

# CORROTHERM INTERNATIONAL LIMITED

## CONDITIONS OF PURCHASE

### 1 INTERPRETATION

1.1 In these Conditions of Purchase:-

“Buyer” means Corrotherm International Limited (company number 03143112);

“Contract” means any contract based upon an Order, or other contract, made between the Buyer and the Seller for the sale and purchase of Goods and/or the supply and acquisition of Services by the Buyer from the Seller;

“Delivery Address” means the address stated in the Order;

“Goods” means the goods (as described in the relevant Order and any Specification) (including any instalment of the goods or any part of them), and any Specified Documents described in the Order;

“Order” means the Buyer’s purchase order for Goods or Services (together with any Specification) to which these Terms are annexed;

“Price” means the price of the Goods and/or the charge for the Services, as set out in the relevant Order;

“Seller” means the individual, firm or company selling the Goods and/or supplying the Services;

“Services” means the services (if any) described in the Order;

“Specification” means any specification for the relevant Goods or Services set out in an Order, including any plans, drawings, data or other information relating to the Goods or Services;

“Specified Documents” means such documents and certifications as are specified in the relevant Order to accompany the Goods;

“Terms” means these terms of purchase and (unless the context otherwise requires) includes any special terms agreed in Writing between the Buyer and the Seller;

“Writing” and any similar expression, includes facsimile transmission, electronic mail and comparable means of communication.

1.2 Any reference in these Conditions to a statute or a provision of a statute shall be construed as a reference to that statute or provision as amended re-enacted or extended at the relevant time.

1.3 The headings in these Conditions are for convenience only and shall not affect their interpretation.

### 2 BASIS OF PURCHASE

2.1 The Order constitutes an offer by the Buyer to purchase the Goods and/or acquire the Services subject to these Terms.

2.2 These Terms shall apply to the Contract to the exclusion of any other terms and conditions on which any quotation has been given to the Buyer, or subject to which the Order is accepted or purported to be accepted by the Seller.

2.3 Subject to Condition 9.2.7, a Contract will be formed between the Buyer and the Seller in respect of the relevant Order at the point that it is unconditionally accepted by the Seller, and shall be deemed to have been accepted unless the Seller notifies the Buyer in Writing that the relevant Order has not been accepted, within 7 days of its date.

- 2.4 No variation to the Order or these Terms shall be binding unless agreed in Writing between authorised representatives of the Buyer and the Seller.

### 3 SPECIFICATIONS

- 3.1 The quantity, quality and description of the Goods and Services shall (subject as provided in these Terms) be as specified in the relevant Order and in any applicable Specification supplied by the Buyer to the Seller, or as agreed in Writing by the Buyer.
- 3.2 Any Specification supplied by the Buyer to the Seller or specifically produced by the Seller for the Buyer in connection with the Contract, together with the copyright design rights or any other intellectual property rights in the Specification, shall be the exclusive property of the Buyer and the Seller assigns with full title guarantee to the Buyer all such copyright, design rights and other intellectual property for no further consideration, subject only to payment of the Price. The Seller shall not disclose to any third party or use any such Specification except to the extent that it is or becomes public knowledge through no fault of the Seller, or as required for the purpose of the Contract.
- 3.3 The Seller shall comply with all applicable regulations or other legal requirements concerning the manufacture, packaging, packing, and delivery of the Goods and the performance of the Services.
- 3.4 The Seller shall not unreasonably refuse any request by the Buyer to inspect or test the Goods during manufacture, processing, or storage at the premises of the Seller or any third party prior to their despatch, and the Seller shall provide the Buyer with all facilities reasonably required for such inspection and testing.
- 3.5 If as a result of any inspection or testing the Buyer is not satisfied that the Goods or the Specified Documents will comply in all respects with the Contract and the Buyer so informs the Seller within 28 days of such inspection or testing, the Seller shall take all such steps as are necessary to ensure compliance.
- 3.6 The Goods shall be marked in accordance with the Buyer's instructions and any applicable regulations or requirements of the carrier, and properly packed and secured so as to reach their destination in an undamaged condition in the ordinary course.

### 4 PRICE

- 4.1 The Price of the Goods or Services shall be stated in the Order, and unless otherwise so stated shall be:
- 4.1.1 exclusive of any applicable value added tax (which shall be payable by the Buyer subject to receipt of a VAT invoice); and
  - 4.1.2 inclusive of all charges for packaging, packing, shipping, carriage, insurance and delivery of the Goods and any duties, imposts or levies, other than value added tax.
- 4.2 No increase in the Price may be made (whether on account of increased material, labour or transport costs, fluctuation in rates of exchange or otherwise) without the prior consent of the Buyer in Writing.
- 4.3 The Buyer shall be entitled to any discount for prompt payment, bulk purchase or volume of purchase customarily granted by the Seller, whether or not shown on its own terms of sale.

## **5 TERMS OF PAYMENT**

- 5.1 The Seller may invoice the Buyer on or at any time after delivery of the Goods or performance of the Services, as the case may be, and each such invoice shall quote the number of the Order.
- 5.2 Unless otherwise stated in the Order, the Buyer shall pay the Price of the Goods or Services within 30 days of the end of the month in which the Buyer receives the Seller's invoice in respect of the relevant Goods or Services in accordance with the Contract, or if later, after acceptance of the Goods or Services in question by the Buyer.
- 5.3 The Buyer shall be entitled to set off against the Price any sums owed to the Buyer by the Seller.

## **6 DELIVERY**

- 6.1 The Goods shall be delivered to and the Services shall be performed at the Delivery Address on the date or within the period stated in the Order, in either case during the Buyer's usual business hours.
- 6.2 Where the date of delivery of the Goods or of performance of the Services is to be specified after the placing of the Order, the Seller shall give the Buyer reasonable notice of the specified date.
- 6.3 The time of delivery of the Goods and of performance of the Services is of the essence of the Contract.
- 6.4 A packing note quoting the number of the Order must accompany each delivery or consignment of the Goods and must be displayed prominently, together with all Specified Documents.
- 6.5 If the Goods are to be delivered or the Services are to be performed by instalments, the Contract will be treated as a single contract and not severable.
- 6.6 The Buyer shall be entitled to reject any Goods delivered which are not in accordance with the Contract or which are not accompanied by any Specified Documents, and shall not be deemed to have accepted any Goods until the Buyer has had a reasonable time to inspect them following delivery, or if later, within a reasonable time after any latent defect in the Goods has become apparent.
- 6.7 The Seller shall supply the Buyer in good time with any instructions or other information required to enable the Buyer to accept delivery of the Goods or performance of the Services.
- 6.8 The Buyer shall not be obliged to return to the Seller any packaging or packing materials for the Goods, whether or not any Goods are accepted by the Buyer.
- 6.9 If the Goods or any Specified Documents are not delivered or the Services are not performed on the due date, then without limiting any other remedy, the Buyer shall be entitled to deduct from the Price or (if the Buyer has paid the Price) to claim from the Seller by way of liquidated damage for delay, 0.5 per cent of the Price for every week's delay up to a maximum of 10 per cent.

## **7 RISK AND PROPERTY**

- 7.1 Risk of damage to or loss of the Goods shall pass to the Buyer upon delivery in accordance with the Contract.
- 7.2 The property in the Goods shall pass to the Buyer upon delivery unless payment for the Goods is made prior to delivery, when it shall pass to the Buyer once payment has been made and the Goods have been appropriated to the Contract.

## 8 WARRANTIES AND LIABILITY

- 8.1 The Seller warrants to the Buyer that the Goods:
- 8.1.1 will be of satisfactory quality (within the meaning of the Sale of Goods Acts 1979 and 1994, as amended) and fit for any purpose held out by the Seller or made known to the Seller in Writing at the time the Order is placed;
  - 8.1.2 will be free from defects in design material and workmanship;
  - 8.1.3 will correspond with any relevant Specification or sample; and
  - 8.1.4 will comply with all statutory requirements and regulations relating to the sale of the Goods.
- 8.2 The Seller warrants to the Buyer that any Services will be performed by:
- 8.2.1 any time and/or date limits contained in the Order (or agreed between the Buyer and Seller in Writing); and
  - 8.2.2 appropriately qualified and trained personnel with due care and diligence, and to such high standard of quality as it is reasonable for the Buyer to expect in all the circumstances.
- 8.3 Without limiting any other remedy, if any Goods or Services are not supplied or performed in accordance with the Contract, then the Buyer shall be entitled:
- 8.3.1 to require the Seller to repair the Goods or to supply replacement Goods or Services in accordance with the Contract within 7 days; or
  - 8.3.2 at the Buyer's sole option and whether or not the Buyer has previously required the Seller to repair the Goods or to supply any replacement Goods or Services, and to treat the Contract as discharged by the Seller's breach and require the repayment of any part of the Price which has been paid.
- 8.4 The Seller shall indemnify the Buyer in full against all liabilities, losses, damages, costs and expenses (including legal expenses) awarded against, or incurred, or paid by the Buyer as a result of or in connection with:
- 8.4.1 breach of any warranty given by the Seller in relation to the Goods or Services;
  - 8.4.2 any claim that the Goods infringe or their importation, use, or resale infringes the patent, copyright, design right, registered design, trade mark or other intellectual property rights of any other person, except to the extent that the claim arises from compliance with any Specification supplied by the Buyer;
  - 8.4.3 any liability under the Consumer Protection Act 1987 in respect of the Goods;
  - 8.4.4 any act or omission of the Seller or its employees, agents or sub-contractors in supplying, delivering or installing the Goods; and
  - 8.4.5 any act or omission of any of the Seller's personnel in connection with the performance of the Services.
- 8.5 Neither the Seller nor the Buyer shall be liable to the other or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of its obligations in relation to the Goods or Services, if the delay or failure is beyond that party's reasonable control.

Without limiting the foregoing the following shall be regarded as causes beyond either party's reasonable control:

- 8.5.1 act of God, explosion, flood, tempest, fire or accident;
- 8.5.2 war or threat of war, sabotage, insurrection, civil disturbance or requisition;
- 8.5.3 acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;
- 8.5.4 import or export regulations or embargoes;
- 8.5.5 strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of either the Seller or the Buyer or of a third party); and
- 8.5.6 power failure or breakdown in machinery (but not including failure or breakdown resulting from normal wear and tear in the ordinary course).

## 9 TERMINATION

- 9.1 The Buyer may cancel the Order in respect of all or part only of the Goods and/or the Services by giving notice to the Seller at any time prior to delivery or performance, in which event the Buyer's sole liability to the Seller shall be to pay the Price for the Goods in respect of which the Buyer has exercised its right of cancellation, less the Seller's net saving of costs arising from cancellation.
- 9.2 The Buyer may terminate the Contract without liability to the Buyer by giving notice to the Seller at any time if:
  - 9.2.1 a creditor or encumbrancer attaches or takes possession of, or a distress, execution, sequestration or other process is levied or enforced upon or sued out against, the whole or any part of the assets of the Seller, and such attachment or process is not discharged within seven days;
  - 9.2.2 the Seller suspends or threatens to suspend payment of its debts or is, or is deemed for the purposes of any applicable law to be, unable to pay its debts as they fall due or admits inability to pay its debts as they fall due, or commences negotiations with all or any class of its creditors with a view to the general readjustment or rescheduling of all or any class of its indebtedness, or proposes or enters into any assignment, composition or other arrangement for the benefit of its creditors generally or any class of creditors;
  - 9.2.3 a meeting of the Seller is convened for the purpose of considering any resolution for (or to petition for) its winding up or its administration or any such resolution is passed, or any person presents a petition for the winding-up or for the administration of the Seller or any order for the winding-up or administration of the Seller is made or a Notice of Intention to Appoint an Administrator is filed at court, or any other step (including petition, proposal or convening a meeting) is taken with a view to rehabilitation, administration, liquidation, winding-up or dissolution of the Seller or any other insolvency or moratorium proceedings involving the Seller;
  - 9.2.4 the Seller becomes subject to analogous insolvency legislation in any other jurisdiction;

- 9.2.5 the Seller ceases or threatens to cease to carry on business;
- 9.2.6 the Buyer reasonably apprehends that any of the events mentioned above is about to occur in relation to the Seller, and notifies the Seller accordingly; or
- 9.2.7 the Seller has not unconditionally accepted the Order by notice to the Buyer in Writing.

## **10 CONFIDENTIALITY**

Any information which the Buyer discloses relating to the Goods which is not in the public domain at the time of disclosure shall be confidential, and shall not be disclosed by the Seller to any third party.

## **11 NOTICES**

A notice required or permitted to be given by either party to the other under these Terms shall be in Writing addressed to that other party at its registered office or principal place of business, or such other address as may at the relevant time have been notified under this provision to the party giving the notice. In the absence of proof of earlier receipt, such notice shall be deemed to be served in the case of an inland letter after 24 hours, in the case of any airmail letter 72 hours after proof of despatch or posting, and in the case of electronic mail or facsimile transfer one hour after the sending party has received electronic proof of transmission.

## **12 WAIVER AND SEVERANCE**

- 12.1 Any indulgence granted by the Buyer to the Seller and any failure by the Buyer to insist upon strict performance of these terms and conditions shall not be deemed a waiver of any of the Buyer's rights or remedies, nor be deemed a waiver of any subsequent default by the Buyer.
- 12.2 The invalidity, illegality, voidness, unenforceability or unreasonableness in whole or in part of any clause in these Terms shall not affect the validity of the remainder of such clause or these Terms.

## **13 ASSIGNMENT**

The Order is not assignable by the Seller without the prior written consent of the Buyer and is between the Seller and the Buyer as principals, but the Buyer may without consent assign or sub-contract all or any of its rights and obligations hereunder.

## **14 GOVERNING LAW**

The interpretation and application of these Terms and any contractual or non-contractual dispute or claim arising out of it or in connection with it shall be in accordance with English Law, and both parties hereby agree to submit to the non-exclusive jurisdiction of the English Courts.

## **15 THIRD PARTIES**

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