

# CORROTHERM INTERNATIONAL LIMITED

## CONDITIONS OF SALE

### 1 INTERPRETATION

1.1 In these Conditions the following words have the following meanings:

“the Buyer” means the person(s), firm or company who purchases the Goods from the Company;

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

“Contract” means any contract based upon an Order Acknowledgement or other contract, made between the Company and the Buyer for the sale and purchase of Goods, and incorporating these Conditions in accordance with Condition 2.4 below;

“Delivery Point” means the place where delivery or collection (as specified in the Special Conditions) of the Goods is to take place pursuant to Condition 5 below;

“Goods” means any goods or services (as described in the relevant Order Acknowledgement and any Special Conditions) agreed in the Contract to be supplied to the Buyer by the Company (including any part or parts of them);

“Order Acknowledgement” has the meaning set out in Condition 2.3;

“Special Conditions” means any specific conditions relating to the Goods (including but not limited to descriptions, specifications, prices, place and time of delivery or collection) contained in or referred to in the Order Acknowledgment. If there is a conflict between these Conditions and the Special Conditions then the Special Conditions shall prevail.

1.2 Any reference in these Conditions to:

1.2.1 a statute or provision of a statute shall, unless the context otherwise requires, be construed as a reference to that statute or provisions as amended or re-enacted or extended at the relevant time;

1.2.2 a Clause or Condition shall (unless the contrary is expressly stipulated) be to a Clause or Condition of these Conditions;

1.2.3 the masculine includes the feminine and the singular includes the plural, and vice versa as the context admits or requires.

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

1.4 These Conditions shall be supplemented by and/or varied to the extent that any of the International Chamber of Commerce Incoterms (2000 Issue) (as varied, modified or replaced from time to time) or other specified terms are specifically incorporated into the Special Conditions.

### 2 ORDERS

2.1 Subject to any variation under Condition 2.5, the Contract shall be on these Conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Buyer purports to apply in any purchase order, confirmation of order, specification or other document).

2.2 No terms or conditions endorsed on, delivered with, or contained in any Buyer's purchase order, confirmation of order, specification, or other document shall form part of the Contract simply as a result of such document being referred to in the Contract.

- 2.3 Any quotation is issued by the Company on the basis that no contract will come into existence until the Company despatches a written acknowledgement of order (together with any Special Conditions) (an "Order Acknowledgement") to the Buyer.
- 2.4 The Company will be under no liability for any order received until an Order Acknowledgment is delivered to the Buyer, or (if earlier) the Company delivers or makes available for collection (as appropriate) the Goods to the Buyer, at which time a contract will be formed between the Company and the Buyer.
- 2.5 These Conditions apply to all of the Company's sales and a Contract may only be cancelled or varied with the Company's written consent, and any representations about the Goods shall have no effect unless expressly agreed in writing and signed by a duly authorised officer of the Company. The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in the Contract. Nothing in this Condition shall exclude or limit the Company's liability for fraudulent misrepresentation.
- 2.6 The Buyer must ensure that the terms of its order and any applicable specification are complete and accurate.

### **3 PRICES**

- 3.1 Unless otherwise agreed by the Company in writing, the price for the Goods shall be the price set out in the Special Conditions.
  - 3.2 Unless otherwise stated in the Special Conditions price for the Goods set out in the Special Conditions does not include:
    - 3.2.1 sales taxes or valued added tax in any relevant jurisdiction;
    - 3.2.2 insurance;
    - 3.2.3 the cost of loading, unloading, carriage and installation; and
    - 3.2.4 any special packing or alterations to the order required by the Buyer and agreed to by the Company;
- all of which amounts the Buyer will pay in addition when it is due to pay for the Goods.

### **4 PAYMENT**

- 4.1 Payment shall be made in the currency stated in the Special Conditions within thirty days of the date of the Company's invoice, unless otherwise specified in the Special Conditions or the relevant invoice. The Buyer shall make no deduction set-off, counterclaim or withholding of any type from such payments unless it has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Buyer.
- 4.2 Time for payment shall be of the essence and failure by the Buyer to pay in accordance with the provisions of this Condition shall entitle the Company, without prejudice to its rights to damages, to suspend any outstanding deliveries or to cancel the Contract.
- 4.3 If the Buyer fails to pay the Company any sum due pursuant to the Contract, the Buyer shall be liable to pay interest (compounded monthly) on any amounts outstanding (both before and after judgment) at the rate of 4 per cent above the National Westminster Bank Plc base rate for the time being in force, accruing on a daily basis until payment is made, whether before or after any judgment. The

Company reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.

- 4.4 No payment shall be deemed to have been received until the Company has received cleared funds.
- 4.5 Payments by letter of credit shall only be made with the Company's written consent and if such consent is given, all costs including bank charges shall be for the account of the Buyer unless otherwise specified in the Special Conditions, and all letters of credit shall be:
  - 4.5.1 in favour of the Company;
  - 4.5.2 consistent with the provisions of these Conditions;
  - 4.5.3 in sufficient amounts and for the period necessary to meet with all payment obligations hereunder;
  - 4.5.4 irrevocable, transferable and divisible; and
  - 4.5.5 issued or confirmed by a Bank in London acceptable to the Company within fifteen days after the date of the Contract.
- 4.6 All payments payable to the Company under the Contract shall become due immediately upon termination of the Contract despite any other provision.

## **5 DELIVERY OR COLLECTION AND PASSING OF RISK**

- 5.1 Unless otherwise specified in writing by the Company or in the Special Conditions, delivery or collection (as specified in the Special Conditions) of the Goods shall take place at such location as may be agreed between the Company and the Buyer.
- 5.2 The Buyer will take delivery of or arrange for collection of (as specified in the Special Conditions), the Goods within 7 days of the Company giving it notice that the Goods are ready for such delivery or collection (as appropriate).
- 5.3 Any dates specified by the Company for delivery or collection (as appropriate) of the Goods are intended to be an estimate, and time for delivery or availability for collection (as appropriate) shall not be made of the essence by notice.
- 5.4 Subject to the other provisions of these Conditions, the Company will not be liable for any loss (including loss of profit), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods (even if caused by the Company's negligence), nor (subject to Conditions 5.5 to 5.8 inclusive) will any delay entitle the Buyer to terminate or rescind the Contract unless such delay exceeds 180 days.
- 5.5 At any time whilst a delay in the delivery of Goods is persisting beyond the delivery date specified in the Special Conditions, the Company may by written notice require the Buyer (a "Continuation Notice") to notify the Company in writing, stating whether it wishes to continue the relevant Contract as varied by the terms set out in Condition 5.6.
- 5.6 In the event that the Buyer notifies the Company in writing in response to a Continuation Notice that it wishes to continue the relevant Contract, such Contract shall be deemed to be varied such that the Company (acting reasonably) shall specify a new delivery date, and the Buyer agrees to waive any rights to cancel, terminate or rescind the relevant Contract for a further period of 180 days from the date of such Continuation Notice, but otherwise the contract shall continue unamended.

- 5.7 In the event that the Buyer notifies the Company in writing in response to a Continuation Notice that it does not wish to continue the relevant Contract, the relevant Contract shall be deemed to have been terminated by the Buyer (or if the Buyer does not respond to a Continuation Notice within 30 days of service, the Company shall at anytime thereafter be entitled to notify the Buyer in writing that the relevant Contract is accordingly deemed to have been terminated by the Buyer), and the parties shall each bear 50% of the Company's reasonable and properly incurred costs and expenses in connection with the partial performance of the Contract up to the date of termination.
- 5.8 In the event that Goods are to be manufactured or produced by the Company using materials supplied by a third party which are required to meet certain testing specifications, the Buyer and the Seller acknowledge that (i) after such manufacture or production, the relevant Goods may require testing to confirm that they meet the relevant specifications; and (ii) to the extent that the Goods do not meet the relevant testing requirements as a result of the failure of those materials to meet the required specification (a "Material Failure"), it will be necessary for the Company to order new such materials and to repeat the manufacture or production of the relevant Goods. Upon receiving written notice of such a Material Failure from the Company (a "Material Failure Notice"), the Buyer hereby waives any rights to cancel, terminate or rescind the relevant Contract for a further period of 180 days from the date of the Material Failure Notice, but otherwise the Contract shall continue unamended.
- 5.9 If for any reason the Buyer will not accept delivery of or arrange for collection of (as specified in the Special Conditions) any of the Goods when they are ready for delivery or collection (as appropriate), or (if relevant) the Company is unable to deliver the Goods on time because the Buyer has not provided appropriate instructions, documents, licences or authorisations:
- 5.9.1 the risk in the Goods will pass to the Buyer (including for loss or damage caused by the Company's negligence);
- 5.9.2 the Goods will be deemed to have been delivered or collected (as appropriate); and
- 5.9.3 the Company may store the Goods until delivery or collection (as appropriate) in which case the Buyer will be liable for all related costs and expenses (including without limitation, storage and insurance).
- 5.10 The Buyer will provide at the Delivery Point and at its expense, adequate and appropriate equipment and manual labour for loading or unloading (as appropriate) the Goods.
- 5.11 The Buyer shall not be entitled to object to or reject the Goods or any of them by reason of the surplus or shortfall in the quantity delivered or collected (as appropriate), and shall pay for such Goods at the pro rata Contract rate.
- 5.12 The Company may deliver or make available for collection (as appropriate) the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the Contract.
- 5.13 Each instalment shall be a separate Contract, and no cancellation or termination of any one Contract relating to an instalment shall entitle the Buyer to repudiate or cancel any other Contract or instalment.

- 5.14 The quantity of any consignment of Goods as recorded by the Company on despatch from the Company's place of business shall be conclusive evidence of the quantity received by the Buyer on delivery or collection (as appropriate), unless the Buyer can provide conclusive evidence proving the contrary.
- 5.15 The Company shall not be liable for any non-delivery of Goods (even if caused by the Company's negligence) unless written notice is given to the Company within 7 days of the date when the Goods would in the ordinary course of events have been received.
- 5.16 Any liability of the Company 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.
- 5.17 The Buyer shall promptly obtain all necessary import licences, clearances and other consents necessary for the purchase of the Goods.

## **6 RISK AND TITLE**

- 6.1 Unless otherwise specified by the Company in writing or in the Special Conditions, the Goods are at the risk of the Buyer from the time of delivery or collection.
- 6.2 Ownership of the Goods shall not pass to the Buyer until the Company has received in full (in cash or cleared funds), all sums due to it in respect of:
  - 6.2.1 the Goods; and
  - 6.2.2 all other sums which are or which become due to the Company from the Buyer on any account.
- 6.3 Until ownership of the Goods has passed to the Buyer, the Buyer must:
  - 6.3.1 hold the Goods on a fiduciary basis as the Company's bailee;
  - 6.3.2 store the Goods (at no cost to the Company) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as the Company's property;
  - 6.3.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods;
  - 6.3.4 maintain the Goods in satisfactory condition insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company. On request the Buyer shall produce the policy of insurance to the Company; and
  - 6.3.5 hold the proceeds of the insurance referred to in Condition 6.3.4 on trust for the Company and not mix them with any other money, nor pay the proceeds into an overdrawn bank account.
- 6.4 The Buyer may resell the Goods before ownership has passed to it solely on the following conditions:
  - 6.4.1 any sale shall be effected in the ordinary course of the Buyer's business at full market value, and the Buyer shall hold such part of the proceeds of sale as represent the amount owed by the Buyer to the Company on behalf of the Company, and the Buyer shall account to the Company accordingly; and

- 6.4.2 any such sale shall be a sale of the Company's property on the Buyer's own behalf, and the Buyer shall deal as principal when making such a sale.
- 6.5 The Buyer's right to possession of the Goods shall terminate immediately if:
  - 6.5.1 being an individual the Buyer:
    - 6.5.1.1 has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any Act for the time being in force for the relief of insolvent debtors;
    - 6.5.1.2 (being a body corporate):-
      - 6.5.1.2.1 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 Buyer and such attachment or process is not discharged within seven days;
      - 6.5.1.2.2 the Buyer 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;
      - 6.5.1.2.3 a meeting of the Buyer 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 Buyer or any order for the winding-up or administration of the Buyer 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 Buyer or any other insolvency or moratorium proceedings involving the Buyer;
  - 6.5.2 the Buyer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe/perform any of his/its obligations under the Contract or any other contract between the Company and the Buyer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Buyer ceases to trade;
  - 6.5.3 the Buyer encumbers or in any way charges any of the Goods; or

6.5.4 the Buyer suffers any event or process equivalent or analogous to anything set out in Conditions 6.5.1, 6.5.2 or 6.5.3 in any foreign jurisdiction.

6.6 The Company shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Company.

6.7 The Buyer grants the Company, its 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 the Buyer's right to possession has terminated, to recover them.

6.8 Where the Company is unable to determine whether any Goods are the goods in respect of which the Buyer's right to possession has terminated, the Buyer shall be deemed to have sold all goods of the kind sold by the Company to the Buyer in the order in which they were invoiced to the Buyer.

6.9 On termination of the Contract, howsoever caused, the Company's (but not the Buyer's) rights contained in this Condition 6 shall remain in effect.

## **7 FORCE MAJEURE**

7.1 The Company shall be under no liability for any delay or failure to perform in the event that the manufacture, supply or delivery of the Goods is prevented or delayed by any act or circumstances beyond the Company's reasonable control, including but not limited to, act of God, legislation, war, fire, drought, failure of power supply, lock-out, strike or other action taken by employees in contemplation or furtherance of a trade dispute, or owing to any inability to procure materials required for their performance of the Contract.

7.2 The Company shall notify the Buyer of any circumstance arising under Condition 7.1, and if such circumstance prevails for more than 3 months then either party shall have the option by giving notice in writing to the other to bring the Contract to an end, and they shall each bear 50% of the Company's reasonably and properly incurred costs and expenses in connection with the partial performance of the Contract up to the date of its termination.

## **8 SPECIFICATIONS**

8.1 The quantity and description of the Goods shall be as set out in the Company's quotation or Order Acknowledgment.

8.2 Any published specifications, drawings, descriptions, photographs, measurements or capacities are approximate only and shall not form part of the Contract. The Company reserves the right to make any changes to the specification referred to in the Contract which are required to conform with any applicable statutory or regulatory requirements, or where the Goods are to be supplied to the Company's specification, which do not materially effect their quality or performance. Any such specifications, drawings, descriptions, photographs or measurements are confidential to the Company and must not be disclosed to any third party.

8.3 If the Goods to be manufactured or any process is to be applied to the Goods by the Company in accordance with a specification submitted by the Buyer, the Buyer shall indemnify the Company against all loss, damages, costs and expenses awarded against or incurred by the Company in connection with, or paid, or agreed to be paid by the Company in settlement of any claim of infringement of any patent, copyright, registered design, design right, trade mark, or other industrial or

intellectual property rights of any other person which results from the Company's use of the Buyer's specification.

## **9 WARRANTY**

- 9.1 The Company warrants that (subject to the other provisions of these Conditions) Goods which are manufactured by the Company shall on delivery or collection (as appropriate) be in accordance with any specification set out in the relevant Order Acknowledgement or Special Conditions.
- 9.2 In respect of Goods not manufactured by the Company, the Company shall endeavour to assign for the benefit of the Buyer, such rights (including guarantee or warranty rights) as the Company has against such manufacturer, but shall not be liable for such Goods beyond this Condition 9.2.
- 9.3 The Company reserves the right to require that all faulty Goods be returned to the Company. In that event the Company shall refund the cost of carriage by normal means on returned Goods, and shall at its option provide repaired or replacement Goods which will be delivered or made available for collection (as appropriate) free of charge by the Company to or from (as appropriate) the location of the faulty Goods. Where Goods are repaired or replaced under this Condition, they will be considered as having been delivered or collected (as appropriate) at the same time as the original Goods.
- 9.4 The Company shall not be liable for a breach of the warranty in Condition 9.1 if:
- 9.4.1 the Buyer makes any further use of such Goods after giving notice of such defects; or
  - 9.4.2 the defect arises because the Buyer failed to follow good trade practices and the Company's oral or written instructions (if any) as to the storage, installation, commissioning, or use of the Goods;
  - 9.4.3 the Buyer alters or repairs such Goods without the written consent of the Company.
- 9.5 The Company's sole obligation under this Condition 9 shall be at its option to repair or replace the Goods or any part thereof, or to refund the price of such Goods at the pro rata Contract rate.

## **10 LIMITATION OF LIABILITY**

- 10.1 Subject to Condition 9, the following provisions set out the entire financial liability of the Company (including any liability of the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of:
- 10.1.1 any breach of these Conditions;
  - 10.1.2 any use made or resale by the Buyer of any of the Goods, or of any product incorporating any of the Goods; and
  - 10.1.3 any representation, statement or tortious act or omission, including negligence arising under or in connection with the Contract.
- 10.2 All warranties, conditions and other terms implied by statute or common law (save for conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.
- 10.3 Nothing in these Conditions excludes or limits the liability of the Company for:
- 10.3.1 for death or personal injury caused by the Company's negligence; or
  - 10.3.2 under section 2(3), Consumer Protection Act 1987; or



10.3.3 for any matter which it would be illegal for the Company to exclude or attempt to exclude its liability; or

10.3.4 for fraud or fraudulent misrepresentation.

**THE BUYER'S ATTENTION IS IN PARTICULAR DRAWN TO THE PROVISIONS OF CONDITION 10.4.**

10.4 Subject to Conditions 10.2 and 10.3:

10.4.1 the Company's total liability in Contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise, arising in connection with the performance or contemplated performance of this Contract shall be limited to the Contract price; and

10.4.2 the Company shall not be liable to the Buyer for any indirect or consequential loss or damage (whether for loss of profit, loss of business, depletion of goodwill or otherwise), costs, expenses or other claims for consequential compensation whatsoever (as of costs) which arise out of or in connection with the Contract.

**11 ACCESS**

Where the Company is to carry out work or operations upon the Buyer's premises or other premises at the direction of the Buyer, then the Buyer must ensure that:

11.1 such premises and any machinery involved and all other arrangements affecting the work or operations are ready by the time the Company is scheduled to enter upon such premises to commence such work or operations; and

11.2 there will be no delay to the works or operations caused directly or indirectly by such premises or such machinery or arrangements or the state and condition thereof, for which the Company is not responsible.

**12 CONFIDENTIALITY**

Any information which the Company 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 to any third party, or used by the Buyer to enable the Buyer to manufacture the Goods or use the same as a springboard to develop the Buyer's own products.

**13 NOTICES**

13.1 All notices required to be served by one party upon the other shall be in writing and may be served on the other at its postal address, facsimile number, or email address as set out in the Special Conditions (or any such alternative postal address, facsimile number, or email address as any Party may notify to the other for such purpose from time to time).

13.2 All such notices may be served by first class pre-paid letter, facsimile transfer or by email, and (in the absence of proof of earlier receipt) shall be deemed to be served:

13.2.1 in the case of an inland letter 24 hours after proven despatch or posting;

13.2.2 in the case of any airmail letter 72 hours after proven despatch or posting;

13.2.3 in the case of facsimile transfer at 9 a.m. on the business day of the recipient party next following receipt by the transmitting party of machine confirmation of successful transmission to the recipient party's receiver number; and

13.2.4 in the case of email transfer within one hour of receipt by the transmitting party of electronic confirmation of successful transmission to the recipient party's email address.

#### **14 WAIVER AND SEVERANCE**

14.1 Any indulgence granted by the Company to the Buyer or any failure by the Company to insist upon strict performance of these Conditions shall not be deemed a waiver of any of the Company's rights or remedies, nor be deemed a waiver of any subsequent default by the Buyer.

14.2 The invalidity, illegality or unreasonableness in whole or in part of any of these Conditions shall not affect the validity of the remainder of such Condition or these Conditions.

#### **15 ASSIGNMENT**

No Contract is assignable by the Buyer without the written consent of the Company and each Contract is between the Company and the Buyer as principals, but the Company may without consent assign or sub-contract all or any of its rights and obligations under a Contract.

#### **16 GOVERNING LAW**

The interpretation and application of every Contract 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 agree to submit to the non-exclusive jurisdiction of the English Courts.

#### **17 THIRD PARTIES**

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