

**Terms and Conditions of Sale
for Air Treatment & Services**

Interpretation

1. In these Conditions the following words shall have the following meanings:-
“**Business Day**” a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business;
“**Commissioning Service**” the commissioning of the Goods by the Company for the Customer as described in Condition 48.5;
“**Company**” Munters Limited, company registration number 07270788, whose registered office is at Knowledge Centre, Wyboston Lakes, Great North Road, Wyboston, Bedford, MK44 3BY, United Kingdom;
“**Conditions**” these terms and conditions of sale;
“**Consultation Service**” the consultancy services provided by the Company for the Customer as described in Condition 48.8;
“**Contaminants**” means any material (whether airborne or otherwise) which pollutes, infects, corrupts or otherwise comes into contact with Goods;
“**Contract**” the contract between the Company and the Customer for the Company to supply the Goods and/or Services to the Customer in accordance with these Conditions;
“**Customer**” the person, firm or company identified in the Proposal as the customer to whom the Company will supply the Goods and/or Services;
“**Design Service**” the design and/or specification of Goods by the Company for the Customer as described in Condition 48.6;
“**Documents**” includes any document in writing, any drawing, map, plan, diagram, design, computer program, picture or other image, tape, disk, or other device or record embodying information in any form supplied by the Company to the Customer;
“**FAT Service**” the factory acceptance testing of Goods for the Customer as described in Condition 48.10;
“**Goods**” the goods (including any instalment of the goods or any part of them) to be supplied by the Company to the Customer under the Contract or, if different, the equipment of the Customer in respect of which the Company will perform the Service;
“**Installation Service**” the installation of the Goods by the Company for the Customer as described in Condition 48.7;
“**Intellectual Property Rights**” the patents, rights to inventions, copyright and related rights, moral rights, trademarks and service marks, trade names and domain names, rights in get-up, rights to goodwill or to sue for passing-off or unfair competition, rights in designs, rights in computer software, database rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extensions of, 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;
“**Maintenance Service**” the maintenance of the Goods by the Company for the Customer as described in Condition 48.1;
“**Price**” the price payable for the Goods and/or Services exclusive of VAT at the then current rate;
“**Project Management Service**” the project management of any project by the Company for the Customer as described in Condition 48.9;
“**Proposal**” the Company’s quotation or other form of proposal to the Customer, including any reference to a specification or other document describing and stipulating the Goods and/or Services to be supplied by the Company to the Customer, and setting out the terms upon which the Goods and/or Services will be supplied;
“**Refurbishment Service**” the refurbishment of Goods by the Company for the Customer as described in Condition 48.2;
“**Return to Works Service**” the examination of defective or malfunctioning equipment by the Company for the Customer as described in Condition 48.4;
“**Spare Parts Service**” the supply of spare parts by the Company for the Customer as described in Condition 48.3; and
“**Services**” any or all of the Commissioning Service, the Consultation Service, the Design Service, the FAT Service, the Installation Service, the Maintenance Service, the Project Management Service, the Refurbishment Service, the Return to Works Service and the Spare Parts Service to be supplied by the Company to the Customer under the Contract together with any other services (including, without limitation, breakdown or emergency call-outs outside the scope of the Maintenance Service) performed for the Customer by the Company.
2. The headings in these Conditions are for convenience only and shall not affect their interpretation.
3. A reference to a law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.
4. Words in the singular include the plural and vice versa.

Formation and Incorporation

5. The Conditions shall be incorporated into and govern the Contract to the entire exclusion of all other terms or conditions. Without prejudice to the generality of the foregoing, the Company will not be bound by any standard or printed terms tendered by the Customer, unless the Customer specifically states in writing, separately from such terms, that it wishes such terms to apply and this has been agreed in writing by an authorised representative of the Company. In the event of any conflict between the Proposal and these Conditions, the terms of the Proposal shall prevail.

6. The Company’s employees or agents are not authorised to make any representations concerning the Goods and/or the Services (including, without limitation, suitability, fitness for purpose, application, use or performance of the Goods) unless expressly agreed in writing and signed by an authorised representative of the Company. In entering into the Contract the Customer acknowledges that it does not rely on any such representations which are not so confirmed but nothing in these Conditions affects the liability of either party for fraudulent misrepresentation.
7. The Proposal constitutes an offer by the Company to supply the defined and stipulated Goods and/or Services and will be valid for acceptance by the Customer in writing for a period of 45 days from the date of the Proposal, unless the Company has given an extension of time in writing. Time will be of the essence in this regard. The Proposal will lapse automatically at the end of that period and will not be capable of acceptance by the Customer. The Contract shall only come into existence on the date the Company receives the Customer’s written acceptance and deemed receipt shall not apply.
8. Any variation to the Contract or any documents referred to in the Contract shall have no effect unless expressly agreed in writing and signed by an authorised representative of the Company.

Price

9. The Price shall be that stipulated in the Proposal, based upon the market rates for the materials, labour, transport and any other direct costs at the date of the Proposal. If there is any increase, howsoever arising, in the cost of materials, labour, transport or any other direct costs (including, without limitation, taxes, duties and foreign exchange fluctuations) incurred by the Company in the performance of the Contract, the Company reserves the right to make such adjustment to the Price to take account of such increases at any time between the date of the Proposal and the delivery of the Goods or, if appropriate, the performance of the relevant part of the Services.
10. Only those Goods and/or Services expressly included in the Proposal are included in the Price and all and any other goods or services required by the Customer shall be supplied at an additional cost to the Customer.
11. The Price is based on delivery of the Goods and/or any Services being performed during normal working hours 9.00am to 5.00pm on a Business Day.
12. Any costs for the Company’s labour quoted in the Price for attendance at the delivery site shall be based on work over continuous, consecutive Business Days unless stated to the contrary. Additional visits due to factors beyond the Company’s control may incur additional costs for which the Customer will be liable.
13. Activities by the Customer which delay, alter or impinge upon the Company’s delivery of the Goods or performance of the Services will make the Customer liable, upon demand, to pay additional charges to the Company, as reasonably stipulated by the Company.
14. Where the Company’s engineers have been booked to attend site as part of the Services and site access is delayed on arrival for any reason, the Company will charge (and the Customer will pay on demand) £200 + VAT per engineer for each 2 hour period of delay (or the Company’s then current full day rate where the delay is in excess of 4 hours), as a genuine pre-estimate of the Company’s losses caused by the delay.
15. The Price is exclusive of amounts in respect of VAT and the Customer shall, on receipt of a valid VAT invoice, pay to the Company such additional amounts in respect of VAT as are chargeable on the supply of the Goods and/or Services.
16. The Company has agreed the Price on the basis that the Customer has disclosed all Contaminants which the Goods will be exposed to at its operating location. In the absence of any such disclosure, the Price has been calculated on the basis that the Goods will operate in an environment consistent with the working environment stipulated in the technical manual.

Payment Terms

17. The Company will not open an account for any Customer unless the Company has conducted a satisfactory credit check against the Customer. All invoices submitted by the Company to account holding Customers are payable within 30 days from the invoice date.
18. Non-account holding Customers will be invoiced by the Company in advance and such invoices must be paid in full before delivery of the Goods or performance of the Services.
19. 30% of the Price will be payable upon acceptance of the Proposal. The balance of 70% will be payable upon delivery of the Goods and/or Services to the Customer.
20. Where the Goods and/or Services comprise more than one item, invoicing may be by instalments to match the delivery date of each item.
21. The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against the Company in order to justify withholding payment of any such amount in whole or in part. The Company may at any time, without limiting any other rights or remedies it might have, set-off any amount owing to it by the Customer against any amount payable by the Company to the Customer.
22. Non-payment of any part of the Price upon the date it falls due shall result in all monies due from the Customer to the Company becoming immediately payable and until such payment the Company shall be entitled to suspend performance of all or any of its obligations to the Customer howsoever arising.
23. If the Company has granted credit facilities to the Customer and the Customer defaults in any payment due, the Company shall be entitled to withdraw or vary such credit facility at any time by written notice without incurring any liability to the Customer.
24. Under the Late Payment of Commercial Debts (Interest) Act 1998, the Company reserves the right to charge for accrued interest on all outstanding invoices from the date upon which payment falls due at the rate of 8%.
25. In the event of legal action being taken by the Company against the Customer for breach of any obligation of the Customer under the Contract (including,

without limitation any payment obligations), the Customer shall be responsible for all costs and disbursements, reasonably and necessarily incurred by the Company, on an indemnity basis.

Cancellation of the Contract

26. The Customer cannot cancel the Contract except with the Company's written consent and on terms which will indemnify the Company against loss by payment of reasonable cancellation charges. Such charges shall take into account expenses incurred and commitments made by the Company and all other losses due to such cancellation. When the Company agrees a cancellation and the return of Goods already delivered, the Goods will be inspected and the cost of any repair or replacement to damaged or defective Goods (or the entire costs of such Goods if beyond economic repair or replacement) will be charged to the Customer. Goods returned without the Company's previous consent in writing will not be accepted for credit.

Risk and Title

27. Risk in the Goods shall pass from the Company to the Customer as stipulated in the selected Incoterms 2010 stated in the Contract but property and title in the Goods shall not pass from the Company to the Customer until payment in full of the Price and all of the sums due from the Customer to the Company howsoever incurred.

Delivery

28. The delivery term EXW, shall be used in the Contract and shall have the meanings set out in Incoterms 2010 published by the International Chamber of Commerce, and delivery shall take place, in accordance with that term.

29. Delivery dates and/or times are estimates only and the Company shall not be responsible for any losses caused to the Customer as a result of late delivery.

30. Waiting time for off-loading will be limited to 2 hours, after which additional costs may apply for which the Customer will be liable.

31. Where the Goods include a set of filters, if supplied loose, these must be fitted by or on behalf of the Customer in accordance with the technical manual and/or installation instructions for the Goods.

Acceptance of Goods

32. The Customer shall within 14 days of delivery of the Goods give notice to the Company of any matter or reason by which the Customer alleges the Goods are not in accordance with the Contract. Time shall be of the essence in this regard. If the Customer fails to give such notice the Goods shall be deemed to be in accordance with the terms of the Contract (and free from any defect) and the Customer shall be deemed to have accepted the Goods. If the Customer properly rejects the Goods (to the reasonable satisfaction of the Company) the Company shall replace the Goods or refund the Price and such replacement or refund shall be the Customer's sole remedy for the Company's breach of the Contract.

Intellectual Property

33. All Intellectual Property Rights in the Goods and comprised in or arising out of the Services (including, without limitation, all Intellectual Property Rights in the Documents) belong to and are the absolute property of the Company.

34. The Contract does not grant the Customer any right to use the Company's Intellectual Property Rights in the Goods or comprised in or arising out of the Services (including, without limitation, all Intellectual Property Rights in the Documents) save for the physical possession and use of the Goods as contemplated by the Contract.

35. The Customer undertakes not to infringe, and to procure that none of its customers, employees or contractors shall infringe, the Company's Intellectual Property Rights.

36. The Customer undertakes (at the Company's expense) to give the Company all such reasonable assistance (including but not limited to the provision of material information and documents) and to do all such reasonable things as the Company may require in establishing, protecting, maintaining and enforcing the Company's Intellectual Property Rights anywhere in the world.

37. The Customer undertakes not to copy, or to procure anyone to copy, or to make any changes or adjustments to the appearance or construction of the Goods without the Company's prior written consent.

38. The Customer undertakes to notify the Company promptly in the event it becomes aware of any infringement or alleged infringement by any third party of the Company's Intellectual Property Rights or any allegation by any third party that the use and exploitation of the Company's Intellectual Property Rights by the Customer infringes the Intellectual Property Rights of such third party and subsequently to supply to the Company such detailed information concerning such infringement, alleged infringement or any third party allegation as may be available to it and extend such co-operation as the Company shall reasonably request in countering such infringement or alleged infringement or third party allegations.

39. If the Customer infringes the Company's Intellectual Property Rights, or alters the Goods in any way so as to infringe a third party's Intellectual Property Rights, the Customer shall indemnify the Company for any losses incurred as a result of such infringement.

Documentation

40. The Price includes one each of the technical manual, the operating and maintenance instructions), list of components and general installation instructions for the Goods. Where the Company staff provide Services on site, the Price shall include standard paperwork and site working practices only. If the Customer requires additional documentation, the Company shall be entitled to charge an additional fee.

Customer Obligations

41. To enable the Company to perform the Services, the Customer shall:-
- 41.1 provide the Company promptly with all information and documentation reasonably necessary and with all necessary access to the premises where the Services are to be performed, including suitable safe work spaces, site services and facilities including, without limitation, electricity and water supplies;
 - 41.2 without prejudice to the generality of Condition 41.1, in the case of the Design Service, specify the:-
 - 41.2.1 desired functionality and performance of the Goods the Company wishes to acquire;
 - 41.2.2 environment in which such Goods will be expected to operate (including, without limitation, the Contaminants with which the Goods will come into contact); and
 - 41.2.3 working conditions and performance requirements (including, without limitation, periods of continuous use) under which such Goods will be expected to operate;
 - 41.3 without prejudice to the generality of Condition 41.1, in the case of the Commissioning Service, where the Company has not performed the Installation Service:-
 - 41.3.1 install the Goods in accordance with the recommendations stipulated by the Company (including, without limitation, any instruction on installation in the Contract or in the technical manual);
 - 41.3.2 supply the Company with such information concerning the installation of the Goods as the Company shall require including, without limitation, completion and return to the Company of any pre-commissioning completion checklist issued by the Company to the Customer; and
 - 41.3.3 rectify, correct or otherwise deal with any matters specified by the Company relating to the installation of the Goods as a result of its evaluation of the information about the installation of the Goods supplied by the Customer or evident to the Company upon inspection;
 - 41.4 make appropriate staff available to the Company who are familiar with the Customer's requirements under the Contract;
 - 41.5 comply with such other reasonable requirements as may be stipulated by the Company, including, without limitation, any such requirements set out in the Proposal; and
 - 41.6 allow the Company's safety officer or installation or commissioning engineer to access the delivery address at which Services are to be performed for the purpose of determining safety and environmental risks. The Customer shall rectify any problems before the Company's staff start performing the Services on site and the Company shall be entitled to charge the Customer an additional sum if the attending Company staff, and those working for on behalf of the Company, are unable to commence the Service on site at the agreed time because of a safety or environmental risk unacceptable to the Company.

Warranties

42. The Company warrants that all Goods manufactured by the Company and supplied by it to the Customer in United Kingdom or the Republic of Ireland under the Contract shall be free from defects in workmanship and materials for a period of 12 months from the date of delivery.
43. Where the Company is not the manufacturer of such Goods, the Company shall endeavour to transfer to the Customer any warranty or guarantee given to the Company by any manufacturer or supplier of the Goods.
44. The Company warrants that it shall perform the Services using reasonable skill and care. The Company's engineers performing any of the Services at the Customer's premises will be accredited with a Gas Safety Certificate, Construction Skills Certification Scheme card, Prefabricated Access Suppliers and Industry Association Certification and Institution of Electrical Engineers Certificate. If there is a requirement for additional accreditation to perform the Service (including, without limitation, safety accreditation), the Company will be entitled to charge the Customer an additional fee.
45. The Company shall be under no liability (whether under the warranties contained within these Conditions or otherwise) in respect of any defect in the Goods and/or Services:-
- 45.1 arising from any drawing, design, specification, data or other information supplied to the Company by the Customer or the failure to supply the Company with all information and documentation reasonably necessary for the Company to perform the Service;
 - 45.2 without prejudice to the generality of Condition 45.1, in the case of the Design Service, arising from any discrepancy or other error in the information and documentation supplied by to the Company by the Customer pursuant to Condition 41.2;
 - 45.3 caused by a Contaminant, other than those notified to the Company by the Customer in writing prior to the Company issuing the Proposal;
 - 45.4 arising from the installation of the Goods if the Company has not performed the Installation Service;
 - 45.5 arising from the Customer's failure to commission, maintain or service the Goods in accordance with the Company's instructions (whether oral or in writing) and to have such maintenance or servicing carried out by an engineer of the Company or a competent engineer approved by the Company and who has access to all the necessary calibrated test equipment;
 - 45.6 arising from the Customer's failure to operate the Goods in accordance with the Company's instructions (whether oral or in

- writing) (including, without limitation, any instructions on the environment in which the Goods are installed and operated) and in accordance with the technical manual for the Goods;
- 45.7 arising from fair wear and tear, willful damage, negligence, abnormal working conditions, misuse or alteration of the Goods without the Company's written approval or failure to replace components as required; or
- 45.8 unless the Company is given written notice of the alleged defect by the Customer and a reasonable opportunity, after receiving the notice, to examine the Goods.
- 45.9 any goods intended for use outside the United Kingdom or the Republic of Ireland under the Contract.
46. In respect of Goods supplied to the Customer under the Contract, where the goods operate from a single phase electrical power supply, the obligation of the Company under the warranties contained within these Conditions is limited to the repair or, at the sole option of the Company, the replacement of the defective Goods, which the Customer shall at its own expense deliver to the Company. The Company will not send an engineer or other employee or agent to inspect the alleged defective Goods or to remove or re-install any defective or replacement Goods.
47. The Customer warrants that it will comply with the provisions of all relevant statutes, regulations and by-laws for the Customer's use of the Goods and has obtained any necessary licence or consent that may be required in connection with the supply and use of the Goods.
- Services**
48. The Services comprise the following:-
- 48.1 **The Maintenance Service:-**
- 48.1.1 a service period of 12 months (from the start of the date stipulated in the Contract) or any longer period stipulated in the Contract;
- 48.1.2 the service period will automatically expire at the end of that period and there will be no roll-over or automatic renewal;
- 48.1.3 the Contract will stipulate the number of planned service visits to be made by the Company during the service period;
- 48.1.4 during the service visits the Company will perform planned and preventative maintenance checks and services on the Goods stipulated in the Contract;
- 48.1.5 the Service does not include the supply of replacement parts; and
- 48.1.6 the Service consists of pre-booked service visits and does not include emergency or breakdown cover.
- 48.1.7 If arrangements for labour resources specific to any related service work whether planned or otherwise are cancelled, a fee consisting of a percentage of the total Munters' labour costs will be applied as detailed below.
0 - 24 hours notice 100% of the day rate will be chargeable
24 - 48 hours notice 75% of the day rate will be chargeable
48 - 72 hours notice 50% of the day rate will be chargeable
72 hours and above 0% charge will apply. Further cost for materials specific to the scheduled works may also be charged at full cost including any restocking and delivery costs.
- 48.2 The Company provides a **Refurbishment Service** comprising the refurbishment, upgrade or conversion of the Goods stipulated in the Contract to the specification stipulated in the Contract but subject to any special terms and conditions stipulated in the Contract, whether identified in any site/equipment survey undertaken by the Company or otherwise.
- 48.3 The Company provides a **Spare Parts Service** for Goods it has previously supplied to the Customer. The terms of supply including, without limitation, Price, delivery, fitting and commissioning will be stipulated in the Contract.
- 48.4 **The Return to Works Service:-**
- 48.4.1 the Company will examine the defective or malfunctioning Goods stipulated in the Contract;
- 48.4.2 the examination will be carried out at the Company's premises;
- 48.4.3 the Company will provide the Customer with a report on the said defective Goods and any quotation for repair or replacement;
- 48.4.4 the Company will charge a fixed Price on application for the Service, which will be payable whether or not the Customer accepts any quote for the repair or replacement of the said Goods;
- 48.4.5 the responsibility for the delivery of the said Goods to the Company's premises and, if applicable, the return of the same to the Customer will be stipulated in the Contract; and
- 48.4.6 the Customer will ensure the Goods are delivered in a state free from Contaminants or must give the Company notice containing full details of any Contaminants present, together with safety data and risk assessment prior to delivery. The Company will assess the data for risks and shall have the right to decline to provide the Return to Works Service. If accepted for the Return to Works Service, the Customer shall be reasonable for any hazard labelling, using correct and adequate packaging and complying with any applicable transport regulations.
- 48.5 **The Commissioning Service:-**
- 48.5.1 at the Customer's premises, the Company will commission the Goods for use by the Customer;
- 48.5.2 the Company does not provide the Service outside the United Kingdom or the Republic of Ireland unless specifically stated in the Contract;
- 48.5.3 the date for the Company to perform the Commissioning Service will be stipulated in the Contract and if such date is determined by a notice to be issued by the Customer to the Company, such notice shall be in writing and of no less than 21 days;
- 48.5.4 the Service will include as standard a site induction and safety meeting of one hour between the Company's commissioning engineer and the nominated representatives of the Customer. If the meeting requires additional time, the Company shall be entitled to charge an additional fee; and
- 48.5.5 the Service does not include the undertaking of any building work or the installation of additional equipment including, without limitation, cutting away and making good, painting, electrical work, pipe work and fittings, lagging and insulation, scaffolding, heavy lifts and plant positioning or re-positioning.
- 48.5.6 If arrangements for labour resources specific to any related service work whether planned or otherwise are cancelled, a fee consisting of a percentage of the total Munters' labour costs will be applied as detailed below.
0 - 24 hours notice 100% of the day rate will be chargeable
24 - 48 hours notice 75% of the day rate will be chargeable
48 - 72 hours notice 50% of the day rate will be chargeable
72 hours and above 0% charge will apply. Further cost for materials specific to the scheduled works may also be charged at full cost including any restocking and delivery costs.
- 48.6 **The Design Service:-**
- 48.6.1 subject to the Customer's fully performing and discharging its obligations under Condition 41 (including, without limitation, specifically in respect of the Design Service under Condition 41.2), the Company will design the Goods to meet the Customer's desired functionality and performance in accordance with the specification stipulated in the Contract;
- 48.6.2 the Company will submit draft/working designs to the Customer for review and, if required by the Customer, will amend the design and re-submit to the Customer for further review. This process will continue until the Customer approves the design in writing; and
- 48.6.3 if the Customer requests the Company to re-submit the design because of a change in the specification for the Goods as specified in the Contract, the Company shall be entitled to decline to amend the design or shall be entitled to charge a further fee in addition to the Price stipulated in the Contract.
- 48.7 **The Installation Service:-**
- 48.7.1 at the Customer's premises, the Company will install the Goods for use by the Customer;
- 48.7.2 the Company does not provide the Service outside the United Kingdom or Republic of Ireland unless specifically stated in the Contract;
- 48.7.3 the date for the Company to perform the Installation Service will be stipulated in the Contract and if such date is to be determined by a notice to be issued by the Customer to the Company, such notice shall be in writing and of no less than 21 days;
- 48.7.4 the Service will include as standard a site induction safety meeting of one hour between the Company's commissioning engineer and the nominated representatives of the Customer. If the meeting requires additional time, the Company shall be entitled to charge an additional fee;
- 48.7.5 the Service does not include the undertaking of any building work or the installation of additional equipment including, without limitation, cutting away and making good, painting, electrical work, pipe work and fittings, lagging and insulation, scaffolding, heavy lifts and plant positioning or re-positioning, other civil works, sound level testing, determination of maximum allowed floor loading, diamond drilling and planning permission or any underground or building surveys;
- 48.7.6 the Customer will provide secure storage and lay down areas for the Company's equipment and tools used to provide the Service;
- 48.7.7 the Company shall have the right to spend or terminate the Installation Service if any Contaminate (including without limitation asbestos) or other hazardous material is detected at the location where the Installation Services are being performed and, in the reasonable opinion of the Company, would affect the safe continuation of the Installation Services. The Company will not be reasonable for any costs of rendering the area safe for the continuation of the Installation Services;
- 48.7.8 if the Customer requires any amendment to the programme for work for the Installation Services contained in the

Proposal, the Company will use its reasonable endeavours to amend the programme and resubmit to the Customer for further review. The Customer shall be entitled to charge a further fee in addition to the Price stipulated in the Contract if any amendment to the programme of work involves the Company in additional time or expense in completing the Installation Service and the Company shall be entitled to decline to perform any amendment to the programme of work if such further fee cannot be agreed with the Customer;

48.7.9 the Company will not be responsible for any delays or additional cost caused by any work (whether or an installation nature or otherwise) carried out to the premises or the Goods by or on behalf of the Customer prior to the Company's commencement of the Installation Services where such prior works have not previously been approved by the Company or carried out in accordance with any Documents supplied with the Goods.

48.8 The Consultation Service:-

48.8.1 the Company will provide consultancy services to Customers requiring concept, feasibility of problem solving advice in the heating, ventilation or air conditioning business product sectors;

48.8.2 the scope of the Consultation Service will be specified in the Contract together, without limitation, Price, delivery timetable, review dates, reporting dates, key performance indicators and any specified deliverables;

48.8.3 the Company shall not be responsible for any delay in the performance of the Consultation Service caused by any delay in the Customer providing the Company with necessary information or access to premises or equipment. The Customer will be responsible for any additional charges incurred by the Company due to such delay;

48.8.4 the Consultation Service will include a report from the Company on any safety, environmental and regulatory requirements of the work or project under consideration and the cost of such report shall be payable by the Customer in addition to the price if such report is not otherwise identified in the programme of work or elsewhere in the Contract.

48.9 The Project Management Service:-

48.9.1 the Company will provide project management services to Customers requiring any or all of the other Services and/or the supply of Goods, whether as part of a project comprising the supply of Goods and/or Services from the Company alone or supplied exclusively by a third party or a combination of supplies by the Company and a third party;

48.9.2 project management of civil engineering works outside the scope of the Company's other Services, and any building works, will not be included in the Project Management Service unless expressly stated in the Contract. When such civil engineering and/or building work is included, the Company will undertake any obligations pursuant to the Construction (Design and Management) Regulations applicable to the project; and

48.9.3 the Project Management Service will include the preparation by the Company of bespoke project plans, documentation and manuals and the carrying out of all necessary and appropriate site monitoring visits.

48.10 The Company provides a **FAT Service** for Goods it has supplied to the Customer or third party equipment. The terms of supply, including, without limitation, Price, location of testing address and the preparation of any test plans will be stipulated in the Contract.

Liability

49. All 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.

50. Nothing in these Conditions limits or excludes the Company's liability for:-
50.1 for death or personal injury caused by the Company's negligence; or
50.2 defective products under the Consumer Protection Act 1987; or
50.3 for any matter which it would be illegal for the Company to exclude or attempt to exclude its liability; or

50.4 for fraud or fraudulent misrepresentation.

51. Subject to Conditions 49 and 50:-

51.1 the Company's 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 the Contract shall be limited to a sum equivalent to the Price paid to the Company for the Goods and/or Services that are the subject of the Customer's claim; and

51.2 the Company shall not be liable to the Customer for any:-

- 51.2.1 pure economic loss;
- 51.2.2 loss of profit;
- 51.2.3 loss of business;
- 51.2.4 depletion of goodwill;
- 51.2.5 loss revenue;
- 51.2.6 downtime costs;
- 51.2.7 costs of providing alternative equipment;
- 51.2.8 additional labour costs;
- 51.2.9 loss of contracts; or

51.2.10 loss of anticipated savings 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.

52. The Customer shall indemnify the Company for all loss or damage howsoever caused to all Goods delivered to, or materials (including tools) at, the site of the Customer which remain, or are, the property of the Company.

Exercise of Rights

53. Any failure or delay by the Company to exercise any right or remedy available to it under the terms of the Contract or otherwise shall not operate as a waiver of such right and single or partial exercise by the Company of such a right does not preclude the exercise by the Company or any other right or remedy.

Dealings

54. The Company may assign the Contract or any part of it to any person, firm or company. The customer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Company.

55. The Company may sub-contract its obligations under the Contract or any part of it to any person, firm or company.

Force Majeure

56. The Company reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume of the Goods ordered by the Customer or the Services to be performed for the Customer (without liability to the Customer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Company 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 its workforce) or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials.

Breach of Contract

57. If the Customer is in material breach of the Contract and, in the case of a breach capable of remedy, fails to correct the breach within a reasonable period stipulated by the Company or if the Customer becomes insolvent or bankrupt or makes any arrangement with its creditors or suffers a receiver or administrator to be appointed over its assets, the Company may, upon giving written notice to the Customer, terminate the Contract and upon such termination the Company shall have no further obligation under the Contract and, without prejudice to any other remedy available to the Company, any unpaid part of the Price for the Goods and/or Services already delivered and/or performed shall become immediately due and payable by the Customer.

Severance

58. Any provision of the Contract which is or may be void or unenforceable shall to the extent of such invalidity be deemed severable and shall not affect any other provision of the Contract.

Notices

59. Any notice to be given pursuant to the terms of the Contract shall be in writing and may be sent by first class post (airmail if sent outside the United Kingdom) or email provided an email is confirmed within 24 hours by confirmatory copy sent by first class post or airmail (as appropriate). Correctly addressed notices sent by first class post shall be deemed delivered 48 hours after posting; sent by airmail 6 days after posting and correctly directed email shall be deemed to have been received provided they are confirmed as set out above. Notices shall not be validly served if sent by email alone.

Third Party Rights

60. Subject to any assignment made pursuant to Condition 54, any person or entity who is not a party to the Contract will have no right to rely upon or enforce any term of the Contract.

Jurisdiction

61. The Contract shall be construed by and in accordance with the law of England and Wales and the courts of England and Wales shall have exclusive jurisdiction in any disputes arising under the Contract.

Version 7
September 2018