

AQUA COOLING TERMS & CONDITIONS OF SUPPLY

THE CUSTOMER'S ATTENTION IS IN PARTICULAR DRAWN TO THE PROVISIONS OF CLAUSE 11

1. APPLICATION OF TERMS

- 1.1. Each order for Equipment and request for Services from the Customer to the Company shall be deemed to be an offer by the Customer to purchase the Equipment and/or Services subject to these terms and conditions ("**Terms**"). Subject to any variation under clause 1.2 the Contract will be on these Terms to the exclusion of all other terms and conditions, including any terms or conditions which the Customer seeks to impose or incorporate under any purchase order, confirmation of order, specification or other document or which are implied by trade, custom, practice or course of dealing.
- 1.2. These Terms apply to all the Company's sales and any variation to these Terms and any representations, warranties or other statements about the Equipment and Services shall have no effect unless expressly agreed in writing and signed by an authorised representative of the Company.
- 1.3. Any samples, drawings, descriptive matter or advertising issued by the Company and any descriptions of the Equipment or illustrations or descriptions of the Services contained in the Company's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Equipment and/or Services described in them. They shall not form part of the Contract or have any contractual force.
- 1.4. Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Company shall be subject to correction without any liability on the part of the Company.
- 1.5. No order placed by the Customer shall be deemed to be accepted by the Company until a written acknowledgement of order is issued by the Company or (if earlier) the Company commences work to fulfil the order when a contract for the provision of Equipment and/or Services under these Terms will come into effect.
- 1.6. All of these Terms shall apply to the supply of both Equipment and Services except where application to one or the other is specified.

2. ORDER AND CUSTOMER INFORMATION

- 2.1. Before providing the Proposal the Company may conduct an initial meeting with the Customer in which the Company may conduct a survey of the Site ("**Survey**").
- 2.2. The Customer will supply to the Company the Customer Information and any other information required under the Contract.
- 2.3. The Customer acknowledges that the Customer is solely responsible for providing the Customer Information.
- 2.4. The Customer warrants that the Customer Information and any further information supplied by the Customer to the Company under the Contract is complete and accurate in all respects.
- 2.5. The Customer acknowledges that the Company shall rely on the Customer Information in determining and selecting the appropriate Equipment and/or Services and preparing the Proposal.
- 2.6. The Company shall be entitled to rely upon the specification and any advice given by the Customer (in relation to the suitability of the Equipment and/or Services for meeting the Customer's requirements) such that to the extent that the Equipment and/or Services comply with such specification and or such advice then the Company shall be deemed to have supplied in accordance with these Terms, without limitation, notwithstanding the Customer Information.
- 2.7. The Company will send the Customer a Proposal on the basis of any Survey carried out and the Customer Information.
- 2.8. The quantity and description of and any specifications or directions for the Equipment and / or the Services shall be set out in the Proposal.
- 2.9. To the extent that the Equipment is to be manufactured in accordance with a specification supplied by the Customer, the Customer shall indemnify the Company against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Company arising out of or in connection with any claim made against the Company for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Company's use of such specification. This clause 2.9 shall survive termination of the Contract.
- 2.10. If the Customer wishes to proceed with the provision of the Equipment and/or the Services by the Company in accordance with the Proposal the Customer must return its purchase order to the Company, signed by an authorised party on behalf of the Customer prior to the commencement of work by the Company, as confirmation that the Proposal accurately sets out the Customer's requirements.
- 2.11. Any Proposal given by the Company shall not constitute an offer and is valid only for the period stated in the Proposal or if no period is stated a period of 30 days from its date, provided that the Company has not previously withdrawn it.
- 2.12. Without prejudice to clause 2.2, the Customer shall provide to the Company without charge or delay on request from the Company all reasonable assistance as may be so requested by the Company and all additional information and data reasonably requested by the Company to enable the Company to provide the Equipment and/or to carry out the Services.
- 2.13. Any Customer Information supplied by the Customer shall include:
 - (a) any past or present use of the Site which may have an adverse effect on the Services and/or the Equipment;
 - (b) details of any hazardous materials present at the Site which may have an adverse effect on the Services or the Equipment or on the health and safety of the Company's officers, employees and agents;
 - (c) details of whether or not the Customer's cooling system uses de-ionised water;
 - (d) whether the Site is a listed building, is within a conservation area or is subject to any other restrictions that may restrict or prevent the installation of the Equipment;
 - (e) whether the Customer wishes the Company's officers, employees and agents to participate in an induction before commencing provision of the Services at the Site;

(f) details of any specific health and safety, security or other similar requirements applicable to personnel attending the Site; and

(g) details of the duty cycle of the Equipment.

2.14. Any information not supplied to the Company by the Customer is deemed to be unknown to the Company

2.15. No changes to the Customer Information, the Proposal, the Equipment and/or the Services will form part of the Contract unless agreed in writing by the parties. The Customer understands that as a condition to agreeing a change the Company may alter these Terms for the provision of the Equipment and/or the Services (including increasing the Price).

2.16. Without affecting any other right or remedy available to the Company, no order which has been accepted by the Company may be cancelled by the Customer, except with the agreement in writing of the Company and provided that the Customer indemnifies the Company in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Company as a result of cancellation.

2.17. The Company may cancel any order which has been accepted by the Company at any time prior to delivery provided that in the event of such cancellation the Company's sole liability to the Customer by reason of such cancellation shall be limited to the refund to the Customer of all sums already paid by the Customer to the Company in respect of the order within 14 days of the date of cancellation. Except as provided in this clause 2.17 the Company shall have no liability to the Customer in respect of its cancellation of any order pursuant to this clause 2.17.

3. **COMPANY'S OBLIGATION**

3.1. The Company will supply the Equipment and/or provide the Services as set out in the Proposal.

3.2. The Company reserves the right to amend the specification of the Equipment or the content of the Services which are required to conform with any applicable safety or other statutory or regulatory requirements or, where the Equipment is to be supplied or the Services to be provided in accordance with the Customer's specification or directions, which do not materially affect their quality or performance.

4. **PAYMENT**

4.1. The price for the Equipment, Services and any Operating Manuals shall be the price set out in the Proposal and if not specified shall be the Contract Rate. All prices set out in the Proposal are valid for 30 days only, after which time they may be altered by the Company.

4.2. Unless otherwise specified the Price shall be exclusive of delivery, packaging, packing, shipping, carriage, insurance, VAT and other sales tax, tariffs, charges and duties or other local, national government or European Community levies of which amounts the Customer will pay in addition when it is due to pay for the Equipment and/or Services.

4.3. The Price is based on the cost of materials, wages, overhead costs, statutory obligations, delivery dates, specifications and foreign currency exchange rates ruling at the date of the Proposal. Unless stated otherwise in the Proposal, the Company reserves the right to increase the Price without notice in the event of increase in any of the foregoing costs and any other increase in costs due to any factor beyond the control of the Company prior to delivery of the Equipment and/or Services.

4.4. Unless otherwise agreed in writing by the Company, where the total price of the Equipment and/or Services is more than £5,000 (excluding VAT) the price of the Equipment and/or Services shall be paid by way of three equal instalments: (a) the first instalment due immediately on receipt of the Company's written acknowledgement of the order and invoice or (if earlier) the Company commences work to fulfil the order ("**First Instalment**"); (b) the second instalment due within 7 days of the date of the Company's invoice which may be submitted at any time before Delivery of the Equipment and/or the Services; and (c) the final instalment within 30 days of the date of the Company's invoice which shall be submitted on the earlier of the Delivery and commissioning of the Equipment or performance of the Services or 60 days after the date that the First Instalment is due.

4.5. Except as specified in clause 4.4, all other sums due under the Contract shall be paid in pounds sterling within 30 days of the date of the Company's invoice.

4.6. No payment shall be deemed to have been received until the Company has received cleared funds.

4.7. Time for payment is of the essence of the Contract.

4.8. Receipts for payment will be issued only on request.

4.9. The Company reserves the right to charge interest at an annual rate of 8% above the base rate of the Bank of England (but at 8% a year for any period when that base rate is below 0%) calculated on a daily basis in respect of any sum which is due and unpaid, that interest to run from the date on which that sum is due and payable until receipt by the Company of the full amount, whether before or after judgment

4.10. The Company may suspend or cancel the provision of the Equipment and/or Services or may at its discretion request security for payment from the Customer in the event of late payment.

4.11. 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, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by the Company to the Customer.

4.12. The Company may, at any time after the expiry of the Initial Period, increase the Price for the Maintenance Services provided that, such price cannot be increased more than once in any 12 month period. The Company will give the Customer written notice of any such increase 30 days before the proposed date of the increase and such increase will automatically take effect on the expiry of the 30 day notice period.

5. **DELIVERY AND INSTALLATION OF THE EQUIPMENT**

5.1. Unless otherwise agreed in writing by the Company, delivery of the Equipment shall take place at the Company's premises or such other location as is specified in the Proposal.

- 5.2. The Company will use reasonable endeavours to give the Customer prior notice of any delivery and installation date.
- 5.3. The Customer must take delivery at the time so notified (or if delivery takes place at some other time then as soon as practicable) and afford the Company (including its employee, agents and sub-contractors) access to the Site to check, install and commission the Equipment and ancillary materials delivered to the Site.
- 5.4. All Equipment and/or Services supplied to the Customer which conform in all material respects with the Proposal shall be deemed accepted by the Customer.
- 5.5. Any dates specified by the Company for delivery of the Equipment and/or performance of the Services are intended to be an estimate and time shall not be of the essence for delivery, installation and any other obligations under the Contract and shall not be made of the essence by notice. If no dates are so specified, delivery of the Equipment and/or performance of the Services will be within a reasonable time.
- 5.6. The Customer understands that delivery of Equipment is conditional upon availability and the Company shall not be liable if prevented from meeting the Contract because the Equipment is not readily available by reason of any circumstances outside the control of the Company.
- 5.7. If the Company fails to deliver the Equipment, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Equipment. The Company shall have no liability for any failure to deliver the Equipment to the extent that such failure is caused by Customer Caused Event.
- 5.8. If for any reason the Customer will not accept delivery and installation of any of the Equipment when they are ready for delivery and installation, or the Company is unable to deliver or install the Equipment on time because the Customer has not provided or obtained appropriate instructions, documents, licences, consents or authorisations ("**Customer Caused Event**"), the Equipment will be deemed to have been delivered, risk in the Equipment will pass to the Customer and the Customer shall pay to the Company any and all additional costs and expenses incurred by the Company as a result of the Customer Caused Event (including storage, delivery costs and insurance).
- 5.9. If 14 days after the day on which the Company notified the Customer that the Equipment was ready for delivery the Customer has not taken or accepted delivery of them, the Company may resell or otherwise dispose of part or all of the Equipment and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Equipment or charge the Customer for any shortfall below the price of the Equipment.
- 5.10. Where the Company is providing Equipment only, and unless otherwise stated in the Proposal, the Customer will provide at its expense at the place where delivery of the Equipment is to take place adequate and appropriate equipment and manual labour for loading, unloading or positioning the Equipment.
- 5.11. The Company reserves the right to make partial deliveries. The Customer shall not be entitled to object to or reject the delivery by reason of the surplus or shortfall.
- 5.12. The Customer must give notice in writing of any damage to the Equipment to the Company within 5 working days of delivery of the Equipment giving full particulars, including the condition of parcels received, failing which the Company is discharged from any liability in respect of such damage and the Equipment is deemed to be compliant.
- 5.13. Subject to clause 5.8, upon delivery risk in the Equipment will pass to the Customer, the Customer shall (at the Customer's cost) store any Equipment safely and securely and be responsible for the security for all such Equipment while such Equipment is on the Site including the provision of adequate fencing and supervision until the Installation Services have been completed.
- 5.14. The Customer hereby agrees to take out and maintain adequate insurance during the duration of the Contract commencing from the date of delivery against any loss or damage caused to the Equipment whilst on the Site save to the extent that such loss is caused by the negligence of the Company.
- 5.15. Any tests that the Customer wishes the Company to carry on the Equipment in the presence of the Customer (other than those usually carried out by the Company in the performance of the Installation Services) will only be carried out if agreed in writing by the Company and if the Customer pays the Company's charges for such tests at the Contract Rate and any additional charges imposed by the Company for light, heat, water and the hiring of special equipment that may be needed for the purposes of such tests.
- 5.16. The Customer understands and accepts that due to the operating temperature of some Equipment and the risk of legionnaires disease it may be necessary for the Customer to seek expert advice regarding the treatment of the Customer's water systems to prevent and/or eliminate legionella bacteria. After installation of the Equipment the Customer acknowledges and agrees that, where applicable it shall be responsible for seeking expert advice regarding the risks of legionella bacteria in its water systems and the Customer shall take such steps as are necessary to monitor control and treat the Customer's water system (whether by chemical dosing of the water system or otherwise) to prevent and/or eliminate legionella bacteria.

6. **MAINTENANCE SERVICES**

- 6.1. During the Maintenance Term, the Company shall provide the Customer with the Maintenance Services for the Maintained Equipment at the Site in accordance with the Service Levels set out in the Service Level Agreement.
- 6.2. The Company shall use reasonable endeavours to ensure that its personnel shall, while at the Site, comply with the Customer's reasonable health and safety and security policies provided that these policies have been brought to the attention of its personnel in advance of commencing performance of the Services and/or delivering the Equipment.
- 6.3. In performing the Maintenance Services the Company may from time to time provide spare parts for the Maintained Equipment and the Company shall have the right to charge the Customer for the spare parts.
- 6.4. All spare parts and/or replacements provided by the Company to the Customer shall become part of the Maintained Equipment. All parts and components removed from the Maintained Equipment by the Company in the course of performing the Maintenance Services shall no longer constitute part of the Maintained Equipment and will be the property of the Company.

- 6.5. The Company is not obliged to perform any Excluded Maintenance.
- 6.6. Where the Company is performing or has performed the Maintenance Services in circumstances where it is established that the Maintained Equipment was performing incorrectly due to any of the Excluded Causes, the Company may charge, and the Customer shall pay, the Company at the Contract Rate in respect of that work.
- 6.7. During the Maintenance Term the Customer shall:
- (a) ensure that the Maintained Equipment is installed and kept in suitable premises and under suitable conditions, as specified in the Operating Manuals, permit only trained and competent personnel to use it and follow any operating instructions set out in the Operating Manuals and as the Company may give from time to time;
 - (b) notify the Company promptly if the Maintained Equipment is discovered to be operating incorrectly;
 - (c) not allow any person other than the Company to maintain, alter, modify or adjust the Maintained Equipment without the prior written approval of the Company;
 - (d) not move the Maintained Equipment from the Site without the prior written approval of the Company (approval not to be unreasonably withheld or delayed);
 - (e) store any reserve equipment only in conditions approved by the Company, and make this equipment available for periodic maintenance, as with all other Maintained Equipment; and
 - (f) only use supplies or materials supplied or approved by the Company (approval not to be unreasonably withheld or delayed); and
 - (g) monitor the temperature at the Site and provide the Company with reports on the temperature at the Site in the manner and at the frequency reasonably required by the Company.

7. ACCESS, CO-OPERATION AND PREPARATION OF SITE

- 7.1. Unless otherwise agreed in writing the Customer shall complete the preparation of the Site on or before the date for delivery of the Equipment and/or performance of the Services in such manner as set out in the Proposal or as the Company shall reasonably require which may include flushing the Customer's cooling system.
- 7.2. The Customer shall, at all reasonable times and at the Customer's expense, provide the Company, its employees, contractors and agents, with access to the Site, adequate and safe working space, and any lighting, power and water facilities and any lifting equipment and scaffolding as are reasonably required to enable the Company to inspect the Site and perform the Services while at the Site.
- 7.3. The Customer shall co-operate with the Company in all matters relating to the Services.
- 7.4. If there is a change to the Site between inspection of the Site and commencement of the Services the Company will be entitled to alter these Terms for the provision of the Services (including increasing the Price).
- 7.5. The Customer shall afford reasonable safe and adequate access and space in which the Company may operate (including loading and unloading), without risk of damage to any vehicle, its driver, or its load and without obstruction to the public highway.
- 7.6. The Customer undertakes to the Company throughout the term of the Contract to take all reasonable precautions to protect the health and safety of the Company's employees agents and sub-contractors while on the Site.
- 7.7. The Customer shall obtain all necessary permits, licences and consents including any planning consents required for the Installation Services and shall produce such permits, licences and consents to the Company promptly on request.
- 7.8. The Customer shall comply with all applicable laws.
- 7.9. Before and during the supply of the Equipment and/or Services the Customer undertakes to identify, monitor, remove and dispose of any hazardous material from the Site in accordance with all applicable laws.
- 7.10. The Company reserves the right to refuse to carry out the Services where the Company at its sole discretion considers that the work required might place at risk any person, vehicle, equipment or property.
- 7.11. If for any reason (other than as a direct result of the Company's negligence), access is delayed, the Customer shall be liable for any loss or damage suffered by the Company as a result of such delay.
- 7.12. The Customer shall be solely responsible for any masons, smiths, bricklayers, carpenters or other third party contractors which may be required to enable the Company to perform the Installation Services. The Customer acknowledges that in order for the Installation Services to be performed it may be necessary for the Company to drill or cut into walls, floors, ceilings or other parts of the Site and/or secure fixings to parts of the Site and that additional work may be needed to put the Site in the condition it was in before the Installation Services were performed. The Customer acknowledges and agrees that the Company is not responsible for repairing, rebuilding, redecorating or otherwise making good any damage caused to the Site where such damage is necessary in order for the Installation Services to be performed.
- 7.13. The Customer shall be solely responsible for ensuring that any of its cooling system to which the Equipment is to be connected or attached is in good working order, properly maintained and any water or other fluids within the system are clean and conform to the relevant operating and manufacturing standards.
- 7.14. The Customer shall be solely responsible for obtaining any legal consents and permissions required for the carrying out of the Services and operation of the Equipment. The Company shall not be liable for any failure by the Customer to obtain such consents or permissions.
- 7.15. The Company shall not have any liability for any damage or other effect that drilling, grouting, trenching or permanent boreholes may have on foundations, services or structures at the Site. The Customer shall be responsible for arranging for any appropriate consultants or specialists to advise on the potential impact of the Installation Services and approve the position and construction of such boreholes and trenches prior to commencement of the Services.
- 7.16. If performance of the Contract is suspended at the request of or delayed through the Customer's default the Company shall be entitled to payment at the Contract Rate for any other additional costs thereby incurred including storage, hire charges, labour costs (including the de-mobilisation and re-mobilisation costs of the Company's sub-contractor and agents), insurance and interest.

7.17. If suspension pursuant to Clause 7.16 continues for a period of 7 days or more (or the parties cannot agree to any new terms including an increase in Price) the Company shall be entitled (without prejudice to its other remedies under the Contract for such breach) to:

- (a) terminate the Contract immediately by giving written notice to the Customer (and be entitled to payment for loss of profit and payment at the Contract Rate for Equipment and/or Services already performed, supplied or ordered); and
- (b) sell or, at its option, destroy the Equipment where title to the Equipment has not passed to the Customer to apply the proceeds of sale thereof if sold, and the scrap value if destroyed, towards payment of all sums due to the Company under the Contract.

7.18. Unless otherwise agreed in writing by the Company, all Services to be performed at the Site shall be performed during the Company's usual working hours.

7.19. The Customer shall indemnify the Company against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by the Company arising out of or in connection with any claim made against the Company by a third party arising out of or in connection with the provision of the Services at the Site to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Customer, its employees, agents or subcontractors.

7.20. The Customer shall keep all materials, equipment, documents and other property of the Company (**Company Materials**) at the Customer's premises in safe custody at its own risk, maintain the Company Materials in good condition until returned to the Company, and not dispose of or use the Company Materials other than in accordance with the Company's written instructions or authorisation.

7.21. The Customer shall comply with any additional obligations as set out in the Proposal.

7.22. If the Company's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer (including its employees, agents and sub-contractors) or failure by the Customer to perform any relevant obligation (**Customer Default**):

- (a) without limiting or affecting any other right or remedy available to it, the Company shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays the Company's performance of any of its obligations;
- (b) the Company shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Company's failure or delay to perform any of its obligations as set out in this clause 7.22; and
- (c) the Customer shall reimburse the Company on written demand for any costs or losses sustained or incurred by the Company arising directly or indirectly from the Customer Default.

8. RISK/TITLE

8.1. The Equipment is at the risk of the Customer from the time of delivery.

8.2. Title to the Equipment shall not pass to the Customer until the Company has received in full (in cash or cleared funds) all sums due to it in respect of the Equipment.

8.3. Until ownership of the Equipment has passed to the Customer, the Customer shall:

- (a) store the Equipment (at no cost to the Company) separately from all other Equipment of the Customer or any third party in such a way that they remain readily identifiable as the Company's property;
- (b) not destroy, deface or obscure any identifying mark or packaging on or relating to the Equipment;
- (c) maintain the Equipment in satisfactory condition and keep them insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company. On request the Customer shall produce the policy of insurance to the Company; and
- (d) notify the Company immediately if it becomes subject to any of the events listed in clause 9.2(c) to clause 9.2(i); and
- (e) give the Company such information relating to the Equipment as the Company may require from time to time.

8.4. If before title to the Equipment passes to the Customer the Customer becomes subject to any of the events listed in clause 9.2(c) to clause 9.2(i) or the Company reasonably believes that any such event is about to happen and notifies the Customer accordingly, then, without limiting any other right or remedy the Company may have:

- (a) the Customer's right to resell the Equipment or use it in the ordinary course of its business ceases immediately; and
- (b) the Company may at any time: (i) require the Customer to deliver up all Equipment in its possession which has not been resold, or irrevocably incorporated into another product; and (ii) if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Equipment is stored in order to recover it.

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

8.6. The Customer grants the Company, its agents and employees an irrevocable licence at any time to enter any premises where the Equipment are or may be stored in order to inspect them, or, where the Customer's right to possession has terminated, to recover them and/or to switch off or disconnect the Equipment.

9. TERM AND TERMINATION

9.1. Unless terminated earlier in accordance with clause 9.2, the provision of the Maintenance Services shall continue for the Initial Period then shall terminate automatically without notice unless no later than one month before the end of the Initial Period the parties agree in writing that the provision of the Maintenance Services shall be extended.

9.2. The Company may terminate the Contract immediately at any time by written notice if:

- (a) the Customer commits a breach of any term of the Contract; or
 - (b) the Customer fails to make any payment due to the Company under the Contract by the due date for payment;
- or

- (c) there is a change of control of Customer;
- (d) the Customer ceases trading or fails to pay its debts as they fall due;
- (e) an order is made or a petition is filed, a resolution is passed or meeting convened for the purpose of winding the Customer up;
- (f) the Customer becomes insolvent;
- (g) there is an application or petition for an administration order or notice is given to any person of intention to appoint an administrator or if an administrator, administrative receiver or receiver or similar official is appointed over all or any part of the Customer's assets;
- (h) if the Customer makes any composition with its creditors or
- (i) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in 9.2(d) to 9.2(h).

9.3. On termination, howsoever it arises, the Customer shall pay to the Company all costs and expenses, including legal and other fees incurred and all arrears of charges or other payments arising in respect of the Contract or otherwise.

9.4. Termination, howsoever or whenever it occurs, shall be subject to any rights and remedies the Company may have under the Contract or in law.

9.5. The following clauses shall survive termination of the Contract clauses 4, 8, 10-18 inclusive and any other relevant clause.

10. **WARRANTY**

10.1. The Company shall provide the Services in a professional and efficient manner and using reasonable care and skill.

10.2. The Company warrants that during the Warranty Period, the Equipment shall conform to its description and any applicable specification in all material respects.

10.3. Subject to clause 10.4, if:

- (a) the Customer gives notice in writing to the Company during the Warranty Period within 21 days of discovery that some or all of the Equipment does not comply with the warranty set out in clause 10.2;
- (b) the Company is given a reasonable opportunity of examining such Equipment; and
- (c) the Customer (if asked to do so by the Company) returns such Equipment to the Company's place of business or to another place specified by the Company in the United Kingdom at the Company's cost, the Company shall, at its option, repair or replace the defective Equipment (excluding consumable items), or refund the price of the defective Equipment in full.

10.4. The Company shall not be liable for a breach of the warranty contained in Clause 10.2 or under any obligation to comply with clauses 10.2 and 10.3 if:

- (a) the Customer makes any use of the Equipment in respect of which it has given written notice under Clause 10.3(a); or
- (b) the defect arises because the Customer failed to follow the Company's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Equipment or (if there are none) good trade practice
- (c) the defect arises as a result of the Company following any drawing, design or Equipment specification supplied by the Customer;
- (d) the defect is caused by improper use of the Equipment or use outside its normal application; or
- (e) the defect arises due to fair wear and tear, wilful damage, negligence, or abnormal working conditions; or
- (f) the Customer (or any of its employees, agents or sub-contractors) alters or repairs the Equipment without the written consent of Company.

10.5. Any Equipment repaired or replaced by the Company pursuant to this Clause 10 shall be under warranty for the unexpired portion of the warranty period given by the Company under Clauses 10.2.

10.6. If any defect resulting from faulty works cannot be expeditiously carried out on the Site, the Company may remove the Equipment (or any part of the Equipment) from the Site for the purpose of repair.

10.7. Except as set out in this clause 10 or as otherwise agreed by the Company in writing, the Company shall not be liable for any labour expense or transportation cost incurred by the Customer in repairing or replacing Equipment covered by the warranty in clause 10.2.

10.8. The Customer shall indemnify and hold the Company harmless against all charges, costs, expenses and liabilities incurred by the Company or their agents as a result of any work carried out pursuant to Clause 10.2 if in the Company's sole opinion, the defect arose as set out in clause 10.4.

10.9. During the Warranty Period the Customer shall:

- (a) ensure that the Equipment is installed and kept in suitable premises and under suitable conditions, as specified in the Operating Manuals, permit only trained and competent personnel to use it and follow any operating instructions set out in the Operating Manuals and as the Company may give from time to time; and
- (b) Unless otherwise agreed in writing by the Company, ensure that the Equipment is serviced: (i) Once every three months where the Equipment is operating 24 hours a day, 7 days a week; or (ii) Once every six months in all other cases.

10.10. Except as provided in this clause 10, the Company shall have no liability to the Customer in respect of the Equipment's failure to comply with the warranty set out in clause 10.2.

10.11. For the avoidance of doubt:

- (a) the warranty set out in clause 10.2 does not apply to glycol antifreeze additives, oil, water treatment chemicals, water and air filters and other consumable items.
- (b) Water and air filters and such other parts of the Equipment as are specified in the Operating Manuals as requiring replacement more frequently than the expiry of the Warranty Period must be replaced at the frequency specified in the Operating Manual and as such have a warranty period that is shorter than the Warranty Period.

11. **LIMITATION OF LIABILITY**

11.1. In this Clause 11 the following shall mean an "Event of Default":

- (a) any breach by the Company of its contractual obligations arising under the Contract (other than a breach arising from wilful default or recklessness);
- (b) any misrepresentation by the Company in connection with (whether or not contained in the Contract) the Contract (other than a fraudulent misrepresentation);
- (c) any tortious, act or omission, including negligence, arising in connection with the Company's performance under the Contract (other than any act or omission which is fraudulent or dishonest); and/or
- (d) any other act giving rise to a liability in respect of the Contract.

11.2. The Company shall not be liable for any Event of Default caused by:

- (a) any act or omission of the Customer which is relative to its obligations under the Contract; and/or
- (b) any failures of any third parties to provide the Equipment.

11.3. Subject to clause 11.8:

(a) the Customer acknowledges that the Company shall have no liability in respect of the suitability of the Equipment and/or Services which have been recommended and/or selected by the Company in accordance with the Customer's requirements and the Customer Information. If the Customer requires bespoke equipment the Company may provide such bespoke work under such terms to be agreed between the Parties;

(b) the Customer acknowledges that the Company shall have no liability or responsibility for Customer's incorrectly or badly maintained and contaminated cooling systems (or component parts of the same); any disease or outbreak of any airborne virus which is caused by or due to any act, omission or failure of the Customer (its employees, agents or sub-contractors) to install or operate and maintain its cooling system (and any pump connected to such system) at recommended operating temperatures and in accordance with the system's operating manual so as to reduce the risk of contamination within the Customer's cooling system;

(c) the Company shall not be liable to the Customer in respect of any Event of Default for: (i) loss of profits; or (ii) loss of business; or (iii) depletion of goodwill or similar losses; or (iv) loss of anticipated savings; or (v) loss of goods; or (vi) loss of contract; or (vii) loss of use; or (viii) loss or corruption of data or information; or (ix) any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses even if such loss was reasonably foreseeable or the Company had been advised of incurring the same;

(d) the Company's liability to the Customer in respect of each Event of Default shall be limited to the fee payable by the Customer for the Equipment or Service that is the subject of the Event of Default;

(e) the Company's entire aggregate liability to the Customer in respect of any and all Events of Default shall be limited to a sum equal to 1.5 times the aggregate fee payable by the Customer in accordance with the Contract or (where the Contract operates for more than 12 months) the fee shall be deemed to be the average sum payable by the Customer in accordance with the Contract in a 12 month period.

(f) If any advice provided to the Customer by the Company was provided free of charge by the Company then such advice is provided as is without any warranty of any kind from the Company and shall have no liability in relation thereto;

(g) the Company shall have no liability to the Customer in respect of any Event of Default unless notice in writing of such claim (specifying in reasonable detail with supporting evidence the event, matter or default which gives rise to the claim and an estimate of the amount claimed) has been given to the Company within 12 months of the Customer becoming aware of the circumstances and in any event within 12 months following delivery which give rise to such claim provided that without prejudice to their rights, the Customer and the Company agree that if they have reason to believe that they may have a cause of action hereunder, they shall liaise with the other in an open and co-operative way with a view to rectifying the reason for such cause of action whenever practicable.

11.4. If a number of Events of Default give rise substantially to the same loss or a number of Events of Default flow from the same defect then such Events of Default shall be regarded as giving rise to only one claim under these Terms.

11.5. The Customer hereby agrees to afford the Company not less than 60 days (following notification thereof by the Customer) in which to remedy any Event of Default hereunder.

11.6. Nothing in this clause shall confer any right or remedy upon the Customer to which it would not otherwise be legally entitled.

11.7. The Company shall not be liable for defects in Equipment caused by fair wear and tear, abnormal conditions of storage, of use or any act, neglect or default of the Customer or any third party.

11.8. Notwithstanding any other provision under these Terms or otherwise each party's liability to the other for:

- (a) death or personal injury resulting from its own or its employees', agents' or sub-contractors' negligence; and/or
- (b) any breach of its obligations implied by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982; and/or
- (c) in relation to any fraudulent misrepresentation or fraudulent acts of its employees shall not be limited or excluded.

11.9. Subject to clause 11.8, the terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 and all other warranties conditions and terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

11.10. This clause 11 shall survive termination of the Contract.

12. **INTELLECTUAL PROPERTY RIGHTS**

12.1. The Customer acknowledges that any and all Intellectual Property Rights in or arising out of or in connection with the Services and the Equipment shall be owned by the Company

12.2. At the Customer's expense the Customer shall, and shall use all reasonable endeavours to procure that any necessary third party shall, promptly execute and deliver such documents and perform such acts as the Company may require for the purpose of giving full effect to clause 12.1.

13. **CONFIDENTIALITY**

13.1. Both parties shall treat Confidential Information obtained from the other as confidential and shall not without the prior written agreement of the other at any time hereafter (save as required by law or any regulatory organisation

with authority over it) disclose such information to any third party (other than those of its officers, employees advisers and agents whose responsibilities require them to know the same) or use it for any purposes other than for the performance of its obligations pursuant to the Contract (unless such information is in the public domain or is already known to the non-disclosing party otherwise than as a result of a breach of any duty of confidentiality owed in respect of such information).

13.2. No party shall make, or permit any person to make, any public announcement, communication or circular (announcement) concerning the existence, subject matter or terms of this agreement, the wider transactions contemplated by it, or the relationship between the parties, without the prior written consent of the other parties.

14. **SOLICITATION OF STAFF**

14.1. Neither party shall, without the prior written consent of the other party, at any time from the date the Contract is formed to the expiry of twelve months after termination or expiry of the Contract solicit or entice away from the other party or employ or attempt to employ any person who is, or has been, engaged as an employee, consultant or sub-contractor of the other party.

14.2. Any consent given by a party (the "**consenting party**") in accordance with clause 14.1 shall be subject to the party (the "**recruiting party**") wishing to solicit or entice away from the consenting party or employ or attempt to employ any person who is, or has been, engaged as an employee, consultant or sub-contractor of the consenting party paying to the consenting party a sum equivalent to 30% of the then current annual remuneration of the consenting party's employee, consultant or sub-contractor or, if higher, 30% of the annual remuneration to be paid by the recruiting party to such employee, consultant or sub-contractor.

15. **ASSIGNMENT**

15.1. The Customer may not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of the Company.

15.2. The Company may at any time assign, transfer, mortgage, charge or deal in any other manner with any or all of its rights and obligations under the Contract.

16. **FORCE MAJEURE**

16.1. Neither party shall be liable for delay in performing or failure to perform obligations under this Contract if the delay or failure results from "force majeure". For the purposes of the Contract "**force majeure**" shall mean any Act of God war riot act of terrorism outbreak of hostilities strike or other industrial action of any kind malicious damage default of suppliers or sub-contractors accident failure or breakdown of plant or machinery fire flood explosion any act of local or national government or authority and any cause or circumstance whatsoever outside the reasonable control of the parties.

16.2. In the event of any delay or failure under the Contract resulting from "force majeure" the affected party may rely on the provisions of this clause for exemption from liability for non-performance part performance defective performance or delay and in the event that any such delay or failure continues for a period in excess of 120 consecutive days either party shall have the right to terminate the Contract immediately by giving written notice to the other party.

17. **GENERAL**

17.1. Any notice given pursuant to this Contract shall be in writing and may be sent by first class pre-paid post (or other next working day delivery service) or email to the party to whom it is addressed at his or its address as herein specified or subsequently notified and if sent by first class pre-paid post shall be deemed to have been received two working days after the date of posting and if sent by email shall be deemed to have been received at the time transmission was duly completed, or if this time falls outside business hours in the place of receipt, when business hours resume. This clause 17.1 does not apply to the service of any proceedings or other documents in any legal action.

17.2. It is acknowledged and agreed that the Contract (including the documents and instruments referred to herein) (the "**Documents**") shall supersede all prior representations arrangements understandings and agreements between the parties relating to the subject matter hereof and shall constitute the entire complete and exclusive agreement and understanding between the parties hereto;

17.3. The parties irrevocably and unconditionally waive any right they may have to claim damages for any misrepresentation arrangement understanding or agreement not contained in the Documents or for any breach of any representation not contained in the Documents (unless such misrepresentation or representation was made fraudulently);

17.4. It is further acknowledged and agreed that no representations arrangements understandings or agreements (whether written or oral) made by or on behalf of any of the other parties have been relied upon other than those expressly set out or referred to in the Documents.

17.5. Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract will not be construed as a waiver of any of its rights under the Contract.

17.6. No purported variation, change or modification of these Terms shall be valid unless confirmed in writing in a document signed by authorised representatives of both parties on or after the date of this Contract which expressly states that it amends this Contract.

17.7. Should any clause or provision of these Terms be held to be invalid or unenforceable such finding shall not affect the validity of the remaining clauses and provisions of these Terms.

17.8. These Terms are drafted in the English language. If the Contract is translated into any other language, the English language version shall prevail. Any notice given under or in connection with the Contract shall be in the English language. All other documents provided under or in connection with the Contract shall be in the English language, or accompanied by a certified English translation. If such document is translated into any other language, the English language version shall prevail unless the document is a constitutional, statutory or other official document.

17.9. Nothing in these Terms is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

17.10. Each party confirms it is acting on its own behalf and not for the benefit of any other person.

17.11. A third party shall have no right to enforce these Terms under the Contracts (Rights of Third Parties) Act 1999.
 17.12. The international rules for the interpretation of trade terms prepared by the International Chamber of Commerce (Incoterms) shall apply but where they conflict with these Terms, these Terms shall prevail.
 17.13. This Contract shall be governed by and construed in accordance with the laws of England and Wales and each party hereby irrevocably submits to the exclusive jurisdiction of the Courts of England and Wales.

18. **INTERPRETATION**

18.1. In these Terms the following words have the following meanings:

“Company”	the supplier of Equipment and/or Services as named on the Proposal;
“Confidential Information”	all confidential information (howsoever recorded or preserved) disclosed by a party or its employees, officers, representatives or advisers (together its Representatives) to the other party and that party's Representatives in connection with the Contract, concerning: (a) the existence and terms of the Contract; (b) any information that would be regarded as confidential by a reasonable business person relating to: (i) the business, affairs, customers, clients, suppliers, plans, intentions, or market opportunities of the disclosing party (or of any member of the group of companies to which the disclosing party belongs); and (ii) the operations, processes, product information, know-how, designs, trade secrets or software of the disclosing party (or of any member of the group of companies to which the disclosing party belongs); (c) any information developed by the parties in the course of carrying out the Contract;
“Contract”	any Contract between the Company and the Customer for the sale and purchase of the Equipment and/or the Services, incorporating these Terms and formed in accordance with clause 1.5;
“Contract Rate”	the Customer's standard charges in force from time to time;
“Customer”	the person(s), firm or company who accepts a Proposal for the supply of Equipment and/or Services or whose order is accepted by the Company;
“Customer Information”	the information that the Company requires the Customer to provide to the Company in relation to the Equipment and/or the Services and information described in clause 2.11;
“Equipment”	collectively or individually the equipment agreed in the Contract to be supplied to the Customer by the Company (including any part or parts of them) as more particularly described in the Proposal;
“Excluded Causes”	means: (i) a defect in the manufacturer's design of the Maintained Equipment; (ii) faulty materials or workmanship in the manufacture of the Maintained Equipment; (iii) use of the Maintained Equipment with equipment or materials not supplied or approved in writing by the Company; (iv) any maintenance, alteration, modification or adjustment performed by persons other than the Company or its employees or agents; (v) the Customer or a third party moving the Maintained Equipment; (vi) the use of the Maintained Equipment in breach of the Operating Manual or any other reasonable instructions of the Company; (vii) a failure, interruption or surge in the electrical power or its related infrastructure connected to the Maintained Equipment; (viii) a failure or malfunction in the air conditioning or other environmental controls required for the normal operation of the Maintained Equipment, or an error or omission in the correct use of that air conditioning or other environmental controls by the Customer; or (ix) the neglect or misuse of the Maintained Equipment;
“Excluded Maintenance”	any maintenance services required to restore any malfunctioning or failed Maintained Equipment to good working order where the malfunction or failure results from or is caused by any of the Excluded Causes;
“Initial Period”	a period of 12 months commencing on the date that the Company confirms that the Equipment is commissioned and ready for operational use by the Customer;
“Installation Services”	the installation and commissioning of the Equipment;
“Intellectual Property Rights”	all vested, contingent and future intellectual property rights including copyright, trade marks, trade names, patents, service marks, design rights (whether registered or unregistered) know-how, trade secrets, inventions, get up, database rights and any applications for the protection or registration of these rights and all renewal and extensions thereof existing in any part of the world whether now known or in the future created to which the Company may be entitled and other intellectual property rights created, developed, subsisting or used in or in connection with the Company;
“Maintained Equipment”	the Equipment to be maintained under the Contract as specified in the Proposal;
“Maintenance Term”	the Initial Period together with any extension agreed in writing by the parties in accordance with clause 9.1;
“Maintenance Services”	the maintenance services described in the Proposal;

“Operating Manuals”	all operating manuals, specifications, risk assessment method statements, manufacturer documentation and other manuals and documentation developed and provided by the Company relating to the Equipment;
“Price”	the price for Equipment and/or the Services as notified to the Customer by the Company in the Proposal;
“Proposal”	the proposal attached to these Terms containing details of the Equipment and/or the Services, delivery and Price;
“Service Level Agreement”	the Company’s standard service level agreement for performance of the Maintenance Services (a copy of which is available upon request from the Company or via the Company’s website);
“Service Levels”	the levels to which the Company must perform the Maintenance Services;
“Services”	the Installation Services, the Maintenance Services and any other services to be provided by the Company to the Customer;
“Site”	the site for installation of the Equipment and provision of the Maintenance Services as set out in the Proposal;
“Warranty Period”	the period from the date of delivery of the Equipment and ending 12 months after the date of delivery of the Equipment, or such other period as may be specified in the Proposal;

18.2. In these Terms, the following rules apply: (a) Words in the singular include the plural and in the plural include the singular; (b) A reference to a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality); (c) A reference to a statute or statutory provision is a reference to it as it is in force for the time being (d) taking account of any amendment, extension, or re-enactment & includes any subordinate legislation for the time being in force made under it; (e) Unless the context otherwise requires, the words **including, include** and **in particular** and words of similar effect shall not be deemed to limit the general effect of the words which precede them (f) The headings in this Contract are for ease of reference only and shall not affect its construction or interpretation (g) A reference to **writing** or **written** includes faxes and email (h) The Contract shall be binding on, and enure to the benefit of, the parties to the Contract and their respective personal representatives, successors and permitted assigns, and references to any party shall include that party's personal representatives, successors and permitted assigns.

18.3. In the case of any inconsistency between the Proposal and these Terms, these Terms will prevail.