Weatherite Air Conditioning Limited - Terms and Conditions of Purchase

These Conditions apply to all contracts between Weatherite and the Supplier in relation to the purchase by Weatherite of any and all Goods and/or Services. The definitions used in these Conditions are set out in The Schedule.

1. BASIS OF CONTRACT
1.1 The Order constitutes an offer by Weatherite to purchase Goods and/or Services, and an invitation to tender. Weatherite reserves the right to accept or decline any tender or invitation to tender.
1.2 An Order will be contractually binding when submitted by Weatherite, and the date of delivery stipulated in the Order shall be deemed the date on which the Contract will come into existence and on which the Contract date shall be the date on which the Supplier's tender was opened.
1.3 These Conditions apply to the Contract to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
1.4 All Orders are subject to supply of the both Goods and Services except where the application to one or the other is specified.

2. QUOTATIONS
2.1 The Supplier will supply all Goods and/or Services ordered by Weatherite for the Price in accordance with these Terms and Conditions.
2.2 The Supplier will ensure that the Goods will:
   2.2.1 comply with any applicable statutory and regulatory requirements, standards, codes of practice, packaging, storage, handling and delivery of the Goods;
   2.2.2 ensure that the Goods are delivered to Weatherite within the times stipulated in the Order;
   2.2.3 deliver the Goods free of defects of design, materials and workmanship;
   2.2.4 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and fit for any purpose held by the Supplier to be known to Supplier (whichever is longer) after delivery; and
   2.2.5 be fit for any purpose that Weatherite expressly or implicitly states on the Order.

3. SERVICE SPECIFICATION
3.1 The Supplier will undertake:
   3.1.1 provide all necessary plans, drawings and calculations for the Goods/logistics
   3.1.2 ensure that any other necessary information for the provision of the Services is available for receipt by Weatherite;
   3.1.3 provide all information to ensure that the Supplier's obligations are performed;
   3.1.4 ensure that the Goods and/or Services are fit for the purpose for which they are purchased.

4. PAYMENT
4.1 The Supplier will perform the Services to the best care, skill and professionalism in accordance with best practice in the Supplier's industry, profession or trade;
4.2 The Supplier will invoice Weatherite for the Price on the basis of an invoice number to ensure that the Supplier's obligations are fulfilled;
4.3 The Supplier will provide any workmen, tools and vehicles and such other items as required to provide the Services;
4.4 The Supplier will obtain and maintain all insurances necessary to perform the Services and indemnify Weatherite against all liabilities, costs, expenses, damages and losses arising out of or in connection with the performance of the Services.

5. CONTRACT CONDITIONS
5.1 The Supplier will supply all Goods, and/or Services to Weatherite in accordance with the Order and as amended in any relevant Offer Letter.
5.2 The Supplier will ensure that the Goods:
   5.2.1 comply with all applicable laws, regulations, regulatory policies, guidelines or industry codes which may apply to the provision of the Services;
   5.2.2 observe all health and safety rules and regulations and any other security requirements that apply at any of Weatherite's premises;
   5.2.3 hold all materials, equipment and tools, drawings, specifications and data supplied by Weatherite to the Supplier ("Weatherite Materials") at its own risk, maintain Weatherite Materials in good condition until returned to Weatherite, and not dispose of or change Weatherite Materials in any way unless agreed in writing with Weatherite's written instructions or authorisation;
   5.2.4 not do anything that may cause Weatherite to lose any licence, authority, consent or permission upon which it relies for the purposes of the Contract or the provisions of clause 3.2.1 of these Conditions; and
   5.2.5 comply with all additional obligations as set out in the Service Specification.

6. CUSTOMER REMEDIES
6.1 If the Supplier fails to deliver the Goods and/or perform the Services on the applicable date, Weatherite will, without limiting or affecting other rights or remedies available to it, have one or more of the following rights:
   6.1.1 to terminate the Contract with immediate effect by giving written notice to the Supplier;
   6.1.2 to require the Supplier to perform the Goods and/or Services at the Supplier's expense;
   6.1.3 to recover from the Supplier any costs incurred by Weatherite in obtaining substitute goods and/or services from a third party;
   6.1.4 to require a refund from the Supplier of sums paid in advance for Services that the Supplier has not provided and/or Goods that it has not delivered; and
   6.1.5 to claim damages for any additional costs, loss or expenses incurred by Weatherite which are in any way attributable to the failure of the Supplier to perform the Goods or Services.

7. LIABILITY
7.1 The Supplier will indemnify Weatherite against all liabilities, costs, expenses, damages and losses arising out of or in connection with:
   7.1.1 the performance of the Services;
   7.1.2 the provision of the Goods;
   7.1.3 any claim made against Weatherite by a third party for death, personal injury or damage to any property arising out of, or in connection with, the Goods and/or Services;
   7.1.4 any claim or proceeding in connection with Weatherite Materials;
   7.1.5 any claim made against Weatherite by a third party arising out of or in connection with the supply of the Goods, as delivered, or the Services;

8. INTELLECTUAL PROPERTY RIGHTS
8.1 The Supplier grants to Weatherite, or will procure the direct grant to Weatherite of, a fully paid-up, worldwide, non-exclusive, non-transferable licence in copy and modify the Deliverables (excluding Customer Data) that it has supplied to the Supplier under the Contract in accordance with clause 5.3.2 of these Conditions, and which is available to it under the Contract or otherwise.
8.2 All Customer Data are the exclusive property of Weatherite.

9. INDEMNITY
9.1 The Supplier will indemnify Weatherite against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and disbursements) suffered or incurred by Weatherite arising out of or in connection with:
   9.1.1 any breach of contract or other default by the Supplier; or
   9.1.2 any actual or alleged infringement of a third party's intellectual property rights arising out of, or in connection with, the manufacture, supply or use of the Goods and/or Services (excluding Weatherite Materials);
   9.1.3 any claim or proceeding in connection with the Goods for death, personal injury or damage to any property arising out of, or in connection with, the Goods, as delivered, or the Services;
   9.1.4 any claim made against Weatherite by a third party arising out of or in connection with the supply of the Goods, as delivered, or the Services;
   9.1.5 this clause 9 will survive termination of the Contract.
11. CONFIDENTIALITY

11.1 Each party undertakes that it will not disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 11.2.

11.2 Each party may disclose the other party’s confidential information:

11.2.1 to its employees, officers, representatives, subcontractors or advisers who need to know such information for performing their obligations under the Contract or in order to perform their duties; or

11.2.2 in order to comply with any legal or regulatory requirement.

11.3 Neither party will use the other party’s confidential information for any purpose other than to perform its obligations under the Contract.

12. TERMINATION

12.1 Without affecting any other right or remedy available to it, a party may terminate the Contract:

12.1.1 with immediate effect by giving written notice to the Supplier if:

(a) there is a change of control of the Supplier; or

(b) the Supplier’s financial position deteriorates to such an extent that in Weatherite’s opinion the Supplier’s capacity is not adequately fulfilled its obligations under the Contract has been placed in jeopardy; or

(c) the Supplier commits a breach of clause 4.3.8.

12.1.2 by giving notice to the Supplier 2 months’ written notice.

12.2 Without affecting any other right or remedy available to it, a party may terminate the Contract:

12.2.1 with immediate effect by giving written notice to the other party if:

(a) the other party commits a material breach of any term of the Contract which breach is irreparable (or if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified to do so;

(b) the other party takes any step or action in connection with its entering administration, provisional liquidation, any composition or arrangement with its creditors (other than a composition or arrangement involving substantial 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, affairs, customers, clients or suppliers of the other party if such step or action is taken in another jurisdiction unless it is necessary to make it valid, legal and enforceable in accordance with any analogous procedure in the relevant jurisdiction; or

(c) the other party suspends, or threatens to suspend, or ceases to carry on all or a substantial part of its business.

CONSEQUENCES OF TERMINATION

13.1 On termination of the Contract, the Supplier will immediately deliver to Weatherite all Deliverables whether or not then complete, and return all Customer Materials. If the Supplier fails to do so, then Weatherite may require the Supplier’s premises and take possession of them. Until they have been returned or delivered, the Supplier shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract.

13.2 Termination of the Contract will not affect the parties’ rights and remedies that have accrued at or before the date of termination.

13.3 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination of the Contract will remain in full force and effect.

14. FORCE MAJEURE

14.1 Neither party will be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under it if such delay or failure results from events, circumstances or causes beyond its reasonable control. If the period of delay or non-performance continues for 6 weeks, the party not affected may terminate the Contract by giving 7 days’ written notice to the affected party.

15. ASSIGNMENT AND DELEGATION

15.1 Assignment and dealings.

15.1.1 Weatherite may at any time assign, mortgage, charge, subcontract, delegate, trust over or deal in any other manner with any of its rights and obligations under the Contract which existed at or before the date of termination.

15.2 The Supplier will not assign, transfer, mortgage, charge, subcontract, delegate, trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of Weatherite.

15.2.1 Any notice or other communication given to a party under or in connection with the Contract will 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 in writing in accordance with this clause 15.2, and will be delivered personally, or sent by registered mail or any other secure method of delivery service, commercial courier or fax.

15.2.2 A notice or other communication will be deemed to have been received: if delivered personally, when left at the address referred to in clause 15.2.1; if sent by pre-paid first class post or other next working day delivery service, at 1.00 pm on the second Business Day after posting; if delivered by commercial courier, on the date and at the time of delivery as recorded on the courier’s receipt; or, if sent by fax, one Business Day after transmission.

15.2.3 The provisions of this clause 15.2 will not apply to the service of any proceedings or other documents in any legal action.

15.3 Severance. If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it will 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 will be deemed deleted. Any modification due to invalidity or unenforceability will not affect the validity and enforceability of the rest of the Contract.

15.4 Waiver. A waiver of any right or remedy under the Contract by or to the Supplier by or to Weatherite is only effective if given in writing and will not be a waiver of any subsequent right or remedy or prevent the Supplier from exercising any right or remedy provided under the Contract by or to Weatherite. Weatherite will not waive the right of that or any other right or remedy, nor will it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law will prevent or restrict the further exercise of that or any other right or remedy.

15.5 No partnership or agency. Nothing in the Contract is intended to, or will be deemed to, establish any partnership or joint venture between the parties, or constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.

15.6 Entire agreement. The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assumptions of obligations and representations, understandings between them, whether written or oral, relating to its subject matter.

15.7 Third party rights.

15.7.1 Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

15.7.2 The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.

15.8 Variation. Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, will be effective unless it is agreed in writing and signed by the parties or their authorised representatives.

15.9 Governing law. 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 will be governed by and construed in accordance with the law of England and Wales.

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

The Schedule

DEFINITIONS AND INTERPRETATION

Part 1

In these Conditions, the following definitions apply:

Business Day: a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

Commencement Date: has the meaning given in 1.2.

Conditions: these terms and conditions as amended from time to time in accordance with clause 15.8.

Contract: the contract between Weatherite and the Supplier for the supply of Goods and/or Services in accordance with these Conditions.

Control: has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression change of control will be construed accordingly.

Customer Materials: has the meaning set out in clause 4.3.10.

Deliverables: all documents, products and materials developed by the Supplier or its agents, contractors and employees as part of its work or in relation to its work (in any form or medium), including drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts).

Delivery Location: such location as is set out in the Order or as instructed by Weatherite before delivery.

Goods: the goods (or any part of them) set out in the Order.

Goods Specification: any specification for the Goods, including drawings, diagrams, designs, plans and other similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Order: Weatherite’s order for the supply of Goods and/or Services, as set out in the Order together with any Deliverable or any modification to it (as issued by Weatherite or the Supplier).

Weatherite: Weatherite’s written acceptance of the Supplier’s quotation, or overleaf, as the case may be.

Price: the price for the Goods and/or Services as specified in the Order or such price as may be agreed between the parties from time to time. If the Price is not set out in the Order and not otherwise agreed between the parties, the Price will be the same as that in Weatherite’s most recent Order for identical Goods and/or Services.

Services: the services, including any Deliverables, to be provided by the Supplier under the Contract as set out in the Service Specification.

Service Specification: the description or specification for the Services agreed in writing by Weatherite and the Supplier.

Supplier: the person or firm from whom Weatherite purchases the Goods and/or Services.

VAT: valued added tax chargeable from time to time.

Weatherite: Weatherite Air Conditioning Limited registered in England and Wales with company number 01829910.