

COOL-THERM (UK) CONDITIONS OF PURCHASE

1. DEFINITIONS

- “Cool-Therm (UK)” means Cool-Therm (UK) Limited, company number 02755818, whose registered office is at 15 Northgate Aldridge, Walsall, West Midlands, England, WS9 8QD.
- “Contract” means the contract for the purchase of goods constituted between Cool-Therm (UK) and the Supplier, consisting of the terms set out in clauses 2.2 and 2.3.
- “Products” means the products specified in the Order and all parts or components therein.
- “Order” means a purchase order issued by Cool-Therm (UK) together with the documents referred to therein (including, but not limited to, reference to the Contract).
- “Supplier” means the supplier to whom the Order is issued.
- “Price” means the price or prices for the goods set out in the Contract.
- “Legal Obligation” means any present or future regulation, order, direction, code of practice or requirement of any statutory, public, local or other competent authority or court of competent jurisdiction in so far as it related to the goods and products set out in the Order or to their use irrespective of the person on whom the obligation is imposed.

2. EXISTENCE OF CONTRACT

- 2.1 The Order is liable to cancellation by Cool-Therm (UK), unless accepted by the Supplier within three working days of the date of the Order. Acceptance shall be by means of any written acknowledgement to the address stated on the Order.
- 2.2 The contract shall incorporate the Order and any specifications, drawings or conditions referred to within it, the conditions set out below and all terms and conditions implied by law.
- 2.3 These terms shall govern any contract between Cool-Therm (UK) and the Supplier and shall prevail over any terms put forward by the Supplier, unless Cool-Therm (UK)'s Managing Director expressly agrees to such Supplier terms (or any addition or variation to the terms of the Contract) in writing. No other conduct by Cool-Therm (UK) shall be deemed to constitute acceptance of any terms put forward by the Supplier.
- 2.4 No employee or agent of Cool-Therm (UK) shall have the authority to vary the Contract verbally.

3. SUPPLY OF DOCUMENTS

- 3.1 The Supplier shall:
- 3.1.1 on dispatch of the goods or completion of any work set out in the Order, send detailed advice notes (which shall accompany the goods) and relevant invoices in which VAT will be shown as a strictly net item;
- 3.1.2 mark the Order numbers and any contract numbers on all invoices, advice notes, statements, correspondence, packages and packing; and
- 3.1.3 send by the tenth day of the tenth day each month a statement of all invoices rendered during the previous months.

4. PRICE

- 4.1 Unless otherwise stated in the Order, the Price for the Products shall include all packaging, carriage and insurance, delivery to the specified address and all duties and taxes other than VAT. VAT shall be paid in addition by Cool-Therm (UK), subject to the receipt by it of a valid VAT invoice.
- 4.2 No increase in the Price of the Products shall take effect, unless agreed by Cool-Therm (UK) in advance and in writing.
- 4.3 The reduction in volume or removal of a Product set out in the Order shall not affect the Price of the remaining Products set out in that Order.

5. TERMS OF PAYMENT

- 5.1 Unless otherwise specifically agreed in writing and in advance, payment of an invoice relating to an Order, shall be 60 days after the date of that invoice, provided that delivery is made in accordance with the provisions of the Contract.

6. DELIVERY

- 6.1 The Products shall be delivered carriage paid to the address stated on the relevant Order, unless otherwise agreed in writing.
- 6.2 Where Cool-Therm (UK) have agreed that delivery of the Products may be made by instalments, the relevant Order shall be treated as a single contract, regardless of such delivery terms, and shall not be severable.
- 6.3 Unless otherwise stated in the Order, Cool-Therm (UK) shall not be obliged to return any pallets or packaging with which the Products are supplied.

7. INSPECTION AND TESTING

- 7.1 The Supplier warrants and represents that all Products:
- 7.1.1 Comply fully with all applicable laws;
- 7.1.2 Are not subject to restrictions in the United Kingdom which would prevent their supply to Cool-Therm (UK);
- 7.1.3 Are of satisfactory quality (as defined in the Sale of Goods Act 1979) and for the purpose made known, expressly or implicitly, by Cool-Therm (UK) in the Order or prior to entry into the Contract;

- 7.1.4 Will be free from any defects in design, materials, or workmanship, and
 - 7.1.5 Will comply with any sample approved by Cool-Therm (UK).
- 7.2 The Supplier shall forward all test certificates to Cool-Therm (UK), on its request. No inspection, test nor failure to inspect nor test shall constitute acceptance of the goods or affect any liability of the Supplier under the Contract.

8. PASSING OF RISK AND TITLE

- 8.1 The risk and title to the Products shall pass to Cool-Therm (UK) on delivery without prejudice to any right it may have under the Contract.

9. REJECTION

- 9.1 If any goods do not conform to the Contract (including, without limitation, by reason or unsatisfactory quality or for being unfit for the purpose for which they are required) then Cool-Therm (UK) shall be entitled (at its sole discretion and without prejudice to any other remedy it may have) to exercise any one or more of the following rights:
 - 9.1.1 Reject the goods in whole or in part within 3 working days of delivery to the address referred to in clause 6.1.
 - 9.1.2 Permit the Supplier to replace, repair or reinstate the Products so that they conform to the Contract; and
 - 9.1.3 Carry out or have carried out (at the Suppliers expense), such work as is necessary in order for the Products to conform to the Contract.

10. TERMINATION

- 10.1 If at any time the Supplier becomes Insolvent or Bankrupt, in the case of a sole trader or partnership (as defined within the meaning of the Insolvent Act 1986, or any successor legislation), Cool-Therm (UK) shall be entitled to terminate the Order immediately by giving written notice to that effect to the Supplier.
- 10.2 The value of the Products which have been delivered and forming part of the Contract, less:
 - 10.2.1 all amounts paid for the Products that have been rejected; and
 - 10.2.2 any additional costs incurred by Cool-Therm (UK), clause 17 (Third Party Rights and Severability), clause 18 (Law and Jurisdiction) and clause 19 (Notices).
- 10.3 The termination of the Contract shall not affect the continuation of clause 12 (Loss and Indemnity), clause 14 (Confidentiality), clause 17 (Third party Rights and Severability), clause 18 (Law and Jurisdiction) and clause 19 (Notices).
- 10.4 The Termination of the Contract shall not affect any rights, remedies, obligations or 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 existing at or before the date of termination.

11. WARRANTY

- 11.1 The Supplier shall, at its own expense, make good any defects which under proper use appear in the delivered Products during the period beginning with the date of their delivery and ending twelve months after their delivery; or such other period or defect (resulting from any other use by Cool-Therm (UK) stipulated by Cool-Therm (UK) in the Order.

12. LOSS AND INDEMNITY

- 12.1 The Supplier shall indemnify Cool-Therm (UK) (and hold it harmless), on demand for all loss, damage or injury to Cool-Therm (UK), which arises from any claim in respect of loss, damage or injury made against Cool-Therm (UK), by a third parties; and any costs and expenses arising in connection with them which result from the Supplier's failure to comply with the Contract (whether negligent or otherwise) and in particular, resulting from any defect in the Products or their materials, construction, workmanship or design (to the extent that the Supplier is responsible for such design); or any claim that any Products prepared or supplied under the Contract (except exclusively prepared in accordance with a design or instruction set out in writing by Cool-Therm (UK)), which infringes or is alleged to infringe the rights of any third party, claimed under or in connection with any patent, registered design, copyright or breach or confidence.
- 12.2 The Supplier shall be at all times fully insured with a reputable insurer against all insurable liabilities arising from the Contract.
- 12.3 The Supplier shall provide all facilities, assistance and advice required by Cool-Therm (UK) or its insurers for the purpose of contesting or dealing with any action, claim or matter arising out of the Supplier's performance or purported performance of, or failure to perform, the Contract.

13. DESIGNS

- 13.1 The delivered Products (subject to the terms of the Contract), all related patterns, designs, drawings, copyright, design right and other documents prepared in connection with the Order, shall belong to Cool-Therm (UK).
- 13.2 The Supplier shall use all drawings and documents only for the purposes of the Contract and shall return them carriage paid, to Cool-Therm (UK) on its request at any time; or, if no request is made, on the completion of the Contract.
- 13.3 The Supplier shall be responsible for any errors or omissions in any drawing, calculations or particulars supplied by it, whether or not such information has been approved by Cool-Therm (UK).

14. CONFIDENTIALITY

- 14.1 The Supplier shall not at any time whether before or after termination of the Contract, divulge to any third party (other than as required by law, a court of competent jurisdiction or any government or regulator authority) or use any unpublished technical information deriving from Cool-Therm (UK) or any other confidential information in relation to Cool-Therm (UK)'s affairs, business or method of carrying on business.

14.2 The Supplier shall not copy, reproduce, use for any unauthorized purpose, or part with possession of any drawings, documents or other materials made available by Cool-Therm (UK); or conduct an unauthorized examination of any such material and shall promptly return all such drawings, documents or materials (and copied of them whether authorized or not) to Cool-Therm (UK), on its request at any time.

15. STATUTORY AND OTHER REQUIREMENTS

15.1 The Supplier warrants and undertakes that the Products are safe and do not present a risk, to health when properly used and comply in all respects with all legal obligations in force at the date of delivery. The Supplier shall supply in respect of the Products such information about their use as is required by the Legal Obligations and enables Cool-Therm (UK) to comply with them as far as it is required to do so by law, and proper evidence of all tests and examinations and research made in compliance with the Legal Obligations.

16. ASSIGNMENT AND SUB-LETTING

16.1 Unless otherwise agreed in writing by Cool-Therm (UK), the Supplier shall not assign or sub-let the Contract in whole or in part and it shall be a condition of any such consent to any such assignment or sub-letting of the Contract, that the Supplier shall:

- 16.1.1 ensure and be responsible for the compliance by any assignee or sub-contractor with the terms of the Contract;
- 16.1.2 include in the assignment or sub-contract, provisions consistent with the terms of the Contract, for the benefit or, and enforceable by, Cool-Therm (UK) and
- 16.1.3 furnish Cool-Therm (UK) with copies of any assignment or sub-contract upon Cool-Therm (UK)'s request at any time.

17. THIRD PARTY RIGHTS AND SEVERABILITY

- 17.1 The Contract, does not give rise to rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- 17.2 If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modifications is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

18. LAW AND JURISDICTION

- 18.1 This Contract and any dispute or claim arising from its construction or terms (including non-contractual claims or disputes) shall be governed by, and construed in accordance with, English Law.
- 18.2 The Supplier irrevocably agrees to the exclusive jurisdiction of the courts in England and Wales in all matters regarding a dispute or claim (including non-contractual disputes or claims) arising from the Contract, except to the extent that Cool-Therm (UK) invokes the jurisdiction of the courts of any other country.

19. NOTICES

- 19.1 Any notice or other communication required to be given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or sent by pre-paid first class post to the other party's registered office, or by email to the last number or email address, notified by the receiving party.
- 19.2 Any notice or communication shall be deemed to have received if delivered by hand, on signature of a deliver receipt or at the time the notice is left at the proper address, or if sent by fax or email, at 09:00 on the next working day after the posting or at the time recorded by the delivery service.
- 19.3 This notices clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

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