no longer justified. The Buyer may not withhold payment of any invoice or other amount due to the Seller by reason of set-off or counterclaim which the Buyer alleges it may have. Time for payment shall be of the essence.

2.4 If the Buyer fails to pay the Seller any sum due pursuant to the Contract the Buyer shall pay interest to the Seller on such sum from the due date for payment until the date of actual payment (both before as well as after judgement) at the rate of 8% per annum.

2.5 The Seller reserves the right to withdraw with immediate effect and at any time prior to settlement of its invoice any offer of credit it has made to the Buyer if it receives adverse information about the financial status of the Buyer.

3. Delivery

3.1 Times and dates of delivery shall not be of the essence of the Contract and the Seller shall not be liable for any loss, expenses, damage or claim whatsoever and howsoever arising resulting from any delay in delivery howsoever such delay is caused.

3.2 The Seller shall deliver the Goods to the site or such other place by such date for delivery as agreed between the parties and where it cannot deliver by such date for any reason it shall deliver the Goods within a reasonable time.

3.3 If the Contract provides for the Goods to be collected by or on behalf of the Buyer the Seller shall give to the Buyer notice of the date when and the place where the goods will be ready for collection and delivery shall be deemed to take place on the date and at the place so notified.

3.4 Without Prejudice to the foregoing, if the Buyer fails to collect the Goods from the site specified within fourteen (14) days after receiving notification from the Seller that the same are ready for collection then any loss or damage to or deterioration in the Goods thereafter shall be at the sole risk of the Buyer who shall pay to the Seller the extra expense or costs incurred by the Seller in consequence of such failure together with a reasonable charge in respect of the storage of the Goods from the date upon which they should have been collected until the date of actual collection.

3.5 Ownership of, and risk in the Goods will pass to the Buyer once they have been delivered to the Buyer.

3.6 If more than one item is ordered the Seller may deliver the Goods in instalments.

3.7 The Seller will not bear the cost of unloading the Goods which shall be the responsibility and at the cost of the Buyer (the Seller will, where the Contract provides for the fitting of the Goods and/or in the course of fitting the Goods undertake unpacking of and handling of the Goods on behalf of the Buyer)

4. Retention of Title

4.1 The Goods supplied to the Buyer by the Seller shall remain the sole and absolute property of the Seller until such time as:-

4.1.1 The Goods have been paid for in full;

4.1.2 All other monies due to the Seller from the Buyer have been paid to the Seller

4.2 Until the Goods are paid for the Buyer shall:

4.2.1 be responsible for and adequately insure the Goods in the name of and for the benefit of the Seller against loss or damage arising from any cause whatsoever in their full replacement value and shall produce to the Seller on demand the policies of such insurance and the receipts for premiums paid thereon and

4.2.2 keep the Goods separate from all property of other persons in an area set aside for such purposes and stored in accordance with recommendations made from time to time by the Seller and at all times keep a separate account of the Goods and supply to the Seller upon request full details of the Goods

or any part thereof including details of any part of the Goods which has been utilised or sold by the Buyer its servants or agents and

4.2.3 hold the entire proceeds of sale of the Goods or any part thereof which are used or sold by the Buyer in trust for the Seller in a separate bank account and not mix them with any other funds.

4.3 The Buyer acknowledges that it is in possession of the Goods as bailee and in a fiduciary capacity for the Seller until such time as the Goods are paid for in full by the Buyer.

4.4 The Buyer grants to the Seller its irrevocable licence to enter at any time any vehicle or premises owned or occupied by the Buyer or in its possession for the purpose of repossessing and removing any Goods or property which has remained with the Seller under this Condition 4.

5. Cancellation

5.1 No order which has been placed with the Seller may be cancelled by the Buyer except with the agreement in writing of the Seller and on the terms that the Buyer shall indemnify the Seller in full against all loss, costs (including costs of all labour and materials used) damages, charges and expenses incurred by the Seller as a result of cancellation.

6. Limitation of Liability

6.1 Nothing in these Conditions shall exclude either party’s liability for death or personal injury caused by negligence or fraud or fraudulent misrepresentation nor where liability cannot be limited or excluded by law.

6.2. subject to 6.1 above the Sellers total liability in contract, tort, misrepresentation or otherwise arising in connection with the performance or contemplated performance of any contract to which these terms and conditions apply shall be limited to the greater of the price of the Goods under the order which has given rise to the claim or the amount that the Seller may reasonably recover from its insurers under any policy of insurance that it has in force.

6.3 Subject to Condition number 6.1 and number 6. 2, the Seller shall not be liable for:

- a) Any indirect or consequential loss or damage;
- b) Any loss of profit, loss of business, or depletion of goodwill;
- c) Any costs, expenses or other claims for consequential compensation;
- d) Any defect which may occur in any prior installation to which the Sellers equipment may be connected;
- e) Any defect to the extent that is caused by incorrect installation (where not installed by the Seller) or lack of or poor maintenance of the Goods.

7. Indemnity

7.1 The Buyer shall indemnify the Seller in respect of any loss, injury, damage, expense or claim of whatsoever nature and howsoever arising out of the Contract or the Goods or their storage, installation, use, operation or maintenance save where the same is caused solely by the negligence of the Seller.

8. Termination

8.1 In the event that the Buyer has failed to make payment of any invoice or of any sum due to the Seller under the Contract on the due date and/or the Buyers credit limit has been exceeded and/or the Buyer becomes insolvent and/or commits a material breach of the Contract and the Buyer fails to remedy any of the above within 7 days of being requested to do so by the Seller all sums outstanding and payable to the Seller by the Buyer under the Contract shall become immediately due and payable and the Seller shall be entitled to do any one or more of the following (without prejudice to any other rights or remedies that the Seller may have):

8.1.1 Require payment in cleared funds in advance for further deliveries of Goods;

8.1.2 Cancel any further deliveries of Goods under any contract without liability on the Seller’s part; and/or

8.1.3 suspend or cancel any obligation to commission the Goods whether under this or any other contract.

8.2. Where the Seller is prevented from performing the Contract for any cause beyond its control whatsoever and howsoever arising then it may by notice in writing to the Buyer determine this Contract and on receipt of such notice to the Buyer the Contract shall forthwith determine. In such event the Buyer shall pay to the Seller all reasonable costs incurred by it up to the date of the said notice and in and about its partial and/or attempted performance of its obligations hereunder but subject thereto neither the Seller nor the Buyer shall be under any other liability to the other in connection with the Contract.

8.3 Determination of the Contract shall not affect the rights and obligations that have already accrued at the time of termination.

9. Severability

9.1 In so far as any provision of this Contract or any part thereof shall be found or deemed void or voidable or invalid, ineffective or unenforceable such defects shall not affect the remainder of the Contract which shall be construed as if the defective part or parts have been excluded therefrom at the time when the Contract was entered into.

10. Notice

10.1 Where under any of the terms and conditions contained herein notice is required to be given by either party to the other such provision shall be satisfied by a written typed notice signed by a person authorised by the relevant party and transmitted either by post facsimile or email to the registered office of such party where it is a company and to the address notified to the Seller where the Buyer is unincorporated.

11. Law and Jurisdiction

11.1 These conditions and the Contract shall be governed and construed in all respects in accordance with the laws of England and Wales and the Seller and the Buyer agree to submit to the exclusive jurisdiction of the English and Welsh Courts.