

1) Eltherm UK Limited - Terms and Conditions

2) INTERPRETATION

a) In these Conditions, the following definitions apply:

- i) **Acknowledgment of Order:** has the meaning given to it in clause 2.3.
- ii) **Business Day:** a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.
- iii) **Buyer:** the corporate entity, firm or person who buys or agrees to buy the Goods and/or the Services from the Seller.
- iv) **Conditions:** the terms and conditions set out in this document.
- v) **Contract:** any contract for the sale and purchase of Goods and/or the Services made between the Seller and Buyer.
- vi) **Deliverables:** the deliverables set out in the Order.
- vii) **Force Majeure Event:** has the meaning given in clause 12).
- viii) **Goods:** the goods (or any part of them) set out in the Order.
- ix) **Order:** the Buyer's order for the Goods and/or Services, as set out in the Buyer's purchase order form.
- x) **Seller:** Eltherm UK Limited a company registered in England with company number 01361204 whose registered office is at Mill House, Overbridge Square, Hambridge Lane, Newbury, Berkshire, RG14 5UX.
- xi) **Services:** the installation services and all other services, including the Deliverables, supplied by the Seller to the Buyer as set out in the Order.
- xii) **Seller Materials:** has the meaning set out in clause 8.1(g).

b) **Construction.** In these Conditions, the following rules apply:

- i) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- ii) A reference to a party includes its personal representatives, successors or permitted assigns.
- iii) A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.
- iv) Any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- v) A reference to **writing** or **written** includes faxes and email.

3) BASIS OF CONTRACT

- a) These Conditions shall be incorporated into each and every Contract to the exclusion of all other terms and conditions including any terms that the Buyer seeks to impose or incorporate under any purchase order or similar document, or which are implied by trade, custom, practice or course of dealing.
- b) The Order constitutes an offer by the Buyer to purchase the Goods and/or Services in accordance with these Conditions. The Buyer is responsible for ensuring that the terms of the Order are complete and accurate.
- c) All Orders are subject to acceptance by the Seller and the Order shall only be deemed to be accepted when the Seller issues a written acknowledgement of the Order (an "**Acknowledgement of Order**"), at which point a legally binding contract between the Buyer and the Seller shall come into existence.
- d) The Contract shall constitute the entire agreement between the parties. The Buyer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Seller which is not set out in the Contract or these Conditions.
- e) Any samples, drawings, descriptive matter, or advertising produced by the Seller and any descriptions or illustrations contained in the Seller's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods and/or Services described in them. They shall not form part of the Contract or have any contractual force.
- f) A quotation for the Goods and/or Services given by the Seller shall not constitute an offer. A quotation shall only be valid for a period of 60 Business Days (or such other time period as specified in the quotation) from its date of issue.
- g) All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.

4) PRICE AND PAYMENT

- a) The price of the Goods shall be the price set out in the Acknowledgement of Order, or, if no price is quoted, the price set out in the Seller's published price list in force as at the date of delivery.
- b) The charges for Services shall be the price set out in the Acknowledgement of Order, or, if no price is quoted, on a time and materials basis as follows:
 - i) the charges shall be calculated in accordance with the Seller's standard daily fee rates, as set out in the Seller's price list in force as at the date of delivery;



- ii) the Seller's standard daily fee rates for each individual person are calculated on the basis of an eight-hour day from 8.00 am to 5.00 pm worked on Business Days;
 - iii) the Seller shall be entitled to charge an overtime rate of fifty per cent of the standard daily fee rate on a pro-rata basis for each part day or for any time worked by individuals whom it engages on the Services outside the hours referred to in clause 3.2(b); and
 - iv) the Seller shall be entitled to charge the Buyer for any expenses reasonably incurred by the individuals whom the Seller engages in connection with the Services including, but not limited to, travelling expenses, and for the cost of services provided by third parties and required by the Seller for the performance of the Services, and for the cost of any materials.
- c) The Seller may increase its standard daily fee rates for the charges for the Services, provided that such charges cannot be increased more than once in any 12 month period. The Seller will give the Buyer written notice of any such increase one month before the proposed date of the increase. If such increase is not acceptable to the Buyer, it shall notify the Seller in writing within two weeks of the date of the Seller's notice and the Seller shall have the right without limiting its other rights or remedies to terminate the Contract by giving two weeks' written notice to the Buyer.
- d) The Seller may by giving notice to the Buyer at any time before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:
- i) any factor beyond the Seller's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
 - ii) any request by the Buyer to change the delivery date(s), quantities or types of Goods ordered; or
 - iii) any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate or accurate information or instructions.
- e) The price of the Goods is exclusive of the costs and charges of packaging, insurance and transport of the Goods, which shall be invoiced to the Buyer if delivery of the Goods is requested by the Buyer.
- f) All amounts payable by the Buyer under the Contract are exclusive of amounts in respect of value added tax (**VAT**). The Buyer shall, on receipt of a valid VAT invoice from the Seller, pay to the Seller such additional amounts in respect of VAT as are chargeable on the supply of the Goods or Services at the same time as payment is due for the supply of the Goods or Services.
- g) The Seller shall submit an invoice to the Buyer on the delivery of the Goods or completion of the Services or as set out in the quotation or Acknowledgement of Order, and the Buyer shall pay such invoice in full and in cleared funds within 30 days of the date of the invoice. Payment shall be made to the bank account nominated in writing by the Seller. Time of payment is of the essence
- h) If the Buyer fails to make any payment due to the Seller under the Contract by the due date for payment, then the Buyer shall pay interest on the overdue amount at the rate of 3% per annum above Barclays Bank Plc's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Buyer shall pay the interest together with the overdue amount.
- i) The Buyer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). The Seller may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Buyer against any amount payable by the Seller to the Buyer.

5) COLLECTION AND DELIVERY OF GOODS

- a) The Buyer shall confirm during the ordering process if the Goods shall be delivered or collected by it from the Seller's premises.
- b) Unless the Goods are collected, the Seller will deliver the Goods to the address specified for delivery by the Buyer to the Seller in the Order. It is important that this address is accurate and correct.
- c) When a delivery date has been arranged, the Buyer must ensure that it, an authorised employee or an approved agent of the Buyer is available at the address to accept delivery. All deliveries must be received and signed for.
- d) The Seller shall always endeavour to make one single delivery to the Buyer whenever possible. When an order contains a mix of goods with different delivery lead times, the longest lead time will apply to the whole order. This will apply except where the Buyer has specified that it will accept multiple deliveries during the order process. The Seller reserves the right to deliver by way of instalments.
- e) The Seller shall deliver to the address specified by the Buyer provided that there is suitable access to the point where delivery is requested. If no such access exists, delivery will be made to the nearest point at which, in the driver's sole opinion, the vehicle can safely and lawfully unload the Goods.
- f) The Buyer shall be responsible for unloading the Goods and shall provide for all necessary labour and equipment.
- g) Any time or date quoted by the Seller for delivery or availability for collection of all or any of the Goods is an estimate only, and the Seller shall not be liable for any failure to meet any such estimate nor for any loss, whether financial or otherwise resulting directly or indirectly therefrom. The time of the delivery is not of the essence.



6) TITLE AND RISK

- a) The risk in the Goods shall pass to the Buyer on completion of delivery or collection.
- b) Notwithstanding clause 5.1, title to the Goods shall not pass to the Buyer until the Seller receives payment in full (in cash or cleared funds) for:
 - i) the Goods; and
 - ii) any other goods that the Seller has supplied to the Buyer in respect of which payment has become due.
- c) Until title to the Goods has passed to the Buyer, the Buyer shall:
 - i) hold the Goods on a fiduciary basis as the Seller's bailee;
 - ii) store the Goods separately from all other goods held by the Buyer so that they remain readily identifiable as the Seller's property;
 - iii) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - iv) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
 - v) notify the Seller immediately if it becomes subject to any of the events listed in clause 10)b); and
 - vi) give the Seller such information relating to the Goods as the Seller may require from time to time.
- d) If before title to the Goods passes to the Buyer the Buyer becomes subject to any of the events listed in clause 9, then, without limiting any other right or remedy the Seller may have the Seller may at any time:
 - i) require the Buyer to deliver up all Goods in its possession which have not been resold, or irrevocably incorporated into another product; and
 - ii) if the Buyer fails to do so promptly, enter any premises of the Buyer or of any third party where the Goods are stored in order to recover them.

7) QUALITY

- a) The Seller warrants that on delivery, and for a period of 12 months from the date of the Acknowledgment of Order ("**warranty period**"), the Goods shall:
 - i) conform in all material respects with their description;
 - ii) be free from material defects in design, material and workmanship; and
 - iii) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).
- b) Subject to clause 6.3, if:
 - i) the Buyer gives notice in writing to the Seller 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 6.1; and
 - ii) the Seller is given a reasonable opportunity of examining such Goods; and
 - iii) the Buyer (if asked to do so by the Seller) returns such Goods to the Seller's place of business at the Buyer's cost,
 - iv) the Seller shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.
- c) The Seller shall not be liable for the Goods' failure to comply with the warranty set out in clause 6.1 in any of the following events:
 - i) the Buyer makes any further use of such Goods after giving notice in accordance with clause 6.2;
 - ii) the defect arises because the Buyer failed to follow the Seller's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;
 - iii) the defect arises as a result of the Seller following any drawing, design or specification supplied by the Buyer;
 - iv) the Buyer alters or repairs such Goods without the written consent of the Seller;
 - v) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
 - vi) the Goods differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- d) Except as provided in this clause 6, the Seller shall have no liability to the Buyer in respect of the Goods' failure to comply with the warranty set out in clause 6.1.
- e) The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.
- f) These Conditions shall apply to any repaired or replacement Goods supplied by the Seller.

8) SUPPLY OF SERVICES

- a) The Seller shall provide the Services to the Buyer in accordance with the Order in all material respects.
- b) The Seller shall use all reasonable endeavours to meet any performance dates for the Services specified in the Order but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.



- c) The Seller shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and the Seller shall notify the Buyer in any such event.
- d) The Seller warrants to the Buyer that the Services will be provided using reasonable care and skill.
- e) Subject to clause 7.6, if:
 - i) the Buyer gives notice in writing to the Seller during the warranty period within a reasonable time of discovery that any installations are incorrect or faulty and do not comply with the warranty set out in clause 7.4; and
 - ii) the Seller is given a reasonable opportunity of examining such installations,
 - iii) the Seller shall repair any such incorrect or faulty installations to the extent that they are caused by the Seller in the course of the Services.
- f) The Seller is not responsible for the cost of repairing any pre-existing faults or damage nor any faults or damage caused by third party tampering or modification.

9) BUYER'S OBLIGATIONS

- a) The Buyer shall:
 - i) ensure that the terms of the Order are complete and accurate;
 - ii) co-operate with the Seller in all matters relating to the Services;
 - iii) provide the Seller, its employees, agents, consultants and subcontractors, with access to the Buyer's premises, office accommodation and other facilities as reasonably required by the Seller to provide the Services;
 - iv) provide the Seller with such information and materials as the Seller may reasonably require to supply the Seller, and ensure that such information is accurate in all material respects;
 - v) prepare the Buyer's premises for the supply of the Services;
 - vi) obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;
 - vii) keep and maintain all materials, equipment, documents and other property of the Seller (**Seller Materials**) at the Buyer's premises in safe custody at its own risk, maintain the Seller Materials in good condition until returned to the Seller, and not dispose of or use the Seller Materials other than in accordance with the Seller's written instructions or authorisation.
- b) If the Seller's performance of any of its obligations in respect of the Services is prevented or delayed by any act or omission by the Buyer or failure by the Buyer to perform any relevant obligation (**Buyer Default**):
 - i) the Seller shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Buyer remedies the Buyer Default, and to rely on the Buyer Default to relieve it from the performance of any of its obligations to the extent the Buyer Default prevents or delays the Seller's performance of any of its obligations;
 - ii) the Seller shall not be liable for any costs or losses sustained or incurred by the Buyer arising directly or indirectly from the Seller's failure or delay to perform any of its obligations as set out in this clause 9)b); and
 - iii) the Buyer shall reimburse the Seller on written demand for any costs or losses sustained or incurred by the Seller arising directly or indirectly from the Buyer Default.

10) TERMINATION AND SUSPENSION

- a) If the Buyer becomes subject to any of the events listed in clause 9.2 or the Seller reasonably believes that the Buyer is about to become subject to any of them and notifies the Buyer accordingly, then without limiting any other right or remedy available to the Seller, the Seller may terminate the Contract with immediate effect by giving written notice to the Buyer or suspend all further deliveries of any outstanding Contract without incurring any liability to the Buyer.
- b) For the purposes of clause 9.1, the relevant events are:
 - i) the Buyer commits a material breach of its obligations under this Contract and (if such breach is remediable) fails to remedy that breach within 14 days after receipt of notice in writing to do so;
 - ii) the Buyer suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply;
 - iii) the Buyer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than where these events take place for the sole purpose of a scheme for a solvent amalgamation of the Buyer with one or more other companies or the solvent reconstruction of the Buyer;
 - iv) (being a company) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Buyer, other than for the sole purpose of a scheme for a solvent amalgamation of the Buyer with one or more other companies or the solvent reconstruction of the Buyer;
 - v) (being a company) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Buyer;
 - vi) (being a company) the holder of a qualifying floating charge over the Buyer's assets has become entitled to appoint or has appointed an administrative receiver;



- vii) a person becomes entitled to appoint a receiver over the Buyer 's assets or a receiver is appointed over the Buyer 's assets;
 - viii) (being an individual) the Buyer is the subject of a bankruptcy petition or order;
 - ix) a creditor or encumbrancer of the Buyer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
 - x) any event occurs, or proceeding is taken, with respect to the Buyer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 10)b)i) to clause 10)b)vii) (inclusive);
 - xi) the Buyer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business;
 - xii) the Buyer's financial position deteriorates to such an extent that in the Seller's opinion the Buyer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; and
 - xiii) (being an individual) the Buyer dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.
- c) Without limiting its other rights or remedies, the Seller may suspend provision of the Goods and/or Services under the Contract or any other contract between the Buyer and the Seller if the Buyer becomes subject to any of the events listed in clause 10)b)i) to clause 10)b)xiii), or the Seller reasonably believes that the Buyer is about to become subject to any of them, or if the Buyer fails to pay any amount due under this Contract on the due date for payment.
- d) Without limiting its other rights or remedies, the Seller may terminate the Contract with immediate effect by giving written notice to the Buyer if the Buyer fails to pay any amount due under this Contract on the due date for payment.
- e) On termination of the Contract for any reason:
- i) the Buyer shall immediately pay to the Seller all of the Seller's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has yet been submitted, the Seller shall submit an invoice, which shall be payable by the Buyer immediately on receipt; and
 - ii) the Buyer shall return all of the Seller Materials and any Deliverables which have not been fully paid for. If the Buyer fails to do so, then the Seller may enter the Buyer's premises and take possession of them. Until they have been returned, the Buyer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;
- f) Termination of the Contract, however arising, shall not affect any of the parties' rights, remedies, obligations and liabilities that have accrued as at termination.
- g) Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

11) LIABILITY

- a) Nothing in these Conditions shall limit or exclude the Seller's liability for:
- i) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
 - ii) fraud or fraudulent misrepresentation;
 - iii) breach of the terms implied by section 12 of the Sale of Goods Act 1979;
 - iv) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982; or
 - v) defective products under the Consumer Protection Act 1987.
- b) Subject to clause 10.1:
- i) the Seller shall under no circumstances whatever be liable to the Buyer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
 - ii) the Seller's total liability to the Buyer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the aggregate price of the Goods and/or the Services.
- c) The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- d) This clause 10 shall survive termination of the Contract.

12) FORCE MAJEURE

- i) Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event. A **Force Majeure Event** means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms,



earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of Sellers or subcontractors.

13) GENERAL

a) Assignment and other dealings.

- i) The Seller may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- ii) The Buyer may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of the Seller.

b) Notices.

- i) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service, commercial courier, fax [or e-mail].
- ii) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 13)b)i); 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; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax, one Business Day after transmission.
- iii) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

c) Severance.

- i) 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 shall not affect the validity and enforceability of the rest of the Contract.
- ii) If any provision or part-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.

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

- e) **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, nor constitute either party the agent of another party for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.

- f) **Third party rights.** A person who is not a party to the Contract shall not have any rights to enforce its terms.

- g) **Variation.** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is in writing and signed by the Seller.

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

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

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