

Cold Water Storage Ltd

CONDITIONS OF SALE

1. INTERPRETATION

- (i) In these conditions:
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| COMPANY | means Cold Water Storage whose Registered office is at Tarn House, 77 High Street, Yeadon, LS19 7HZ; |
| CONDITIONS | means the standard terms and conditions of sale set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Customer and the Company; |
| CONTRACT | means the contract in respect of the Works; |
| CUSTOMER | means the person, firm or company entering into the Contract in respect of the Works with the Company; |
| GOODS | means the goods (including any instalment of the Goods or any parts for them), which the Company is to supply in accordance with these Conditions; |
| PURPOSE | means any purpose, which the Customer makes known to the Company, expressly or by implication, for which the Goods are being bought; |
| SERVICE | means the installation refurbishment and commissioning of the Goods; |
| WORKS | means the supply of the Goods or the provision of the Service or either of them; |
| WRITING | includes telex, cable, facsimile transmission, electronic mail and comparable means of communication; |

- (ii) Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.
- (iii) The headings in these Conditions are for convenience only and shall not affect their interpretation.

2. BASIS OF THE SALE

- (i) The Company shall sell and the Customer shall purchase the Goods and the Service in accordance with any written quotation of the Company which is accepted by the Customer, or any written order of the Customer which is accepted by the Company, subject in either case to these Conditions, which shall govern the Contract to the exclusion of any other terms and conditions subject to which any such quotation is accepted or purported to be accepted, or any such order is made or purported to be made by the Customer.
- (ii) No modification or waiver of these Conditions of Sale shall be valid unless made in Writing expressly for the purpose and signed by the Customer and an authorised officer of the Company.

3. ORDERS AND SPECIFICATIONS

- (i) No order submitted by the Customer shall be accepted or deemed to be accepted by the Company unless and until confirmed in Writing by the Company's authorised representative.
- (ii) The Customer shall be responsible to the Company for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Customer and for giving the Company any necessary information relating to the Works within a sufficient time to enable the Company to perform the Contract in accordance with its terms.
- (iii) The Company reserves the right to make any changes to the Contract which are required to conform with any changes to applicable safety or other statutory or EU requirements or, where the Goods are to be supplied to the Company's specification, which do not materially affect their quality or performance.
- (iv) 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 on terms that the Customers shall indemnify 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.

4. PRICE

- (i) The price shall be the Company's quoted price, all prices quoted are valid for 30 days or as expressly provided in the quotation, after which time it may be altered by the Company without giving notice to the Customer.
- (ii) All prices are given by the Company on an ex works basis, and where the Company agrees to deliver the Goods the Customer shall be liable to pay the Company's charges for transport, packaging and insurance.
- (iii) The price is exclusive of any applicable value added tax, which the Customer shall be additionally liable to pay to the Company.

5. DRAWINGS AND OTHER DESCRIPTIVE MATTER

All descriptive specifications, drawings, illustrations and particulars of weights and dimensions and other information submitted by the Company to the Customer are an indication only, and are intended

merely to present a general idea of the Goods and the Works and none of these shall form part of the Contract. After acceptance of the Company's quotation the Company shall supply to the Customer two copies of the General Arrangement Drawing and two copies of the Operating and Maintenance Manual. The specification of the Goods shall be that set out on the general arrangement drawing and in the operating and maintenance manual.

6. TERMS OF PAYMENT

- (i) The Company shall be entitled to invoice the Customer for the price on or at any time after the Company has notified the Customer that the Goods are ready for delivery.
- (ii) The Customer shall pay the price in accordance with the payment terms set out in the Company's quotation and the Company shall be entitled to recover the price, notwithstanding that delivery may not have taken place and the property in the Goods has not passed to the Customer. The time of payment of the price shall be of the essence of the Contract. Receipts for payment will be issued only upon request.
- (iii) If the Customer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to:
- suspend all or any further deliveries to the Customer made under that or any other contract with the Customer and in such event the Customer shall not be released from its obligations to the Company under that or any other contract or cancel the Contract or any other contract with the Customer and to claim damages from the Customer for breach of contract;
 - appropriate any payment made by the Customer to such element of the Contract or any other contract between the Customer and the Company as the Company may think fit (notwithstanding any purported appropriation by the Customer);
 - charge the Customer interest (both before and after any judgement) on the amount unpaid, at the rate of 2 per cent per annum above National Westminster Bank Plc's base rate from time to time accruing daily, until payment in full is made.
- (iv) The company may without notice set off any sums from time to time owed to the Customer in or towards the satisfaction of all and any liabilities of the Customer to the Company whether or not under this Contract.

7. DELIVERY

- (i) Delivery of the Goods shall be made by the Customer collecting the Goods at the Company's premises at any time after the Company has notified the Customer that the Goods are ready for collection or, if some other place for delivery is agreed by the Company, by the Company delivering the Goods to that place.
- (ii) Any dates quoted for delivery of the Goods or performance of the Service are an indication only and the Company shall not be liable for any delay in delivery of the Goods or performance of the Service howsoever caused. Time for delivery or performance of the Service shall not be of the essence unless previously agreed by the Company in Writing. The Goods may be delivered by the Company in advance of the quoted delivery date upon giving reasonable notice to the Customer.
- (iii) If the Company fails to deliver the Goods or to perform the Service for any reason other than any cause beyond the Company's fault, and the Company is accordingly liable to the Customer, the Company's liability is limited to the cost to the Customer or the Company's quoted price whichever is the lesser of similar Goods or Service to replace those not delivered or performed.
- (iv) If the Customer fails to take delivery of the Goods or fails to give the Company adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Customer's reasonable control) then, without prejudice to any other right or remedy available to the Company, the Company may store the Goods until actual delivery and charge the Customer for the reasonable cost of storage and protection, including insurance.

8. SERVICE

The customer shall provide suitable access to the site, proper foundations ready to receive the Goods, as and when delivered, labour for off-loading and storage and transport from storage to foundations, together with all necessary facilities and adequate assistance. The Service will take place during the Company's normal working hours and all overtime will be the subject of an extra charge.

9. TESTS

- (i) Performance tests if required shall be carried out on site by, or in the presence of the Company's engineer at the Customer's cost. Such

tests shall be in accordance with a test procedure to be mutually agreed before the tests take place.

- (ii) Any other test whether at the Company's works or not shall be at the Customers cost.

10. RISK AND PROPERTY

- (i) Risk of damage to or loss of the Goods shall pass to the Customer on delivery.
- (ii) Title to and property in the Goods shall not (save only as hereinafter provided) pass to the Customer and the Customer shall hold the Goods supplied as bailee for the Company until the Customer has paid in full to the Company the price and all other sums howsoever due or owing to the Company.
- (iii) Until such time as the property in the Goods passes to the Customer, the Customer shall not resell, charge, mortgage or create any encumbrance whatsoever over the Goods save only with the prior written consent of an officer of the Company and on terms that all moneys owing by the Customer to the Company shall, without prejudice to any other right or remedy of the Company forthwith become due and payable. Until such time as the property in the Goods passes to the Customer, the Customer shall be entitled to resell or use the Goods in the ordinary course of its business, but shall have a fiduciary duty to the Company to account for the proceeds of sale.
- (iv) The Customer while bailee of the Goods for the Company as aforesaid shall keep the Goods separate and apart from all other goods (save only for other goods supplied by the Company), shall keep them at all times clearly labelled as the Company's property, and shall not howsoever attach or affix the Goods nor cause suffer or permit the Goods to be attached or affixed to any land or buildings or to any other plant, machinery or equipment, save only:
 - a. if and to the minimum extent it is necessary so to do to enable the Customer to use the Goods for their ordinary purpose, and
 - b. in such a manner as enables them readily and easily to be detached and removed therefrom, and
 - c. on terms that notwithstanding such attachment or affixation the Goods shall continue to be held by the Customer as bailee as aforesaid and shall not form or become part of the land or buildings or (as the case may be) the other plant, machinery or equipment to which they are attached or affixed.
- (v) Until such time as the property in the Goods passes to the Customer (and provided the Goods are still in existence and have not been resold), the Company shall be entitled at anytime to require the Customer to deliver up the Goods to the Company and in default of immediate compliance with such request the Company, its servants or agents shall be entitled to enter upon the premises of the Customer or any other land or buildings where the Goods are situated or reasonably suspected by the Company to be situated and to recover them.

11. WARRANTIES AND LIABILITIES

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

- (i) Subject to the Conditions set out below, the Company warrants that the Goods will:
 - a. be free from defects in material and workmanship for a period of 12 months from delivery;
 - b. comply with their specification at the time of delivery;
 - c. be fit for the Purpose for a period of 2 years from delivery.
- (ii) The Company shall perform the Service with reasonable care and skill.
- (iii) The above warranties are given by the Company subject to the following conditions:
 - a. the Company shall be under no liability in respect of any defect or failure arising from any drawing, design or specification supplied by the Customer;
 - b. the Company shall be under no liability in respect of any defect or failure arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Company's instructions (whether oral or in writing), misuse or alteration or repair of the goods without the Company's approval;
 - c. if the agreed price has not been paid by the due date for payment, the Company shall be under no liability under the above warranties, or any other warranty, condition or guarantee;
 - d. the above warranties do not extend to parts, materials or equipment not manufactured by the Company, in respect of which the Customer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Company.
- (iv) Any claim by the Customer which is based on any defect in the quality or condition of the Goods, their failure to correspond with the specification or any failure to exercise reasonable care shall be notified to the Company within 3 working days from the date of delivery or installation. Where the defect or failure was not apparent on reasonable inspection or in the event that the Goods fail to be fit for purpose then the Customer shall inform the Company within 3 working

days of being aware of the problem. If the Customer does not notify the Company in accordance with this condition the Customer shall not be entitled to reject the Goods, and the Company shall have no liability for the defect or failure, and the Customer shall be bound to pay the price.

- (v) Where any valid claim which is based on any defect in the quality or condition of the Goods, their failure to correspond with specification or be fit for the Purpose, or failure to exercise reasonable care and skill is notified to the Company in accordance with these Conditions, the Company shall be entitled to replace the Goods (or the part in question) free of charge or re-perform the Service or, at the Company's sole discretion, refund to the Customer the price (or a proportionate part of the price) but the Company shall have no further liability to the Customer.
- (vi) Except in respect of death or personal injury caused by the Company's negligence, the Company shall not be liable to the Customer by reason of any representation, or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for any consequential loss or damage (whether for loss of profit or otherwise), costs, expenses or other claims for compensation whatsoever which arise out of or in connection with the supply or installation of the Goods or their use or resale by the Customer and the entire liability of the Company under or in connection with the Contract shall not exceed the price except as expressly provided in these Conditions.
- (vii) The Company shall not be liable to the Customer or be deemed to be breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Company's obligations if the delay or failure was due to any cause beyond the Company's reasonable control.

12. INSOLVENCY OF THE CUSTOMER

- (i) This clause applies if:
 - a. the Customer makes any voluntary arrangement with its creditors or becomes subject to an administration order (or being an individual or firm) becomes bankrupt or (being a company) goes into liquidation, otherwise than for the purpose of amalgamation or reconstruction; or
 - b. an encumbrance takes possession, or a receiver is appointed, of the Customer's undertaking or any of its property or assets, or
 - c. the Customer ceases, or threatens to cease, to carry on business; or
 - d. the Company reasonably apprehends that any of the events mentioned above is about to occur in relation to the Customer and notifies the Customer accordingly.
- (ii) If this clause applies then, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Customer, and if the goods have been delivered, but the price has not been paid, the prices shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary, or the removal of the Goods supplied by the Company and returned to the Company's works by the Customer or the receiver.

13. GENERAL

- (i) The Company is a member of a group of companies and accordingly the Company may perform any of its obligations or exercise any of its rights hereunder by itself or through any other member of its group, provided that any act or omission of any such other member shall be deemed to be the act or omission of the Company.
- (ii) The Customer shall not be entitled to assign the whole or any part of its rights and/or obligations under the Contract without the prior written consent of the Company.
- (iii) Any notice require or permitted to be given by either party to the other under these Conditions shall be in Writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant on this provision to the party giving the notice. A notice shall be deemed to have been received, in the case of facsimile or electronic mail, upon transmission and, in the case of a letter, forty-eight hours after posting. In proving service by letter, it shall be sufficient to show that the envelope containing the notice was properly addressed and stamped and duly posted. In proving service by facsimile transmission or electronic mail, it shall be necessary only to produce a report confirming uninterrupted transmission to the recipient.
- (iv) No waiver by the Company of any breach of the Contract by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision.
- (v) The Contract shall be governed by the laws of England and the Customer agrees to submit to the non-exclusive jurisdiction of the English courts.