

## Thermalec Terms & Conditions

1. **Definitions** – In these Terms and Conditions, the following words and phrases shall have the following meanings:
  - 1.1. **Business Day:** a day other than a Saturday, Sunday, or public holiday in England when banks in London are open for business.
  - 1.2. **Commencement Date:** has the meaning set out in clause 3.3.
  - 1.3. **Contract:** the contract between the Supplier and the Customer for the sale and purchase of Goods in accordance with these Conditions.
  - 1.4. **Customer:** the person or firm who purchases the Goods from the Supplier.
  - 1.5. **Force Majeure Event:** an event or circumstance beyond a party's reasonable control.
  - 1.6. **Goods:** the goods (or any part of them) set out in the Order Confirmation.
  - 1.7. **Specification:** any specification for the Goods, including any relevant plans or drawings, that is agreed in writing by the Customer and the Supplier.
  - 1.8. **Order:** the Customer's order for the supply of Goods as set out in the Customer's purchase order form or the Customer's written acceptance of the Supplier's quotation whichever is received by the Supplier.
  - 1.9. **Order Confirmation:** the Supplier's written acceptance of the Order.
  - 1.10. **Supplier:** Meddings Thermalec
2. **Interpretation:**
  - 2.1. A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
  - 2.2. A reference to a party includes its personal representatives, successors or permitted assigns.
  - 2.3. A reference to a statute or statutory provision is a reference to such statute or statutory 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.
  - 2.4. 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.
  - 2.5. A reference to writing or written includes faxes and emails
  - 2.6. The headings in these Terms and Conditions are for ease of reference only and shall not affect the interpretation or construction of these Terms and Conditions.
  - 2.7. Where the context permits, the use of the singular shall be construed to include the plural, and the use of plural the singular, and the use of any gender shall include all genders.
3. **Basis of Contract**
  - 3.1. The Order constitutes an offer by the Customer to purchase Goods in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order and any applicable Specification are complete and accurate.
  - 3.2. In circumstances where the Supplier has reviewed the Order and rejects the Order because the Customer has amended the delivery requirements, specification, or the quoted price the Supplier shall communicate the need for the order to be re-issued or the order becomes invalid. This process shall be repeated until the Supplier approves the Order and issues an Order Confirmation.
  - 3.3. The Order shall only be deemed to be accepted when the Supplier issues an Order Confirmation of the Order, at which point, and on which date (Commencement Date) the Contract shall come into existence.
  - 3.4. The customer has 5 business days prior to the commencement date to amend or cancel their order. Any cancellations or amendments after 5 business days prior to the commencement date will incur a charge of 50% of the order total, or 100% of any materials ordered specifically for that order, whichever is greater. Special orders, including spares cannot be cancelled under any circumstances.

- 3.5.** If the Customer wishes to reschedule any Order accepted by the Supplier, such rescheduling will be entirely at the discretion of the Supplier and in any event will only be considered by the Supplier if:
  - a)** written confirmation of the rescheduling is received by the Supplier a minimum of twenty eight days prior to the original delivery date; and
  - b)** it is subject to a maximum reschedule period of three months from the date of placing of the Order by the Customer.
- 3.6.** The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance, or warranty made or given by or on behalf of the Supplier which is not set out in the Contract.
- 3.7.** Any samples, drawings, descriptive matter, or advertising issued by the Supplier and any descriptions of the Goods, or illustrations, or descriptions of the Goods contained in the Supplier's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract or have any contractual force.
- 3.8.** These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice, or course of dealing.
- 3.9.** Any quotation given by the Supplier shall not constitute an offer, and in the absence of any date given in the quotation is only valid for a period of 30 Business Days from its date of issue.

#### **4. Goods**

- 4.1.** The Goods are described in the Company's quotation.
- 4.2.** All drawings, descriptive matter, specifications, and advertising issued by the Company on any packaging of the Goods or elsewhere and any descriptions or illustrations contained in the Company's catalogues, brochures, or website are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They will not form part of this Contract and no warranty is given that the Goods will comply with or perform in accordance with any such description.
- 4.3.** The Supplier reserves the right to amend the Goods Specification if required by any applicable statutory or regulatory requirements.

#### **5. Price and Payment**

- 5.1.** The price for Goods shall be the price set out in the Order Confirmation or, if no price is quoted, the price set out in the Supplier's published price list as at the date of delivery.
- 5.2.** The price of the Goods:
  - a)** excludes amounts in respect of value added tax (VAT), which the Customer shall additionally be liable to pay to the Supplier at the prevailing rate, subject to the receipt of a valid VAT invoice; and
  - b)** excludes the costs and charges of packaging, insurance, and transport of the Goods, which shall be invoiced to the Customer; and
  - c)** excludes all wire transfer/banking charges, which are the responsibility of the customer and are to be paid at source for the whole transaction.
- 5.3.** The Supplier reserves the right to increase the price of the Goods, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Goods to the Supplier that is due to:
  - a)** any factor beyond the Supplier's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
  - b)** any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Goods Specification;
  - c)** any administrative or clerical error of the Supplier; or

- d)** any delay caused by any instructions of the Customer in respect of the Goods or failure of the Customer to give the Supplier adequate or accurate information or instructions in respect of the Goods.
- 5.4.** In respect of Goods, the Supplier shall invoice the Customer on or at any time after completion of despatch.
- 5.5.** The Customer shall pay each invoice submitted by the Supplier unless otherwise stated in the Order within 30 days of invoice.
- 5.6.** Payment to the Supplier shall be in full and in cleared funds either by:
  - a)** bank transfer to a bank account nominated in writing by the Supplier;
  - b)** credit or debit card; or
  - c)** cheque.
- 5.7.** All payments shall be in pounds sterling unless otherwise agreed.
- 5.8.** If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment, then:
  - a)** the Customer shall pay interest on the overdue amount at the rate of 8% per annum. 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 Customer shall pay the interest together with the overdue amount; and
  - b)** the Supplier may suspend delivery of the Goods.
- 5.9.** The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding except as required by law. The Supplier may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.

## **6. Delivery**

- 6.1.** The Supplier shall ensure that each delivery of the Goods is accompanied by a delivery note that shows the date of the Order, the type and quantity of the Goods (including the code number of the Goods, where applicable) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered.
- 6.2.** Depending on the agreement of the parties in the Order the Goods shall either be:
  - a)** delivered by the Supplier (at the Customer's cost and risk) to the location set out in the Order or such other location as the parties may agree (Delivery Location) at any time after the Supplier notifies the Customer that the Goods are ready; or
  - b)** collected by the Customer from the Supplier's premises or such other location as may be advised by the Supplier prior to delivery (Delivery Location) within three Business Days of the Supplier notifying the Customer that the Goods are ready.
- 6.3.** Delivery of the Goods shall be completed on the Goods' arrival at the Delivery Location or if the Customer collects the completion of loading of the Goods at the Delivery Location.
- 6.4.** Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 6.5.** If the Customer fails to accept or take delivery of the Goods within seven Business Days of the Supplier notifying the Customer that the Goods are ready, then except where such failure or delay is caused by a Force Majeure Event or by the Supplier's failure to comply with its obligations under the Contract in respect of the Goods:
  - a)** delivery of the Goods shall be deemed to have been completed at 09.00 on the seventh Business Day following the day on which the Supplier notified the Customer that the Goods were ready; and
  - b)** the Supplier shall store the Goods until delivery takes place and charge the Customer for all related costs and expenses (including insurance).

- 6.6. If ten Business Days after the Supplier notified the Customer that the Goods were ready for delivery the Customer has not taken or accepted delivery of them, the Supplier may resell or otherwise dispose of part or all of the Goods and, after deducting storage and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.
- 6.7. The Customer shall not be entitled to reject the Goods if the Supplier delivers up to and including 5 per cent more or less than the quantity of Goods ordered, but a pro-rata adjustment shall be made to the Order invoice on receipt of notice from the Customer that the wrong quantity of Goods was delivered.
- 6.8. The Supplier may deliver the Goods by instalments, which shall be invoiced and paid for separately but where delivery by instalment is due to the Suppliers' operational reasons or the Goods are not in stock then delivery shall be at the Suppliers' cost. 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.
- 6.9. The quantity of any consignment of Goods as recorded by the Company upon dispatch from the Company'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.
- 6.10. The Customer shall be responsible for any export and import clearance in connection with this Contract. The Supplier shall provide the Customer, at the Customer's request and cost, with all the assistance required to obtain an export licence.

## 7. Quality

- 7.1. The Supplier warrants that on the date of despatch, the Goods shall:
  - a) conform in all material respects with their description as set out in the applicable Goods Specification;
  - b) be free from material defects in design, material, and workmanship; and
  - c) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979)
- 7.2. For Goods supplied to Customers the warranties under clause 7.1 shall apply for two years from the date of despatch.
- 7.3. For Spare Parts supplied to Customers the warranties under clause 7.1 shall apply for six months from the date of despatch.
- 7.4. Subject to clause 7.5, if:
  - a) the Customer gives notice in writing within five Business Days of the Delivery Date of discovery that some or all of the Goods do not comply with the warranty set out in clause 7.1; and
  - b) in the case of a latent defect, the Customer gives notice in writing within five Business Days of the latent defect having become apparent; and
  - c) the Supplier is given a reasonable opportunity of examining such Goods; and
  - d) the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Customer's cost,the Supplier shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.
- 7.5. The Supplier shall not be liable for the Goods' failure to comply with the warranty in clause 7.1 if:
  - a) the Customer makes any further use of such Goods after giving a notice in accordance with clause 7.4;
  - b) the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice;
  - c) the defect arises as a result of the Supplier following or observing any drawing, design or Goods Specification supplied by the Customer;
  - d) the Customer adjusts, alters or repairs such Goods without the written consent of the Supplier;

- e) the defect arises as a result of fair wear and tear, wilful damage, damage by chemicals, negligence, theft, accident, fire, flood, explosion, lightning, storms, frost, or other bad weather conditions, or abnormal storage or working conditions;
- f) the defect arises as a result of scale, sludge, or blockages;
- g) the Goods differ from the Goods Specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards.

**7.6.** The following are expressly excluded from the warranty in clause 7.1:

- a) consumables as specified by the supplier, including but not limited to fuses; and
- b) machine maintenance, adjustment and set ups; and
- c) any third party product installed within or connected to the Goods by the Customer

**7.7.** The Supplier shall not be liable for any costs or losses sustained or incurred by the Customer if the Goods have not been returned to the Supplier's place of business for examination.

**7.8.** Goods claimed to be defective are to be returned to the Supplier at the expense of the Customer.

**7.9.** If the Goods on examination are not found to be defective, the Customer must reimburse the Supplier for its reasonable costs in inspecting the rejected Goods and any delivery costs borne by the Supplier.

**7.10.** Except as provided in this clause 7, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 7.1.

**7.11.** The terms of these Conditions shall apply to any repaired or replacement Goods supplied by the Supplier under clause 7.4, based on the original despatch date.

## **8. Title and Risk**

**8.1.** Subject to clause 8.2 the risk in the Goods shall pass to the Customer on completion of delivery.

**8.2.** Title to the Goods shall not pass to the Customer until the Supplier receives payment in full (in cash or cleared funds) for the Goods and any other goods that the Supplier has supplied to the Customer in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums.

**8.3.** Until title to the Goods has passed to the Customer, the Customer shall:

- a) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
- b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
- d) notify the Supplier immediately if it becomes subject to any of the events listed in (clause 10.1 Termination); and
- e) give the Supplier such information relating to the Goods as the Supplier may require from time to time.

**8.4.** If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in (clause 10.1 Termination), then, without limiting any other right or remedy the Supplier may have the Supplier may at any time:

- a) require the Customer to immediately deliver up all Goods in its possession that have not been resold, or irrevocably incorporated into another product; and
- b) if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

## **9. Returns**

**9.1.** The Customer shall not be entitled to return any goods without the prior written approval of the Supplier.

**9.2.** Special orders, including spares cannot be returned under any circumstances.

**9.3.** If the Supplier agrees to accept the return of any Goods it shall be on terms that:

- a) they are returned at the Customer's expense to the Supplier within 30 business days of delivery; and

- b) they are received by the Supplier in 'as new' condition without any damage or use; and
- c) any return will be subject to a 15% 'restocking charge' and such other terms as the Company may impose.

## **10. Termination**

- 10.1.** Without limiting its other rights or remedies, the Supplier may terminate this Contract with immediate effect by giving written notice to the Customer if:
- a) the Customer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within fifteen days of that party being notified in writing to do so;
  - b) 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), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
  - c) the Customer suspends, threatens to suspend, ceases, or threatens to cease to carry on all or a substantial part of its business; or
  - d) the Customer's financial position deteriorates to such an extent that in the Supplier's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 10.2.** Without limiting its other rights or remedies, the Supplier may suspend provision of the Goods under the Contract or any other contract between the Customer and the Supplier if the Customer becomes subject to any of the events listed in clause 10.1, or the Supplier reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.
- 10.3.** Without limiting its other rights or remedies, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment.
- 10.4.** On termination of the Contract for any reason:
- a) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Goods supplied but for which no invoice has yet been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt; and
  - b) the Customer shall return all of the Supplier Materials which have not been fully paid for. If the Customer fails to do so, then the Supplier 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.
- 10.5.** Termination of the Contract shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of this Contract that existed at or before the date of termination.
- 10.6.** Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.

## **11. Limitation of liability**

**11.1.** Nothing in these Conditions shall limit or exclude the Supplier's liability for:

- (a)** death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
- (b)** fraud or fraudulent misrepresentation; or
- (c)** any matter in respect of which it would be unlawful for the Supplier to exclude or restrict liability.

**11.2.** Subject to clause 11.1:

- (a)** the Supplier shall under no circumstances whatsoever be liable to the Customer, 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
- (b)** the Supplier's total liability to the Customer 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 price paid for the Goods.

## **12. Force Majeure**

**12.1.** The Supplier reserves the right to defer the date of delivery or reduce the volume of the Goods ordered by the Customer (without liability to the Customer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Supplier including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport network, act of God, pandemic and disease, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.

**12.2.** If the Force Majeure Event prevents the Supplier from providing any of the Goods for more than six weeks, the Supplier shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Customer.

**12.3.** The Supplier shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.

## **13. Notices**

**13.1.** 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, or email.

**13.2.** A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 13.1; 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 email, one Business Day after transmission.

**13.3.** The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

#### **14. Copyright**

- 14.1.** The goods comprise or include intellectual property rights of the Seller and the sale of the goods by the Seller and the publication of any information and technical data relating thereto does not imply freedom from patent, copyright, registered design or other industrial or intellectual property rights in respect of any particular application of the goods.
- 14.2.** The Buyer warrants that the design and specifications supplied by it to the Seller will not involve the infringement of any patent, copyright, registered design or other industrial property right in the manufacture and sale of goods by the Seller.
- 14.3.** The Buyer accordingly undertakes to indemnify and keep indemnified the Seller against all royalties, claims, actions, demands, proceedings, losses and costs in connection with any infringement or alleged infringement of any patent, copyright, registered design or other industrial property right in the manufacture, sale or application of the goods provided that nothing in this clause shall operate to prejudice the statutory term as to title contained in section 12 of the Sale of Goods Act 1979.

#### **15. Sub-Contract.**

- 15.1.** The Seller reserves the right to sub-contract any part of the performance of the services or the supply of any goods ordered without obtaining the consent of the Buyer.

#### **16. Waiver**

- 16.1.** A waiver of any right under the Contract or law is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor prevent or restrict its 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.

#### **17. Legal Construction.**

- 17.1.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the law of England and Wales.
- 17.2.** Where any condition of this Agreement is held to be wholly or partially invalid or unenforceable, then such condition (or the invalid or unenforceable part thereof) shall be treated as severable and the remainder of this Agreement and the remaining part of that condition (if any) shall remain valid and enforceable.
- 17.3.** A person who is not a party to this Agreement has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of these terms and conditions.
- 17.4.** Clause headings are for convenience only and shall not affect the construction of this Agreement.