

## Weatherite Air Conditioning Limited - Terms and Conditions of Sale

These Conditions will apply to all contracts between Weatherite and the Customer in relation to the supply 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 the Customer to purchase Goods and/or Services in accordance with these Conditions.
- 1.2 The Order will only be deemed to be accepted when Weatherite issues written acceptance of the Order at which point and on which date the Contract will come into existence (**Commencement Date**).
- 1.3 Any samples, drawings, descriptive matter or advertising issued by Weatherite and any descriptions of the Goods or illustrations or descriptions of the Services contained in Weatherite's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Services and/or Goods described in them. They will not form part of the Contract or have any contractual force.
- 1.4 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.
- 1.5 Any quotation given by Weatherite will not constitute an offer, and is only valid for a period of 30 days from its date of issue.
- 1.6 All of these Conditions will apply to the supply of both Goods and Services except where application to one or the other is specified.

### 2. GOODS

- 2.1 The Goods are described in the Goods Specification.
- 2.2 To the extent that the Goods are to be manufactured in accordance with a Goods Specification supplied by the Customer, the Customer will indemnify Weatherite against all liabilities, costs, expenses, damages and losses (including 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 expenses) suffered or incurred by Weatherite arising out of or in connection with any claim made against Weatherite for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with Weatherite's use of the Goods Specification. This clause 2.2 will survive termination of the Contract.
- 2.3 Weatherite reserves the right to amend the Goods Specification if required by any applicable statutory or regulatory requirement, and Weatherite will notify the Customer in any such event.

### 3. DELIVERY OF GOODS

- 3.1 Weatherite will ensure that each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Order is being delivered by instalments, the outstanding balance of Goods remaining to be delivered.
- 3.2 Weatherite will deliver the Goods to the Delivery Location or such other location as the parties may agree.
- 3.3 Delivery of the Goods will be completed on the completion of unloading of the Goods at the Delivery Location.
- 3.4 Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. Weatherite will 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 Weatherite with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 3.5 If Weatherite fails to deliver the Goods, its liability will be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. Weatherite will have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide Weatherite with adequate delivery instructions for the Goods or any relevant instruction relating to the supply of the Goods.
- 3.6 If the Customer fails to accept delivery of the Goods when Weatherite delivers them, then:
  - 3.6.1 Weatherite may charge the Customer an aborted delivery fee to cover its wasted expenditure in relation to the Customer's failure to accept delivery of the Goods;
  - 3.6.2 except where such failure or delay is caused by a Force Majeure Event or by Weatherite's failure to comply with its obligations under the Contract in respect of the Goods:
    - (a) delivery of the Goods will be deemed to have been completed at 9.00 am on the third Business Day following the day on which Weatherite notified the Customer that the Goods were ready or the date Weatherite first attempted delivery (whichever is earliest); and
    - (b) Weatherite will store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- 3.7 If 10 or more Business Days after Weatherite notified the Customer that the Goods were ready for delivery, the Customer has not accepted delivery of them:
  - 3.7.1 Weatherite may dispose of part or all of the Goods;
  - 3.7.2 the Customer will be liable to Weatherite for storage, handling, transport and administration costs, which Weatherite incurs in relation to the Goods after they became ready for delivery and any disposal thereof;
  - 3.7.3 the Customer will be liable to Weatherite for any amount by which the sale proceeds less costs Weatherite incurs

- 3.7.4 Weatherite will account to the Customer for any amount by which the sale proceeds less costs Weatherite incurs pursuant to clause 3.7.2 exceed of the price of the Goods.
- 3.8 If Weatherite delivers up to and including 5% more or less than the quantity of Goods ordered the Customer may not reject them, but on receipt of notice from the Customer that the wrong quantity of Goods was delivered, Weatherite will make a pro rata adjustment to the invoice for the Goods.
- 3.9 Weatherite may deliver the Goods by instalments, which will be invoiced and paid for separately. Each instalment will constitute a separate contract. Any delay in delivery or defect in an instalment will not entitle the Customer to cancel any other instalment.

### 4. QUALITY OF GOODS

4. Weatherite warrants that on delivery, and for a period of 12 months from the date of delivery ("**warranty period**"), the Goods will:
  - 4.1.1 conform in all material respects with any applicable Goods Specification;
  - 4.1.2 be free from material defects in design, material and workmanship;
  - 4.1.3 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979); and
  - 4.1.4 be fit for any purpose held out by Weatherite.
- 4.2 Subject to clause 4.3, Weatherite will, at its option, repair or replace any defective Goods, or refund the price of such defective Goods in full if:
  - 4.2.1 the Customer gives notice in writing 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 4.1;
  - 4.2.2 Weatherite is given a reasonable opportunity of examining such Goods; and
  - 4.2.3 the Customer (if asked to do so by Weatherite) returns such Goods to Weatherite's place of business at the Customer's cost.
- 4.3 Weatherite will not be liable for the Goods' failure to comply with the warranty in clause 4.1 if:
  - 4.3.1 the Customer makes any further use of such Goods after giving a notice in accordance with clause 4.2;
  - 4.3.2 the defect arises because the Customer failed to follow Weatherite'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;
  - 4.3.3 the defect arises as a result of Weatherite following any drawing, design or Goods Specification supplied by the Customer;
  - 4.3.4 the Customer alters or repairs such Goods without the written consent of Weatherite;
  - 4.3.5 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; or
  - 4.3.6 the Goods differ from any applicable Goods Specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards.
- 4.4 Except as provided in this clause 4, Weatherite will have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 4.1.
- 4.5 The terms of these Conditions will apply to any repaired or replacement Goods supplied by Weatherite.

### 5. TITLE AND RISK

- 5.1 The risk in the Goods will pass to the Customer on completion of delivery.
  - 5.1.1 Title to the Goods will not pass to the Customer until Weatherite receives payment in full (in cash or cleared funds) for the Goods and any other goods that Weatherite has supplied to the Customer in respect of which payment has become due, in which case title to the Goods will pass at the time of payment of all such sums.
- 5.2 Until title to the Goods has passed to the Customer, the Customer will:
  - 5.2.1 store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as Weatherite's property;
  - 5.2.2 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
  - 5.2.3 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on Weatherite's behalf from the date of delivery;
  - 5.2.4 notify Weatherite immediately if it becomes subject to any of the events listed in clause 12.1.3 to clause 12.1.5; and
  - 5.2.5 give Weatherite such information relating to the Goods as Weatherite may require from time to time.
  - 5.2.6 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 12.1.3 to clause 12.1.5, then, without limiting any other right or remedy Weatherite may have, Weatherite may at any time:
    - (a) require the Customer to deliver up all Goods in its possession which 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.

### 6. SUPPLY OF SERVICES

- 6.1 Weatherite will supply the Services to the Customer substantially in accordance with the Service Specification.
- 6.2 If the Service Specification states that a Design is required, Weatherite will prepare such Design. Weatherite will then submit the Design to the Customer for approval. The parties will use all reasonable endeavours to agree the Design. If the Customer does not approve the Design, it may instruct Weatherite to amend the Design (at the Customer's expense).
- 6.3 If the Customer does not approve the amended Design, either party may refer the matter to be dealt with in accordance with the dispute resolution mechanism detailed at clause 14.
- 6.4 If Weatherite submits a Design to the Customer for approval but the Customer does not respond to Weatherite in relation to that Design within 14 days of such submission, the Design will be deemed to be approved by the Customer and Weatherite will be entitled to proceed with its provision of the Services on the basis of that Design.
- 6.5 Weatherite will use all reasonable endeavours to meet any performance dates for the Services specified in the Service Specification or otherwise agreed in writing between the parties, but any such dates will be estimates only and time will not be of the essence for the performance of the Services.
- 6.6 Weatherite reserves the right to amend the Service Specification if necessary to comply with any applicable law or regulatory requirement, and otherwise if the amendment will not materially affect the nature or quality of the Services, and Weatherite will notify the Customer of any such amendment.
- 6.7 Weatherite will, whilst working at the Customer's Premises, comply with all reasonable instructions given to it by the Customer relating to health and safety matters and procedures.
- 6.8 Weatherite may temporarily suspend all or part of the Services:
  - 6.8.1 for operational reasons including (but without limitation) if machinery and/or equipment required for the Services is out of service or cannot be utilised for other reasons; or
  - 6.8.2 to comply with any applicable law or regulatory requirement.
- 6.9 If the Services will be (or are likely to be) suspended, Weatherite will give the Customer as much advance notice of any such suspension as is practicable.
- 6.10 On the occurrence of the circumstances anticipated by clause 6.8.1 and provided that Weatherite cannot recover such costs from the third party owners of such machinery and/or equipment, Weatherite may charge the Customer a fee to cover its wasted expenditure in relation to costs incurred by Weatherite in connection with having machinery and/or equipment available and ready to perform the Services but that it cannot utilise due to poor weather conditions or other operational reasons outside of Weatherite's control.
- 6.11 If, as part of its provision of the Services, Weatherite agrees to remove old or used machinery and/or equipment from the Customer's Premises, Weatherite will be free to dispose of such machinery and/or equipment as it sees fit and if such machinery and/or equipment is sold by Weatherite, Weatherite will be entitled to retain all proceeds resulting from any such sale.

### 7. CUSTOMER'S OBLIGATIONS

- 7.1 The Customer will:
  - 7.1.1 ensure that the terms of the Order and any information it provides in the Service Specification and the Goods Specification are complete and accurate;
  - 7.1.2 co-operate with Weatherite in all matters relating to the Services;
  - 7.1.3 provide Weatherite, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities including (but without limitation) parking and electricity, as reasonably required by Weatherite to provide the Services;
  - 7.1.4 provide Weatherite with such information and materials as Weatherite may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
  - 7.1.5 prepare the Customer's premises for the supply of the Services;
  - 7.1.6 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;
  - 7.1.7 comply with all applicable laws, including health and safety laws;
  - 7.1.8 keep all materials, equipment, documents and other property of Weatherite ("**Supplier Materials**") at the Customer's premises in safe custody at its own risk, maintain Weatherite Materials in good condition until returned to Weatherite, and not dispose of or use Weatherite Materials other than in accordance with Weatherite's written instructions or authorisation; and
  - 7.1.9 comply with any additional obligations as set out in the Service Specification and the Goods Specification.
- 7.2 If Weatherite's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation ("**Customer Default**");

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- 7.2.1 without limiting or affecting any other right or remedy available to it, Weatherite will have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays Weatherite's performance of any of its obligations;
- 7.2.2 Weatherite will not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from Weatherite's failure or delay to perform any of its obligations as set out in this clause 7.2; and
- 7.2.3 the Customer will reimburse Weatherite on written demand for any costs or losses sustained or incurred by Weatherite arising directly or indirectly from the Customer Default.
- 8. CHARGES AND PAYMENT**
- 8.1 The price for Goods:
- 8.1.1 will be the price set out in the Order or, if no price is quoted, the price set out in Weatherite's published price list as at the date of the order; and
- 8.1.2 will be inclusive of all costs and charges of packaging, insurance, transport of the Goods.
- 8.2 The charges for Services will be the price set out in the Order save that Weatherite will be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom Weatherite engages in connection with the Services including travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by Weatherite for the performance of the Services, and for the cost of any materials.
- 8.3 Weatherite reserves the right to:
- 8.3.1 increase the charges for the Services on an annual basis with effect from each anniversary of the Commencement Date in line with the percentage increase in the Retail Prices Index in the preceding 12 month period and the first such increase will take effect on the first anniversary of the Commencement Date and will be based on the latest available figure for the percentage increase in the Retail Prices Index;
- 8.3.2 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 Weatherite that is due to:
- (a) any factor beyond the control of Weatherite (including (but without limitation) 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; or
- (c) any delay caused by any instructions of the Customer in respect of the Goods or failure of the Customer to give Weatherite adequate or accurate information or instructions in respect of the Goods.
- 8.4 Weatherite may at any time invoice on a pro forma basis requiring the Customer to pay for Goods and/or Services before delivery.
- 8.5 Unless clause 8.4 applies or otherwise agreed, Weatherite will invoice the Customer in respect of Goods on or at any time after it has notified the Customer that they are ready for delivery and in respect of Services, when the same are completed
- 8.6 The Customer will pay each invoice submitted by Weatherite:
- 8.6.1 within 30 days of the date of the invoice or in accordance with any credit terms agreed by Weatherite and confirmed in writing to the Customer; and
- 8.6.2 in full and in cleared funds to a bank account nominated in writing by Weatherite, and time for payment will be of the essence of the Contract.
- 8.7 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of VAT. Where any taxable supply for VAT purposes is made under the Contract by Weatherite to the Customer, the Customer will, on receipt of a valid VAT invoice from Weatherite, pay to Weatherite such additional amounts in respect of VAT as are chargeable on the supply of the Services or Goods at the same time as payment is due for the supply of the Services or Goods.
- 8.8 If the Customer fails to make a payment due to Weatherite under the Contract by the due date, then, without limiting any other remedies available to Weatherite whether hereunder or otherwise the Customer will pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this paragraph 8.8 will accrue each day at the greater of 4% a year above the Bank of England's base rate from time to time, and the rate from time to time applicable to High Court judgment debts.
- 8.9 All amounts due under the Contract will be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 9. INTELLECTUAL PROPERTY RIGHTS**
- 9.1 All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Customer) will be owned by Weatherite.
- 9.2 Weatherite grants to the Customer, or will procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free perpetual and irrevocable licence to copy the Deliverables (excluding materials provided by the Customer) for the purpose of receiving and using the Services and the Deliverables in its business.
- 9.3 The Customer will not sub-license, assign or otherwise transfer the rights granted by clause 9.2.
- 9.4 The Customer grants Weatherite a fully paid-up, non-exclusive, royalty-free non-transferable licence to copy and modify any materials provided by the Customer to Weatherite for the term of the Contract for the purpose of providing the Services to the Customer.
- 10. CONFIDENTIALITY**
- 10.1 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 10.2.
- 10.2 Each party may disclose the other party's confidential information:
- 10.2.1 to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party will ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 10; and
- 10.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 10.3 Neither party will use the other party's confidential information for any purpose other than to perform its obligations under the Contract.
- 11. LIMITATION OF LIABILITY**
- 11.1 Weatherite has obtained insurance cover in respect of its own legal liability for individual claims not exceeding £6,000,000 per claim (including defence costs) in respect of professional indemnity insurance and £2,500,000 per claim in respect of contract works. The limits and exclusions in this clause 11 reflect the insurance cover Weatherite has been able to arrange and the Customer is responsible for making its own arrangements for the insurance of any excess loss.
- 11.2 Nothing in the Contract limits any liability which cannot legally be limited, including but not limited to liability for:
- 11.2.1 death or personal injury caused by negligence;
- 11.2.2 fraud or fraudulent misrepresentation; and
- 11.2.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 11.3 Subject to clause 11.2, Weatherite's total liability to the Customer in respect of all breaches of duty occurring within any contract year will not exceed the lesser of £5,000,000 and 50% of the total charges in the contract year in which the breaches occurred.
- 11.4 In clause 11.3:
- 11.4.1 **contract year.** A contract year means a 12-month period commencing with the date of the Contract or any anniversary of it;
- 11.4.2 **total charges.** The total charges means all sums paid by the Customer and all sums payable under the Contract in respect of goods and services actually supplied by Weatherite, whether or not invoiced to the Customer; and
- 11.4.3 **total liability.** Weatherite's total liability includes liability in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract.
- 11.5 This clause 11.5 sets out specific heads of excluded loss and exceptions from them:
- 11.5.1 Subject to clause 11.2, the types of loss listed in clause 11.5.3 are wholly excluded by the parties, but the types of loss and specific losses listed in clause 11.5.4 are not excluded.
- 11.5.2 If any loss falls into one or more of the categories in clause 11.5.3 and also falls into a category, or is specified, in clause 11.5.4, then it is not excluded.
- 11.5.3 All indirect and consequential loss and the following types of loss (whether direct or indirect) are wholly excluded:
- (a) Loss of profits.
- (b) Loss of sales or business.
- (c) Loss of agreements or contracts.
- (d) Loss of anticipated savings.
- (e) Loss of use or corruption of software, data or information.
- (f) Loss of or damage to goodwill.
- 11.5.4 The following types of loss and specific loss are not excluded:
- (a) Sums paid by the Customer to Weatherite pursuant to the Contract, in respect of any Services not provided in accordance with the Contract.
- (b) Wasted expenditure.
- (c) Additional costs of procuring and implementing replacements for, or alternatives to, Services not provided in accordance with the Contract. These include (but are not limited to) consultancy costs, additional costs of management time and other personnel costs, and costs of equipment and materials.
- (d) Losses incurred by the Customer arising out of or in connection with any third party claim against the Customer which has been caused by the act or omission of Weatherite. For these purposes, third party claims will include (but not be limited to) demands, fines, penalties, actions, investigations or proceedings, including (but not limited to) those made or commenced by subcontractors,
- Weatherite's personnel, regulators and customers of the Customer.
- 11.6 Weatherite has given commitments as to compliance of the Goods and Services with relevant specifications in clause 4 and clause 6. In view of these commitments, the terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from this agreement.
- 11.7 Unless the Customer notifies Weatherite that it intends to make a claim in respect of an event within the notice period, Weatherite will have no liability for that event. The notice period for an event will start on the day on which the Customer became, or ought reasonably to have become, aware of the event having occurred and will expire 3 months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.
- 11.8 This clause 11 will survive termination of the Contract.
- 12. TERMINATION**
- 12.1 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:
- 12.1.1 that other party fails to pay when due any amount not subject to a bona fide dispute and such amount remains unpaid 7 days or more after demand;
- 12.1.2 the other party commits a material breach of its obligations under the Contract and (if such breach is remediable) fails to remedy that breach within 30 days after receipt of notice in writing to do so;
- 12.1.3 the other party 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;
- 12.1.4 the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- 12.1.5 the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 12.2 Without affecting any other right or remedy available to it, Weatherite may terminate the Contract with immediate effect by giving written notice to the Customer if:
- 12.2.1 any amount due hereunder is due and remains unpaid for 14 days or more after notice requiring payment has been served on the party owing such amount; or
- 12.2.2 there is a change of control of the Customer.
- 12.3 Without affecting any other right or remedy available to it, Weatherite may suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Customer and Weatherite if the Customer fails to pay any amount due under the Contract on the due date for payment, the Customer becomes subject to any of the events listed in clause 12.1.3 to clause 12.1.5, or Weatherite reasonably believes that the Customer is about to become subject to any of them.
- 13. CONSEQUENCES OF TERMINATION**
- 13.1 On termination of the Contract:
- 13.1.1 the Customer will immediately pay to Weatherite all of Weatherite's outstanding unpaid invoices and interest and, in respect of Services and Goods supplied but for which no invoice has been submitted, Weatherite will submit an invoice, which will be payable by the Customer immediately on receipt;
- 13.1.2 the Customer will return all of Weatherite Materials and any Deliverables or Goods which have not been fully paid for. If the Customer fails to do so, then Weatherite may enter the Customer's premises and take possession of them. Until they have been returned, the Customer will be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract.
- 13.2 Termination of the Contract will not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.
- 13.3 Any provision of the Contract that expressly or by implication is intended to have effect after termination will continue in full force and effect.
- 14. DISPUTE RESOLUTION**
- 14.1 An Expert is a person appointed in accordance with this clause 14 to resolve any disagreement between the parties relating to a Design or any other technical matter.
- 14.2 Where under this agreement a party wishes to refer a matter to an Expert, the parties shall first agree on the appointment of an independent Expert and agree with the Expert the terms of his appointment.
- 14.3 If the parties are unable to agree on an Expert or the terms of the Expert's appointment within seven days of either party serving details of a suggested expert on the other, either party shall then be entitled to request the Centre for Effective Dispute Resolution ("CEDR") to appoint a suitable and appropriate Expert with the required expertise.

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- 14.4 The Expert is required to prepare a written decision including reasons and give notice (including a copy) of the decision to the parties within a maximum of three months of the matter being referred to the Expert.
- 14.5 If the Expert dies or becomes unwilling or incapable of acting, or does not deliver the decision within the time required by this clause 14, then:
- 14.5.1 either party may apply to CEDR to discharge the Expert and to appoint a replacement Expert with the required expertise; and
- 14.5.2 this clause 14 shall apply to the new Expert as if they were the first Expert appointed.
- 14.6 The parties are entitled to make submissions to the Expert and will provide (or procure that others provide) the Expert with any assistance and documents as the Expert reasonably requires to reach a decision.
- 14.7 Each party shall with reasonable promptness supply each other with all information and give each other access to all documents, personnel and things as the other party may reasonably require to make a submission under this clause 14.
- 14.8 The Expert shall act as an expert and not as an arbitrator. The Expert shall determine the matters referred to the Expert under the agreement. The Expert's written decision on the matters referred to the Expert shall be final and binding on the parties in the absence of manifest error or fraud.
- 14.9 All matters concerning the process and result of the determination by the Expert shall be kept confidential among the parties and the Expert.
- 14.10 Each party shall act reasonably and co-operate to give effect to the provisions of this clause 14 and otherwise do nothing to hinder or prevent the Expert from reaching their determination.
- 14.11 The Expert and CEDR shall have no liability to the parties for any act or omission in relation to this appointment, save in the case of bad faith.
- 14.12 If any other dispute arises in connection with the Contract which does not relate to a Design or any other technical matter, the parties agree to enter into mediation in good faith to settle such a dispute and will do so in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties within 14 days of notice of the dispute, the mediator will be nominated by CEDR. To initiate the mediation a party must give notice in writing ("**ADR Notice**") to the other party to the dispute, referring the dispute to mediation. Unless otherwise agreed the mediation will start not later than 28 days after the date of the ADR Notice.
- 14.13 For the avoidance of doubt, clause 14.12 will not prevent Weatherite from immediately initiating court proceedings to seek any interim relief (including injunctive relief) or take advantage of any applicable time limitation.
15. **FORCE MAJEURE**

### NEITHER PARTY WILL BE IN BREACH OF THE CONTRACT NOR LIABLE FOR DELAY IN PERFORMING OR FAILURE TO PERFORM, ANY OF ITS OBLIGATIONS UNDER THE CONTRACT IF SUCH DELAY OR FAILURE RESULT FROM EVENTS, CIRCUMSTANCES OR CAUSES BEYOND ITS REASONABLE CONTROL.

## 16. GENERAL

### 16.1 Assignment and other dealings

- 16.1.1 Weatherite may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.
- 16.1.2 The Customer will not assign, transfer, mortgage, charge, subcontract, delegate, declare a 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.

### 16.2 Notices.

- 16.2.1 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 to the other party in writing in accordance with this clause 16.2, and will be delivered personally, or sent by pre-paid first class post or other next working day delivery service, commercial courier or fax.
- 16.2.2 A notice or other communication will be deemed to have been received: if delivered personally, when left at the address referred to in clause 16.2.1; 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 that the courier's delivery receipt is signed; or, if sent by fax, one Business Day after transmission.
- 16.2.3 The provisions of this clause 16.2 will not apply to the service of any proceedings or other documents in any legal action.
- 16.3 **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 to or deletion of a provision or part-provision under this clause 16.3 will not affect the validity and enforceability of the rest of the Contract.
- 16.4 **Waiver.** A waiver of any right or remedy under the Contract or by law is only effective if given in writing and will not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law

will not constitute a waiver 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.

16.5 **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, 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.

### 16.6 Entire agreement.

16.6.1 The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

16.6.2 Each party acknowledges that in entering into the Contract it does not rely on, and will have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it will have no claim for innocent or negligent misrepresentation or negligent misrepresentation based on any statement in the Contract.

16.6.3 Nothing in this clause 16.6 will limit or exclude any liability for fraud.

### 16.7 Third parties rights.

16.7.1 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.

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

16.8 **Variation.** Except as set out in these Conditions, no variation of the Contract will be effective unless it is agreed in writing and signed by the parties (or their authorised representatives).

16.9 **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.

16.10 **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 clause 1.2.

**Conditions:** these terms and conditions as amended from time to time in accordance with clause 16.8.

**Contract:** the contract between Weatherite and the Customer 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:** the person or firm who purchases the Goods and/or Services from Weatherite.

**Deliverables:** the deliverables set out in the Order produced by Weatherite for the Customer.

**Delivery Location:** the location set out in the Order or such other location as the parties may agree from time to time.

**Design:** any applicable plans or drawings relevant to the Services stated to be required in the Service Specification.

**Expert:** has the meaning given in clause 14.

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

**Goods Specification:** any specification for the Goods, including any relevant plans or drawings, that is agreed by the Customer and Weatherite.

**Intellectual Property Rights:** patents, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all 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:** the Customer's order for the supply of Goods and/or Services, as set out in the Customer's purchase order form, or the Customer's written acceptance of Weatherite's quotation, or overleaf, as the case may be.

**Retail Prices Index:** the retail prices index published by the United Kingdom's Office for National Statistics provided that if at any time that index is no longer produced or published any index most nearly replacing the same will be used with such adjustments as Weatherite reasonably considers appropriate.

**Services:** the services, including the Deliverables, supplied by Weatherite to the Customer as set out in the Service Specification.

**Service Specification:** the description or specification for the Services provided by Weatherite to the Customer which may include a Design.

**Supplier Materials:** has the meaning given in clause 7.1.8.

**VAT:** value added tax chargeable from time to time.

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

### Part 2

In these Conditions, the following rules apply:

1. A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
2. A reference to a party includes its successors and permitted assigns.
3. A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.
4. Any words following the terms **including** or **include** or any similar expression will be construed as illustrative and will not limit the sense of the words, description, definition, phrase or term preceding those terms.
5. A reference to **writing** or **written** includes fax but not email.