

Terms & Conditions for Sales Contracts

Interpretation

The definitions and rules of interpretation in this condition apply in these conditions.

Buyer: the person, firm or company who purchases the Goods from the Company.

Company: Kiln Control Services Limited (company number 4694649).

Company's Equipment: any equipment, including tools, systems, cabling or facilities, provided by the Company or its subcontractors and used directly or indirectly in the execution and completion of the Installation Works.

Contract: any contract between the Company and the Buyer for the sale and purchase of the Goods and for the Installation Works, incorporating these conditions, the Specification and, if applicable, the Quotation.

Delivery Point: the place where delivery of the Goods is to take place under condition 4.

Goods: any goods agreed in the Contract to be supplied to the Buyer by the Company (including any part or parts of them).

Installation Works: any work required to be done at the Buyer's premises to install the Goods, as set out in the Specification together with any other works which the Company agrees (in writing) to provide to the Buyer.

Quotation: the Company's quotation or other documents specifying the Goods and Installation Works.

Specification: the specification for the Goods and Installation Works.

Headings in these conditions shall not affect their interpretation.

A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

A reference to writing or written includes faxes but not e-mail.

Any obligation in the Contract on a person not to do something includes, without limitation, an obligation not to agree, allow, permit or acquiesce in that thing being done.

References to conditions and schedules are to the conditions and schedules of the Contract.

Application of terms

These Conditions shall:

apply to and be incorporated into the Contract; and prevail over any inconsistent terms or conditions contained, or referred to, in the Buyer's purchase order, confirmation of order, acceptance of a quotation, specification, subcontract or other document supplied by the Buyer.

Subject to any variation under condition 2.4 the Contract shall be on these conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Buyer purports to apply under any purchase order, confirmation of order, specification or other document).

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

These conditions apply to all the Company's sales and any variation to these conditions and any representations about the Goods shall have no effect unless expressly agreed in writing and signed on behalf of the Company. The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in the Contract. Nothing in this condition shall exclude or limit the Company's liability for fraudulent misrepresentation.

Each order or acceptance of a quotation for Goods and Installation Works by the Buyer from the Company shall be deemed to be an offer by the Buyer to buy Goods and Installation Works subject to these conditions.

No order placed by the Buyer 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 delivers the Goods

to the Buyer and commences the Installation Works.

The Buyer shall ensure that the terms of its order and any applicable specification are complete and accurate.

Quotations are given by the Supplier on the basis that no Contract shall come into existence except in accordance with condition 2.1. Any quotation is valid for the period specified in the Quotation, provided that the Supplier has not previously withdrawn it.

Description

The quantity and description of the Goods and Installation Works shall be as set out in the Company's quotation or acknowledgement of order.

All samples, drawings, descriptive matter, specifications and advertising issued by the Company and any descriptions or illustrations contained in the Company's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract and this is not a sale by sample.

Delivery

Unless otherwise agreed in writing by the Company, delivery of the Goods shall take place at the Company's place of business.

Unless otherwise agreed in writing by the Company, the Buyer shall take delivery of the Goods within 5 days of the Company giving it notice that the Goods are ready for delivery.

Any dates specified by the Company for delivery of the Goods are intended to be an estimate and time for delivery shall not be made of the essence by notice. If no dates are so specified, delivery shall be within a reasonable time.

Subject to the other provisions of these conditions the Company shall not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods (even if caused by the Company's negligence), nor shall any delay entitle the Buyer to terminate or rescind the Contract unless such delay exceeds 180 days.

If for any reason the Buyer fails to accept delivery of any of the Goods when they are ready for delivery, or the Company is unable to deliver the Goods on time because the Buyer has not provided appropriate instructions, documents, licences or authorisations: risk in the Goods shall pass to the Buyer (including for loss or damage caused by the Company's negligence); the Goods shall be deemed to have been delivered; and the Company may store the Goods until delivery, whereupon the Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).

The Buyer shall provide at the Delivery Point and at its expense adequate and appropriate equipment and manual labour for loading the Goods.

Risk / Title

The Goods are at the risk of the Buyer from the time of delivery.

Ownership of the Goods shall not pass to the Buyer until the Company has received in full (in cash or cleared funds) all sums due to it in respect of: the Goods; and all other sums which are or which become due to the Company from the Buyer on any account.

Until ownership of the Goods has passed to the Buyer, the Buyer shall: hold the Goods on a fiduciary basis as the Company's bailee; store the Goods (at no cost to the Company) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as the Company's property; not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and maintain the Goods 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 Buyer shall produce the policy of insurance to the Company.

The Buyer's right to possession of the Goods shall terminate immediately if: the Buyer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Buyer or notice of intention to appoint an administrator is given by the Buyer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up of the Buyer or for the granting of an administration order in respect of the Buyer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer; or the Buyer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe or perform any of his/its obligations under the Contract or any other contract between the Company and the Buyer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Buyer ceases to trade; or the Buyer encumbers or in any way charges any of the Goods.

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

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

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

On termination of the Contract, howsoever caused, the Company's (but not the Buyer's) rights contained in this condition 5 shall remain in effect.

Company's obligations

The Company shall use reasonable endeavours to execute and complete the Installation Works for the Buyer, in accordance in all material respects with the Quotation and the Specification.

The Company shall use reasonable endeavours to meet any performance dates specified in but any such dates shall be estimates only and time shall not be of the essence for completion of the Installation Works.

Buyer's obligations

The Buyer shall:

co-operate with the Company in all matters relating to the execution and completion of the Works; provide the Company, its agents, subcontractors, consultants and employees, in a timely manner and at no charge, with access to the Buyer's premises, and other facilities as required by the Company; provide to the Company, in a timely manner, any information as the Company may require and ensure that it is accurate in all material respects; be responsible (at its own cost) for preparing the Buyer's premises and ensuring it is to the standard required by the Company to execute and complete the Installation Works; be responsible (at its own cost) ensuring that the Buyer's premises is adequate prior to the Company starting the Installation Works.

If the Company's performance of its obligations under the Contract is prevented, hindered or delayed by any act or omission of the Buyer, its agents, subcontractors, consultants or employees, the Company shall not be liable for any costs, charges or losses sustained or incurred by the Buyer arising directly or indirectly from such prevention, hindrance or delay.

The Buyer shall be liable to pay to the Company, on demand, all reasonable costs, charges or losses sustained or incurred by the Company (including, without limitation, any direct, indirect or

consequential losses, loss of profit, loss or damage to property and those arising from injury to or death of any person) arising directly or indirectly from the Buyer's fraud, negligence, failure to perform or delay in the performance of any of its obligations under the Contract, subject to the Company confirming such costs, charges and losses to the Contractor in writing.

Price

Unless otherwise agreed by the Company in writing, the price for the Goods and Installation Works shall be the price set out in the Contract.

Payment

The Company shall invoice the Buyer in the manner set out in the Contract. Unless the Company agrees otherwise in writing, the Buyer shall pay each invoice submitted to it by the Company, in full and in cleared funds, within 30 days of receipt to a bank account nominated in writing by the Company.

Time for payment shall be of the essence.

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

All payments payable to the Company under the Contract shall become due immediately on its termination despite any other provision.

The Buyer shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Buyer.

Without prejudice to any other right or remedy that it may have, if the Buyer fails to pay the Company on the due date, the Company may: charge interest on such sum from the due date for payment at the annual rate of 4% above the base lending rate from time to time of National Westminster Bank plc, accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment and the Buyer shall pay the interest immediately on demand. The Company may claim interest under the Late Payment of Commercial Debts (Interest) Act 1998; and suspend any Installation Works until payment has been made in full.

Quality

Where the Company is not the manufacturer of the Goods, the Company shall endeavour to transfer to the Buyer the benefit of any warranty or guarantee given to the Company.

The Company warrants that (subject to the other provisions of these conditions) on delivery and for a period of 12 months from the date of delivery, the Goods shall: be of satisfactory quality within the meaning of the Sale of Goods Act 1979; be reasonably fit for any particular purpose for which the Goods are being bought if the Buyer had made known that purpose to the Company in writing and the Company has confirmed in writing that it is reasonable for the Buyer to rely on the skill and judgement of the Company.

The Company shall not be liable for a breach of any of the warranties in condition 10.2 unless: the Buyer gives written notice of the defect to the Company within 5 days of the time when the Buyer discovers or ought to have discovered the defect; and the Company is given a reasonable opportunity after receiving the notice of examining such Goods.

The Company shall not be liable for a breach of any of the warranties in condition 10.2 if: the Buyer makes any further use of such Goods after giving such notice; or the defect arises because the Buyer failed to follow the Company's oral or written instructions as to the storage, use or maintenance of the Goods or (if there are none) good trade practice; or the Buyer alters or repairs such Goods without the written consent of the Company.

Subject to condition 10.3 and condition 10.4, if any of the Goods do not conform with any of the warranties in condition 10.2 the Company shall at its option repair or replace such Goods (or the defective part) or refund the price of such Goods at the pro rata Contract rate provided

that, if the Company so requests, the Buyer shall, at the Company's expense, return the Goods or the part of such Goods which is defective to the Company.

If the Company complies with condition 10.5 it shall have no further liability for a breach of any of the warranties in condition 10.2 in respect of such Goods.

Limitation of liability

THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CONDITION

Subject to condition 4 and condition 10, the following provisions set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and subcontractors)

to the Buyer in respect of: any breach of these conditions; any use made by the Buyer of any of the Goods; and any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.

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.

Nothing in these conditions excludes or limits the liability of the Company: for death or personal injury caused by the Company's negligence; or under section 2(3), Consumer Protection Act 1987; or for any matter which it would be illegal for the Company to exclude or attempt to exclude its liability; or for fraud or fraudulent misrepresentation.

Subject to condition 11.2 and condition 11.3: 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 the Contract price; and the Company shall not be liable for (a) loss of profits; or (b) loss of business; or (c) depletion of goodwill and/or similar losses; or (h) any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses in each case whether direct, indirect or consequential which arise out of or in connection with the Contract.

Confidentiality and the Company's property

The Buyer shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Buyer by the Company, its employees, agents, consultants or subcontractors and any other confidential information concerning the Company's business or its products which the Buyer may obtain.

The Buyer may disclose such information: to its employees, officers, representatives, advisers, agents or subcontractors who need to know such information for the purposes of carrying out the Buyer's obligations under the Contract; and as may be required by law, court order or any governmental or regulatory authority.

The Buyer shall ensure that its employees, officers, representatives, advisers, agents or subcontractors to whom it discloses such information comply with this condition 12.

The Buyer shall not use any such information for any purpose other than to perform its obligations under the Contract.

All materials, equipment and tools, drawings, specifications and data supplied by the Company to the Buyer (including the Company's Equipment) in connection with the Installation Works shall, at all times, be and remain the exclusive property of the Company, but shall be held by the Buyer in safe custody at its own risk and maintained and kept in good condition by the Buyer until returned to the Company, and shall not be disposed of or used other than in accordance with the Company's written instructions or authorisation.

Termination

Without prejudice to any other rights or remedies which the parties may have, either party may terminate the Contract without liability to the other immediately on giving notice to the other if:

the other party fails to pay any amount due under the Contract on the due date for payment and remains in default not less than seven days after being notified in writing to make such payment; or the other party commits a material breach of any of the terms of the Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach; or the other party repeatedly breaches any of the terms of the Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of the Contract; or **the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 (being a natural person) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;** or the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors; or

a petition is filed, a notice is given, a resolution is passed, or an order is made, for or on connection with the winding up of that other party; an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party; or a floating charge holder over the assets of that other party has become entitled to appoint or has appointed an administrative receiver; or a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party; **or a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;** or 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 condition 13.1.4 to condition 13.1.10 (inclusive); or the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business.

On termination of the Contract for any reason: the Buyer shall immediately pay to the Company all of the Company's outstanding unpaid invoices and interest and, in respect of Goods and Installation Works supplied but for which no invoice has been submitted, the Company may submit an invoice, which shall be payable immediately on receipt; the Buyer shall return all of the Company's Equipment. If the Buyer fails to do so, then the Company may enter the Buyer's premises and take possession of them. Until they have been returned or repossessed, the Buyer shall be solely responsible for their safe keeping; and the accrued rights and liabilities of the parties as at termination and the continuation of any provision expressly stated to survive or implicitly surviving termination, shall not be affected.

On termination of the Contract (however arising) the following conditions shall survive and continue in full force and effect: (a) condition 11; (b) condition 12; (c) condition 13; (d) condition 18.

Assignment

The Company may assign the Contract or any part of it to any person, firm or company.

The Buyer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Company.

Force majeure

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 Buyer (without liability to the Buyer) 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 either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, provided that, if the event in question continues for a continuous period in excess of 180 days, the Buyer shall be entitled to give notice in writing to the Company to terminate the Contract.

General

Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.

If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.

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

Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Buyer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.

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

This Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law, and the parties submit to the exclusive jurisdiction of the English courts.

Notices

Any notice required to be given under the Contract shall be in writing and shall be delivered personally, or sent by pre-paid first-class post, recorded delivery or by commercial courier to the other party and for the attention of the person specified in the Contract, or as otherwise specified by the relevant party by notice in writing to the other party.

Any notice shall be deemed to have been duly received if delivered personally, when left at the address and for the contact referred to in the Contract or, if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.

This condition 17 shall not apply to the service of any in any proceedings or other documents in any legal action.

Governing law and jurisdiction

The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, the law of England and Wales.

The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of, or in connection with, the Contract or its subject matter or formation (including non-contractual disputes or claims).