

**COOL AND HEAT LIMITED – STANDARD TERMS AND CONDITIONS OF BUSINESS (UPDATED 2022)**

**1. DEFINITIONS & INTERPRETATION**

1.1 In these terms and conditions, the following words and phrases shall have the meanings ascribed to them below:

“Cool and Heat” means: the supplier detailed in the Order Form being (i) Cool and Heat Limited (company number (04665531); Registered offices are at Bradley Junction Industrial Estate, Unit 1, Huddersfield, West Yorkshire, HD2 1UR;

“Contract” means the contract between Cool and Heat and the Customer relating to the supply of Goods, incorporating the Order Form and these terms and conditions.

“Credit Facility” means the facility granted by Cool and Heat to the Customer, evidenced by a letter to the Customer confirming the same.

“Customer” means the company, person or party detailed in the Order Form.

“Delivered Only Goods” means the goods detailed in the Order Form, which are delivered but not installed by Cool and Heat;

“Factory Acceptance Date” means the date following Practical Completion on which the Installed Goods have completed the Factory Acceptance Tests and are deemed to have been accepted by the Customer as completed.

“Factory Acceptance Tests” means the tests and/or test criteria detailed in the Order Form or User Requirements Specification.

“Goods” means the Delivered Only Goods and/or Installed Goods.

“Installed Goods” means any goods to be manufactured or modified by Cool and Heat in accordance with the Order Form and User Requirements Specification.

“Order Form” means the order form, confirming details of the Contract.

“Payment Terms” means the payment terms detailed in the Order Form relating to the payment of the Price in respect of Installed Goods.

“Practical Completion Date” means the date on which the Installed Goods are (in the reasonable opinion of Cool and Heat) completed and ready for testing in accordance with the Factory Acceptance Tests.

“Price” means the price payable for the Goods, as specified in the Order Form.

“Sales Literature” means all brochures, drawings, descriptive matter, specifications and websites used by Cool and Heat to advertise and promote the Goods.

“User Requirements Specification” means the specification detailing the intended functionality of the Installed Goods.

1.2 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application, or re-enactment and includes any subordinate legislation for the time being in force made under it.

1.3 Words in the singular include the plural and, in the plural, include the singular.

1.4 A reference to one gender includes a reference to the other gender.

1.5 Condition headings do not affect the interpretation of these terms and conditions.

## **2. CONTRACT FORMATION**

2.1 The Order Form is only valid for a period of thirty (30) days from the date of issue.

2.1 The existence of the Contract may be evidenced by: (i) signature of the Order Form; or (ii) Cool and Heat issuing an acknowledgement of order to the Customer; or (iii) the Customer issuing a purchase order to ACE; or (iv) the delivery of the Products; or (v) any evidence of a general course of dealing between Cool and Heat and the Customer.

## **3. ENTIRE AGREEMENT AND SCOPE**

3.1 Subject to any variation under condition 3.4 the Contract shall be on these terms and conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Customer purports to apply under any purchase order, confirmation of order, communication, specification, or other document).

3.2 No terms or conditions endorsed on, delivered with, or contained in the Customer's purchase order, confirmation of order, specification or other document shall form part of the Contract simply as a result of such document being referred to in the Contract.

3.3 All Sales Literature is 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 which is not a sale by sample.

3.4 Any variation to these terms and conditions and any representations about the Goods shall have no effect unless expressly agreed in writing and signed by a director of Cool and Heat.

3.5 The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of Cool and Heat which is not set out in the Contract.

3.6 The Contract is not a sale by sample or description.

## **4. SUPPLY AND PERFORMANCE**

4.1 In consideration of the Customer paying the Price, Cool and Heat shall perform the Contract using reasonable skill and care.

4.2 Any dates specified by Cool and Heat for performance of the Contract are intended to be an estimate and time for performance shall not be made of the essence by notice. Performance shall be within a reasonable time.

## **5. PRICE**

5.1 If the Order Form does not state a currency, the Price shall be deemed to be in UK £s (pounds sterling) and unless expressly stated otherwise, shall exclude VAT (where applicable) at the applicable current rate and delivery charges which shall be payable by the Customer in addition.

5.2 The Price shall be subject to variation without notice where:

5.2.1 there is any increase in labour and material costs coming into effect between the issuance of the Order Form and:

5.2.1.1 the delivery date in the case of Delivered Only Goods; and

5.2.1.2 the Factory Acceptance Date in the case of Installed Goods.

5.2.2 the Goods are imported into the United Kingdom and in doing so, the cost to Cool and Heat is increased by reason of variation in the rate of exchange for the pound sterling against foreign currency;

5.3 Every effort is made by Cool and Heat to ensure that the Price is accurate. Notwithstanding that the Contract has been formed, Cool and Heat shall have the right to terminate the Contract where the Goods have been sold at the incorrect price. Cool and Heat will always give the Customer the option of reconfirming the Contract at the correct price.

## **6. GENERAL PAYMENT TERMS**

6.1 The Customer shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Customer has a valid court order requiring an amount equal to such deduction to be paid by Cool and Heat to the Customer.

6.2 Time for payment shall always be of the essence. If the Customer fails to pay Cool and Heat any sum due pursuant to the Contract, the Customer shall be liable to pay interest to Cool and Heat on such sum from the due date for payment at the annual rate of 8% above the base lending rate from time to time of the Bank of England, accruing daily until payment is made, whether before or after any judgment. Cool and Heat reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.

6.3 No payment shall be deemed to have been received until Cool and Heat has received cleared funds.

6.4 This condition 6 shall apply to the Contract, irrespective of what Goods are being supplied.

## **7. SPECIFIC PAYMENT TERMS FOR DELIVERED ONLY GOODS (WITH CREDIT FACILITY)**

7.1 This condition 7 shall apply if the Contract relates to the supply of Delivered Only Goods with a Credit Facility.

7.1 Cool and Heat shall issue invoices for payment of the Price at the time of delivery of the Delivered Only Goods or work carried out.

7.2 The Customer shall pay any invoice within thirty (30) days of receipt.

## **8. SPECIFIC PAYMENT TERMS FOR DELIVERED ONLY GOODS (NO CREDIT FACILITY)**

8.1 This condition 8 shall apply if the Contract relates to the supply of Delivered Only Goods without a Credit Facility.

8.2 The Customer shall pay the Price in full, prior to the Delivered Only Goods being delivered.

## **9. SPECIFIC PAYMENT TERMS FOR INSTALLED GOODS**

9.1 This condition 9 shall apply if the Contract relates to the supply of Installed Goods.

9.2 Cool and Heat shall issue invoices and the Customer shall pay such invoices in accordance with the Payment Terms.

9.3 If the Factory Acceptance Tests are not commenced within fourteen (14) days of the Practical Completion Date due to circumstances beyond the reasonable control of Cool and Heat (including without limitation a failure by the Customer to supply test components), the Payment Terms shall no longer apply, in which case:

9.3.1 the Customer shall ensure that at least ninety five percent (95%) of the Price is paid Cool and Heat within seven (7) days; and

9.3.2 the Customer shall pay the remaining five percent (5%) of the Price within:

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Radcliffe  
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9.3.2.1 seven (7) days of the Factory Acceptance Date; or

9.3.2.2 ninety (90) days of the Practical Completion Date, if the Factory Acceptance Tests cannot be commenced due to circumstances beyond the control of Cool and Heat.

**10. RISK & RETENTION OF TITLE**

10.1 Risk in the Goods shall pass to the Customer on delivery.

10.2 Full legal and beneficial title and ownership of the Goods shall pass to the Customer once Cool and Heat has received in full (in cash or cleared funds) the Price due to it in respect of:

10.2.1 the Contract; and

10.2.2 all other sums which are or which become due to Cool and Heat from the Customer under any other contract or account.

10.3 Until title and ownership of the Goods has passed to the Customer, the Customer shall:

10.3.1 hold the Goods on a fiduciary basis as Cool and Heat's bailee;

10.3.2 store the Goods (at no cost to Cool and Heat) separately from all other Goods of the Customer or any third party in such a way that they remain readily identifiable as the property of Cool and Heat;

10.3.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and

10.3.4 maintain the Goods in satisfactory condition and keep them insured on Cool and Heat's behalf for their full price against all risks to the reasonable satisfaction of Cool and Heat. On request the Customer shall produce the policy of insurance to Cool and Heat.

10.4 The Customer's right to possession of the Goods shall terminate immediately if title and ownership of the Goods has not already passed in accordance with condition 10.2 and:

10.4.1 the Customer (being a person) has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors; or

10.4.2 the Customer (being a body corporate) shall have a receiver or administrative receiver appointed over it or over any part of its undertaking or assets or shall pass a resolution for winding-up (otherwise than for the purpose of a bona fide scheme of solvent amalgamation or reconstruction) or shall become subject to an administration order or shall enter into any voluntary arrangement with its creditors or shall cease or threaten to cease to carry on business.

10.5 Cool and Heat shall be entitled to recover payment of the Price, notwithstanding that legal and beneficial ownership and title of the Goods has not passed to the Customer.

10.6 The Customer grants Cool and Heat, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Customer's right to possession has terminated, to recover them.

**11. DELIVERY**

11.1 Unless otherwise agreed in writing, delivery of the Goods shall be made to the address specified in the Order Form.

11.2 Any dates specified by Cool and Heat for delivery of the Goods are intended to be an estimate and time for delivery shall not be made of the essence by notice. If no dates are so specified, delivery shall be within a reasonable time.

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11.3 If delivery is made at the premises of Cool and Heat (ex-works), the Customer shall take delivery of the Goods within two (2) days of Cool and Heat giving it notice that the Goods are ready for delivery.

11.4 If for any reason the Customer fails to accept delivery of any of the Goods when they are ready for delivery, or Cool and Heat is unable to deliver the Goods on time because the Customer has not provided appropriate instructions, documents, licences, or authorisations:

11.4.1 risk in the Goods shall pass to the Customer (including for loss or damage caused by Cool and Heat's negligence);

11.4.2 the Goods shall be deemed to have been delivered; and

11.4.3 Cool and Heat may store the Goods until delivery, whereupon the Customer shall be liable for all related costs and expenses (including, without limitation, storage, and insurance).

11.5 If Cool and Heat is requested to re-deliver the Goods following a failed delivery in accordance with condition 11.4, Cool and Heat reserves the right to make an additional charge for such re-delivery.

11.6 Cool and Heat may deliver the Goods by separate instalments. Each separate instalment shall be a separate Contract and no cancellation or termination of any one Contract relating to an instalment shall entitle the Customer to repudiate or cancel any other Contract or instalment.

11.7 The Customer shall be required to notify Cool and Heat of any delivery shortages within forty eight (48) hours of delivery. If the Customer fails to notify Cool and Heat of any such shortages within this time scale, the Customer shall be deemed to have accepted delivery of all the Goods.

**12. QUALITY**

12.1 Cool and Heat is a re-seller and not a manufacturer of the Goods. In this respect and to the fullest extent permissible by law, Cool and Heat is unable to offer any express warranties of any kind whatsoever in respect of the Contract.

12.2 Save to the extent that any exclusion or restriction of liability may be prohibited by statute, all implied warranties relating to the Contract (statutory or otherwise) including (without limitation) any warranties relating to quality or fitness for a particular purpose, shall be fully excluded from the Contract.

12.3 The Goods may be sold with a manufacturer's warranty, details of which shall be dispatched with the Goods and may be requested from Cool and Heat in advance.

12.4 Defective Goods shall be dealt with by the Customer in accordance with any subsisting manufacturer's or distributor's warranty. For the avoidance of doubt, this may mean that the Goods are repaired as opposed to replaced and may not be returned.

12.5 In the absence of a manufacturer's warranty Cool and Heat warrants that the Goods will be free from defects in material and workmanship for a period of twelve (12) months from the:

12.5.1 date of delivery in the case of Delivered Only Goods; and

12.5.2 the Factory Acceptance Date in the case of Installed Goods.

12.6 ACE shall not be liable for a breach of any of the warranties in condition 12.5 unless:

12.6.1 the Customer gives Cool and Heat written notice of the breach within seven (7) days of the date of the breach coming to its attention; and

12.6.2 Cool and Heat is given a reasonable opportunity after receiving such notice to examine the Goods.

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- 12.7 Cool and Heat shall not be liable for a breach of any of the warranties in condition 12.5 if:
- 12.7.1 the Customer makes any further use of the Goods after giving such notice; or
- 12.7.2 the defect arises because the Customer failed to follow the oral or written instructions of Cool and Heat as to the storage, installation, commissioning, use or maintenance of the Goods or (if there were none) good industry practice; or
- 12.7.3 the Customer alters or repairs the Goods without the prior written consent of Cool and Heat.
- 12.8 Subject to conditions 12.6 and 12.6, if any of the Goods do not conform with the warranties in condition 12.5, Cool and Heat shall at its option repair or replace such Goods (or the defective part) or refund that part of the Price at the pro rata Contract rate provided that, if Cool and Heat so requests, the Customer shall, at Cool and Heat's expense, return the Goods or the part of such Goods which is defective to Cool and Heat.
- 12.9 If Cool and Heat complies with condition 12.8 it shall have no further liability for a breach of any of the warranties under condition 12.5

**13. LIMITATION OF LIABILITY**

- 13.1 The following provisions set out the entire financial liability of Cool and Heat (including any liability for the acts or omissions of its employees, agents, and sub-contractors) to the Customer in respect of:
- 13.1.1 any breach of these terms and conditions.
- 13.1.2 any use made or resale by the Customer of any Goods, or of any product incorporating any of the Goods;
- 13.1.3 any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.
- 13.2 Nothing in these conditions excludes or limits the liability of Cool and Heat:
- 13.2.1 for death or personal injury caused by Cool and Heat's negligence;
- 13.2.2 under section 2(3), Consumer Protection Act 1987;
- 13.2.3 for any matter which it would be illegal for Cool and Heat to exclude or attempt to exclude its liability;
- 13.2.4 for fraud or fraudulent misrepresentation.
- 13.3 Subject to condition 13.2 and condition 13.3:
- 13.3.1 Cool and Heat's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the Price paid under the Contract;
- 13.3.2 Cool and Heat shall not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses.

**14. TERMINATION**

- 14.1 The Contract may be terminated by Cool and Heat or the Customer with immediate if the other party:
- 14.1.1 is in material breach of the terms and conditions of the Contract and the breach is not capable of remedy; or
- 14.1.2 is in material breach of the terms and conditions of the Contract and the breach is capable of remedy and that other party shall have failed to remedy that breach within thirty (30) days of notice, specifying the breach and requiring its remedy; or
- 14.1.3 condition 10.4 applies.

14.2 Termination of the Contract (howsoever occasioned) shall not affect any accrued rights or liabilities of either party hereunder or at law, nor shall it affect the coming into force or the continuance in force of any provision hereof which is expressly or by implication intended to come into or to continue in force on or after such termination.

14.3 All payments payable to Cool and Heat under the Contract shall become due immediately upon its termination.

## **15. UNFORSEEABLE DELAYS**

15.1 Cool and Heat reserves the right to defer the performance of the Contract (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 Cool and Heat including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials.

16.1 If a licence, consent or permission of any government or other authority is required for the acquisition, carriage or use of the Goods by the Customer, the Customer shall obtain the licence or consent at its own expense and if requested/necessary produce evidence of it to Cool and Heat on demand. Failure to obtain any licence or consent does not entitle the Customer to withhold or delay payment of the Price. Any additional expenses or charges incurred by Cool and Heat resulting from such failure shall be paid by the Customer.

16.2 The Customer shall be responsible for arranging for the testing and inspection of the Goods at Cool and Heat premises before shipment. Cool and Heat shall have no liability for any claim in respect of any defect in the Goods which would be apparent on inspection, and which is made after shipment or in respect of any damage during transit.

## **17. INTELLECTUAL PROPERTY RIGHTS**

17.1 Any general assembly drawing, together with any other plans, drawings, specifications and samples submitted by Cool and Heat are the property of Cool and Heat, which are to be used between Cool and Heat and the Customer only. The intellectual property rights, including (without limitation) any copyright, design or patent rights in the same and in the Goods, if designed or adapted by Cool and Heat, shall remain with Cool and Heat and shall not be used or copied by the Customer save solely in connection with the use by the Customer of the Goods.

17.2 Plans, drawings and specifications prepared or supplied by the Customer shall remain the property of the Customer.

17.3 Cool and Heat may write or affix its name to the Goods if the copyright, design rights, patents or trademarks of Cool and Heat are embodied in its design.

17.4 Cool and Heat shall be free to exploit its intellectual property rights in any Goods designed or adapted by it unless the Customer has paid an additional fee to be agreed for the exclusive use of such Goods.

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17.5 If the Goods are to be manufactured or any process is to be applied to the Goods by Cool and Heat in accordance with a specification submitted by the Customer, the Customer shall indemnify Cool and Heat against all loss, damage and expenses awarded against or incurred by Cool and Heat in connection with or paid or agreed to be paid by Cool and Heat in settlement of any claim for infringement of any patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person which results from Cool and Heat's use of the Customer's specification.

**18. EXPORT OF GOODS**

18.1 The Goods may be supplied by Cool and Heat for export from the United Kingdom. The Customer shall comply with all applicable legislation and regulations and payment of any duties, import taxes or other costs of import. If Cool and Heat notifies the Customer that export of the Goods into a country is prohibited under the Cool and Heat export licence, the Customer shall not supply or offer the Goods for supply into or within that country.

18.2 The Customer shall obtain all licences, authorisations and approvals required for export of Goods from the United Kingdom or import into any other country and shall indemnify Cool and Heat against any liability in relation to the Customer's breach of any of the provisions of this condition 18.

**19. DISPUTE RESOLUTION**

19.1 In the event of any bona fide dispute or difference arising between the parties in connection with the Contract (excluding any dispute relating to non-payment of the Charges), the parties shall in accordance with this condition 19, attempt to resolve such dispute or difference in good faith and without recourse to legal proceedings.

19.2 If the parties are unable to resolve such dispute or difference within fifteen (15) days of initial discussions between the parties taking place, either party may request the other in writing that the matter be referred to senior representatives of the parties with authority to settle the dispute, who shall attempt to resolve the dispute within thirty (30) days of the written request to do so.

19.3 If the dispute or difference is not resolved as a result of a meeting of the senior representatives of the parties pursuant to condition 19.2 above, or if no meeting of the senior representatives occurs within the prescribed time periods set out in that condition, either party may request the Centre for Dispute Resolution ("CEDR") in writing to appoint an independent expert.

19.4 If either party so requests CEDR to appoint an independent expert, such party must instruct CEDR to ensure that the expert:

19.4.1 acts as an expert and not an arbitrator.

19.4.2 affords the parties the opportunity within reasonable time limits to make representations to him;

19.4.3 informs each party of the representations of the other;

19.4.4 affords each party the opportunity within reasonable time limits to make submissions to him on the representations of the other; and

19.4.5 notifies the parties of his decision, with reasons as quickly as practicable.

19.5 The fees and expenses of the expert including the cost of his nomination shall be borne equally by the parties who shall bear their own costs as to the submission and determination of the dispute or difference by the expert, save as where otherwise directed by the expert.

19.6 The expert determination is to be conclusive and binding on the parties except where there is fraud or a manifest error or on a matter of law.

**20. GENERAL**

20.1 Cool and Heat may assign the Contract or any part of it to any third party. The Customer shall not be entitled to assign the Contract or any part of it without the prior written consent of Cool and Heat.

20.2 Each right or remedy of Cool and Heat under the Contract is without prejudice to any other right or remedy of Cool and Heat whether under the Contract or not.

20.3 If any provision of the Contract is found by any court, tribunal, or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable, and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.

20.4 Failure or delay by Cool and Heat in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.

20.5 Any waiver by Cool and Heat of any breach of, or any default under, any provision of the Contract by the Customer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.

20.6 The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

20.7 The formation, existence, construction, performance, validity, and all aspects of the Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.

20.8 Cool and Heat accepts no liability for any design work undertaken, any designs produced are previously agreed by the customer and the customer accepts full liability of the project, functionality, effectiveness and choice of materials and equipment.

20.9 All shortages should be notified within 14 days of delivery

20.10 All invoice disputes should be raised within 14 days of date of invoice.

Signed and accepted on behalf of Customer:

Company

Signature

Date