

HAWCO - TERMS AND CONDITIONS OF SALE

1.INTERPRETATION

In these conditions the following words have the following meanings:

You: the person(s), firm or company who purchases the Goods from us or to whom we supply Services;

We: Hawco Limited, Microtherm Limited or Hawco Refrigeration Limited;

Contract: any contract between us and you for the sale and purchase of the Goods or for the supply of Services by us to you, incorporating these Conditions;

Goods: any goods agreed in the Contract to be supplied to you by us (including any part or parts of them);

Services: any services agreed in the Contract to be supplied to you by us and any other advice given by us to you.

2.APPLICATION OF TERMS

2.1Subject to any variation under condition 2.3 the Contract will be on these conditions to the exclusion of all other terms and conditions (including any terms or conditions which you purport to apply under any purchase order, confirmation of order, specification or other document).

2.2These terms or conditions, together with any delivery note or purchase order, specification or other document will form part of the Contract simply as a result of such document being referred to in the Contract.

2.3These conditions apply to all our sales and any variation to these conditions and any representations about the Goods or Services shall have no effect unless expressly agreed in writing and signed by one of our directors.

2.4Each order for Goods or Services by you from us shall be deemed to be an offer by you to purchase Goods or Services subject to these conditions.

2.5No order placed by you shall be deemed to be accepted by us until a written acknowledgement of order is issued by us or (if earlier) we deliver the Goods to you or supply the Services to you.

2.6You must ensure that the terms of your order and any applicable specification are complete and accurate.

2.7Any quotation is given on the basis that no contract will come into existence until we despatch an acknowledgement of order to you. Any quotation is valid for a period of 30 days only from its date, provided that we have not previously withdrawn it.

2.8Any samples submitted by us must be returned to us, carriage paid, within one month of the date of despatch by us, or paid for.

2.9No order which has been accepted by us may be cancelled by you except with our agreement in writing and on terms that you shall indemnify us in full against all loss (including loss of profit), costs (including cost of all labour and materials used), damages, charges and expenses incurred by us as a result of cancellations.

2.10For non stock items, £100 per line item and up to £250 per PO (ex Vat)

For stock items a charge of up to £15 will apply to cover carriage and administration of the order.

3.DESCRPTION

3.1The description of the Goods or Services shall be as set out in our quotation.

3.2All drawings, descriptive matter, specifications and advertising issued by us and any descriptions or illustrations contained in our catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods and Services described in them. They will not form part of this Contract.

3.3We reserve the right to make changes in the specification of the Goods which are required to conform with any applicable safety or other statutory requirements or, where the Goods are to be supplied to your specification, which do not materially affect their quality or performance.

3.4If the Goods are to be manufactured or any processes are to be applied to the Goods by us in accordance with the specification submitted by you, you shall indemnify us against all loss, damages, costs and expenses awarded against or incurred by us in connection with or paid or agreed to be paid by us in settlement of any claim for infringement of any patent, copyright, design, trademark or other industrial or intellectual property rights of any other person which results from our use of your specification.

3.5Any specification supplied by us to you in connection with the Contract, together with the copyright, design rights or any other intellectual property rights in the specification shall be our exclusive property. You shall not disclose to any third party or use any such specification except to the extent that it becomes public knowledge through no fault of yours, or as required for the purpose of the Contract.

4.DESPATCH AND DELIVERY

4.1We will use our reasonable endeavours to despatch Goods on the dates given but any such dates are approximate only and we shall not be liable for any delay in despatch and delivery however caused, neither shall any such delay entitle you to refuse or postpone acceptance of any subsequent delivery to be made under the terms of these Conditions.

4.2Scheduled deliveries can only be agreed during a period commencing no sooner than one month and terminating no later than 12 months from the date of the order. At least 30 days written notice is required of any modification or suspension of scheduled deliveries. Any suspension will be limited to a maximum period of 3 months after which deliveries may be resumed at the former rate.

4.3If you fail to take delivery of the Goods or fail to give us adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond your reasonable control or by reason of our fault) then without prejudice to any right or remedy available to us, we may:

(a)store the Goods until actual delivery and charge you for the reasonable costs (including insurance) of the storage, and charge you also interest as provided in clause 9.6 on the delayed payment until such payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest); or

(b)sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to you for the excess over the price under the Contract or charge you for any shortfall below the price under the Contract.

4.4Once delivered no Goods may be returned to us without our prior written consent.

4.5Any orders for stocked items valued below £250 (ex Vat) will have a standard charge of up to £15 to cover carriage and administration of the order.

4.6Any order delivered by pallet carrier, will be sent on a 3 day service (delivery within 3 days). A next day service can be requested when an order is placed and will be charged at the appropriate requested service rate. Smaller orders sent on free delivery basis will be sent via a parcel carrier on a next day before 5.00 p.m. service. An emergency delivery service can be requested when an order is placed and will be charged at the appropriate requested service rate.

5.NON-DELIVERY

5.1The quantity of any consignment of Goods as recorded by us upon despatch from our works shall be conclusive evidence of the quantity received by you on delivery unless you can provide conclusive evidence proving the contrary. In any event shortage claims will only be considered if the carrier and ourselves receive written notice of such shortage within three days of delivery.

5.2We shall not be liable for any non-delivery of Goods (even if caused by our negligence) unless written notice is given to us within 3 days of the date when the Goods would in the ordinary course of events have been received.

5.3Our liability for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods.

6.TESTS

OUR GOODS ARE CAREFULLY INSPECTED AND, WHERE PRACTICABLE, SUBMITTED TO OUR STANDARD TESTS AT OUR WORKS BEFORE DESPATCH. IF SPECIAL TESTS OR TESTS IN THE PRESENCE OF YOU OR YOUR REPRESENTATIVE ARE REQUIRED, THESE, UNLESS OTHERWISE AGREED, MUST BE MADE AT OUR WORKS AND WILL BE CHARGED FOR IN ADDITION TO THE CONTRACT PRICE. AND IN THE EVENT OF ANY DELAY ON YOUR PART IN ATTENDING SUCH TESTS AFTER SEVEN DAYS NOTICE THAT WE ARE READY, THE TESTS WILL PROCEED IN YOUR ABSENCE, AND SHALL BE DEEMED TO HAVE BEEN MADE IN YOUR PRESENCE. WE ARE NOT LIABLE UNDER THE WARRANTIES IN CONDITION 10.2 FOR DEFECTS IN SAMPLES OF GOODS MADE AVAILABLE FOR TESTING.

7.RISK/TITLE

7.1The Goods are at the risk of the Buyer from the time of delivery.

7.2Ownership of the Goods shall not pass to you until we have received in full (in cash or cleared funds) all sums due to us in respect of:

(a)the Goods; and

(b)all other sums which are or which become due to us from you on any account.

7.3Until ownership of the Goods has passed to you, you must:

(a)hold the Goods on a fiduciary basis as our bailee;

(b)store the Goods (at no cost to us) separately from all your other goods or those of any third party in such a way that they remain readily identifiable as our property;

(c)not destroy, conceal or obscure any identifying mark or packaging on or relating to the Goods; and

(d)maintain the Goods in a satisfactory condition and keep them insured on our behalf for their full price against all risks to our reasonable satisfaction. On request you shall produce the policy of insurance to us; and

(e)hold the proceeds of the insurance referred to in condition 7.3(d) on trust for us and not mix them with any other money, nor pay the proceeds into an overdrawn bank account.

7.4You may resell the Goods before ownership has passed to you solely on the following conditions:

(a)any sale shall be effected in the ordinary course of your business at full market value, and

(b)any such sale shall be a sale of our property on your own behalf and you shall deal as principal when making such a sale.

7.5Your right to possession of the Goods shall terminate immediately if:

(a)you have a bankruptcy order made against you or you make an arrangement or composition with your creditors, or otherwise take the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convene a meeting of creditors (whether formal or informal), or enter into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or have a receiver and/or manager, administrator or administrative receiver appointed of your undertaking or any part thereof, or documents are filed with the court for the appointment of your administrator or notice of intention to appoint an administrator is given by you or your directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for your winding up or for the granting of an administration order in respect of you, or any proceedings are commenced relating to your insolvency or possible insolvency; or

(b)you suffer or allow any execution, whether legal or equitable, to be levied on your property or obtained against you, or fail to observe/perfor any of your obligations under the Contract or any other contract between us and you, or are unable to pay your debts within the meaning of section 123 of the Insolvency Act 1986 or the Buyer ceases to trade; or

(c)you encumber or in any way charge any of the Goods.

7.6We shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from us.

7.7You grant us, our 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 you have a right to possession has terminated, to recover them.

8.PRICE

8.1Unless otherwise agreed by us in writing the price for the Goods and Services shall be the price set out in our price list published on the date of delivery or deemed delivery.

8.2The price for the Goods and Services shall be exclusive of any value added tax and all costs or charges in relation to packing, loading, unloading, carriage and insurance all of which amounts you will pay in addition when you are due to pay for the Goods.

9.PAYMENT

9.1Payment of the price for the Goods and Services is due in pounds sterling on the last working day of the month following the month in which the Goods are delivered or deemed to be delivered or the Services are supplied.

9.2Time for payment shall be of the essence.

9.3No payment shall be deemed to have been received until we have received cleared funds.

9.4All payments payable to us under the Contract shall become due immediately upon termination of this Contract despite any other provision.

9.5You will make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless you have a valid legal claim requiring an amount equal to such deduction to be paid by us to you.

9.6If you fail to pay us any sum due pursuant to the Contract you will be liable to pay interest to us on such sum from the due date for payment at the annual rate of 2% above the base lending rate from time to time of National Westminster Bank plc, accruing on a daily basis until payment is made, whether before or after any judgment.

10.QUALITY

10.1Where we are not the manufacturer of the Goods, we will endeavour to transfer to you the benefit of any warranty or guarantee given to us.

10.2No liability can be accepted for any failure of the Goods to perform according to any performance figures given. Subject thereto, and to clauses 10.7, 10.8, 10.9 and 10.10, we warrant that the other provisions of these conditions upon delivery [and for a period of 6] months from the date of delivery.] the Goods will:

(a)be of satisfactory quality within the meaning of the Sale of Goods Act 1979;

(b)be reasonably fit for any particular purpose for which the Goods are being bought if you had made known that purpose to us in writing and we have confirmed in writing that it is reasonable for you to rely on our skill and judgement.

10.3We will not be liable for a breach of the warranties in condition 10.2 unless:

(a)you give us written notice of the defect, and (if the defect is as a result of damage in transit) to the carrier, within 7 days of the time when you discover or ought to have discovered the defect; and

(b)we are given a reasonable opportunity after receiving the notice of examining such Goods and you (if asked to do so by us) return such Goods to our works at our cost for the examination to take place there.

10.4We will not be liable for a breach of the warranties in condition 10.2 if:

(a)you make any further use of such Goods after giving such notice; or

(b)the defect arises because you failed to follow our oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice; or

(c)you alter or repair such Goods without our written consent.

10.5Subject to conditions 10.3 and 10.4, if any of the Goods do not conform with the warranties in condition 10.2 we will at our option repair or replace such Goods (or the defective part) or refund the price of such Goods at the pro rata Contract rate provided that, if we so request, you will, at our expense, return the Goods or the part of such Goods which is defective to us.

10.6If we comply with condition 10.5 we shall have no further liability for a breach of the warranties in condition 10.2 in respect of such Goods.

10.7We shall be under no liability in respect of any defect in the Goods arising from any drawing, design or specification supplied by you.

10.8We shall be under no liability under the warranties in condition 10.2 (or any other warranty, condition or guarantee) if the total price for the Goods has not been paid by the due date for payment.

10.9The warranties in condition 10.2 do not extend to parts, materials or equipment not manufactured by us.

10.10Any claim under the warranties in condition 10.2 must be made in writing and the Goods in question must be returned to us within 6 months of the date of delivery, suitably packaged, carriage paid and accompanied by proof of purchase and details of the nature of the alleged defect. We shall be under no liability under the warranties in condition 10.2 if these conditions are not complied with.

11.LIMITATION OF LIABILITY

11.1Subject to conditions 10.5 and 10.6, the following provisions set out our entire financial liability (including any liability for the acts or omissions of our employees, agents and sub-contractors) to you in respect of:

(a)any breach of these conditions;

(b)any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.

11.2All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.

11.3Nothing in these conditions excludes or limits our liability for death or personal injury caused by our negligence or fraudulent misrepresentation.

11.4No liability can be accepted for any advice given by or for the quality of Services rendered by any of our sub-contractors unless we have ourselves confirmed that advice on the quality of those Services in writing.

11.5Subject to conditions 11.2 and 11.3:

(a)our 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 this Contract and in the supply of Services to you shall be limited to £100,000; and

(b)we shall not be liable to you for any pure economic loss, loss of profit, loss of business, depletion of goodwill or otherwise, in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

12.FORCE MAJEURE

We reserve the right to defer the date of delivery or to cancel the Contract or reduce the volume of the Goods ordered by you (without liability to you) if we are prevented from or delayed in the carrying on of our business due to circumstances beyond our reasonable control of 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 Provided that, if the event in question continues for a continuous period in excess of 30 days, you will be entitled to give us notice in writing to terminate the Contract.

13.GENERAL

13.1Each right or remedy of ours under the Contract is without prejudice to any other right or remedy of ours whether under the Contract or not.

13.2If 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.

13.3Failure or delay by us in enforcing or partially enforcing any provision of the Contract will not be construed as a waiver of any of our rights under the Contract.

13.4Any waiver by us of any breach of, or any default under, any provision of the Contract by you will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of the Contract.

13.5The parties to this Contract do not intend that any term of this Contract will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

13.6The 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.

14.COMMUNICATIONS

14.1All communications between the parties about this Contract must be in writing and delivered by hand or sent by pre-paid first class post or sent by facsimile transmission:

(a)(in case of communications to us) to our registered office or such changed address as shall be notified to you by us; or

(b)(in the case of the communications to you) to your registered office (if a company) or (in any other case) to your address set out in any document which forms part of this Contract or such other address as shall be notified to us by you.

14.2Communications shall be deemed to have been received:

(a)if sent by pre-paid first class post, 2 days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting);

(b)if delivered by hand, on the day of delivery;

(c)if sent by facsimile transmission on a working day prior to 4.00 pm, at the time of transmission and otherwise on the next working day.

14.3Communications addressed to us shall be marked for the attention of the Managing Director.

Statement of QUALITY ASSURANCE

All the goods detailed hereon have been subjected to the HA Wainwright (Group) Ltd Quality System which has been certified by BSI Quality Assurance to BS EN ISO 9001:2000

Packing, Postage/Delivery charges and VAT where applicable are extra. Our standard terms and conditions of sale/purchase apply. TERMS: Payment to be made by the last date of the month following the month in which the goods are despatched. Claims in respect of this invoice or the goods enumerated thereon must be made within 7 days of receipt. Claims for damage must be made within 3 days of receipt.

No goods may be returned without prior consent in writing. A Returns Number will be issued from the despatch address highlighted at the bottom of our despatch note.

Goods remain the property of HA Wainwright (Group) Ltd until full payment is received.