

PARTIES

- (1) **LOCHINVAR LIMITED** a company incorporated and registered in England and Wales with company number 3453820 whose registered office is at One New Change, London, EC4M 9AF (the **Seller**); and (each a “party”, and together the “parties”).

TERMS AND CONDITIONS

1. INTERPRETATION

- 1.1. The following terms shall have the meanings set out below in this agreement:

Term	Definition
‘Conditions’	the terms and conditions set out in this document, as amended from time to time in accordance with clause 12.2
‘Contract’	the contract between the Seller and the Buyer incorporating these Conditions;
‘Force Majeure Event’	an event or circumstance as defined in clause 11;
‘Order’	written instructions from the Buyer that it wishes to purchase the Products;
‘Product(s)’	shall include reference to a product or part or parts thereof, as set out in the Order;
‘Seller Website’	www.lochinvar.ltd.uk; and
‘Specification’	the specification for the Products as provided on the Sellers website.

A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.

- 1.2. Any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- 1.3. A reference to writing or written includes faxes but not e-mails.

2. BASIS OF CONTRACT

- 2.1. These Conditions apply to the Contract and shall operate to the exclusion of any terms and conditions the Buyer may seek to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.2. The Order constitutes an offer by the Buyer to purchase the Products in accordance with these Conditions. The Buyer is responsible for ensuring that the terms of the Order and any Specification which applies to the Products which are the contents of the Order are fit for the Buyer's purposes.
- 2.3. A quotation for the Products given by the Seller shall not constitute an offer. A quotation shall only be valid until withdrawn by the Seller, or if not withdrawn, for a period of 30 days from its date of issue.
- 2.4. The Order shall only be deemed to be accepted when a written acceptance of the Order is issued by the Seller, at which point the Contract shall come into existence.
- 2.5. Cancellation.
- 2.5.1. Non-Heat Pump Orders: The Buyer may, within 10 days of placing an Order, amend or cancel an Order by written notice to the Seller. If the Buyer amends or cancels an Order, its liability to the Seller shall be limited to payment to the Seller of all costs reasonably incurred by the Seller in fulfilling the Order up until the date of deemed receipt of the amendment or cancellation. Such fees may include the costs incurred by the Seller in the procurement or storage of a bespoke item, however, the Seller shall use reasonable endeavors to mitigate all such costs. The Buyer shall have no liability to the Seller where the amendment or cancellation results from the Seller's failure to comply with its obligations under this Contract.
- 2.5.2. Heat Pump Orders: Once accepted, an Order cannot be cancelled by the Buyer without the Seller's written approval, in which case the Buyer agrees to indemnify the Seller for all losses suffered by it as a result of an approved cancellation.
- 2.5.3. The Seller may cancel any Order in part or in full at any time without incurring any liability provided Seller has given the Buyer no less than seven (7) days written notice of such cancellation.

3. PRODUCT DESCRIPTION AND SPECIFICATION

- 3.1. The information, descriptions, illustrations and drawings contained on the Sellers website, quotations, price lists and advertising material or otherwise are approximate only and are intended to present a general idea of the Products described therein (including weight and dimensions) but none of these shall form part of the Contract and the Seller reserves the right to vary such information without notice. Exact dimensions can be provided on application.
- 3.2. The Seller reserves the right to amend the Specification for the Products if required by any applicable statutory or regulatory requirements.
- 3.3. Lochinvar Ltd warrants that the products supplied will be in material compliance with the Technical Product Submittal, copies of which are available for download at www.lochinvar.ltd.uk. All other warranties, whether express or implied, as to the quality or fitness for purpose of the products are hereby excluded to the fullest extent permitted by law.
- 3.4. Whilst Lochinvar Ltd uses its reasonable endeavours to ensure all equipment complies with all specification requirements provided to it, it shall have no liability for any direct or indirect loss (whether in tort, contract or otherwise), arising from the failure of any supplied products to comply with any given specification.

4. DELIVERY

- 4.1. Delivery shall be accompanied by a delivery note showing the date of the Order, the appropriate reference numbers for the Seller and the Buyer and the type of Product ordered.
- 4.2. The Seller shall deliver the Products to the address set out in the Order or such other location as the Seller may agree with the Buyer ('**Delivery Location**') at any time after the Seller notifies the Buyer that the Products are ready.
- 4.3. Delivery is completed upon unloading of the Products at the Delivery Location.
- 4.4. Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. While the Seller will endeavor to comply with such or any other agreed time(s) for delivery, the Seller shall not be liable for any failure to do so or for any delay in delivery, including any delay in delivery that is caused by a Force Majeure Event or the Buyer's failure to provide the Seller with adequate delivery instructions or any other instructions that are relevant to the supply of the Products. The Seller reserves the right to charge carriage, insurance, and storage in cases where the Buyer refuses to accept delivery of Products supplied by the Seller in response to a duly authorised Order received from the Buyer.

5. SELLER WARRANTY

- 5.1. The Seller warrants that the Products shall:
 - (a) be fit for any purpose made known by the Seller;
 - (b) conform in all material respects with their description and Specification as at the date of the Order; and
 - (c) be of satisfactory quality within the meaning of the Sale of Goods Act 1979.
- 5.2. Upon delivery, the Seller shall pass to the Buyer a good unencumbered title to the Products.
- 5.3. The Seller shall use reasonable endeavours to assign the benefit of any warranties given by the manufacturer of the Products to the Buyer.
- 5.4. If:
 - (a) the Buyer gives notice in writing to the Seller within 7 days after completion of delivery that some or all of the Products do not comply with the warranty set out in clause 5.1;
 - (b) the Seller is given a reasonable opportunity to examine such Products; and
 - (c) the Buyer (if asked to do so by the Seller) returns such Products to the Seller at the Buyer's cost,the Seller shall, at its option, repair or replace the defective Products, or refund the price of the defective Products in full.
- 5.5. The Seller shall not be liable for the failure of the Products to comply with the warranty set out in clause 5.1 in any of the following events:
 - (a) the Buyer makes any further use of such Products after giving notice in accordance with clause 5.3;
 - (b) the defect arises because the Buyer failed to follow the Seller's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Products or (if there are none) good trade practice regarding the same;
 - (c) the Buyer alters or repairs such Products without the written consent of the Seller;
 - (d) the Products differ from the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 5.6. Where required, All Products shall comply with latest British and European Standards and Codes of Practice, which shall include (but not be limited to):
 - (a) Compliance with the energy-related products directive (ErP) 2009/125/EC, or any other similar legislation as may be in force from time to time; and
 - (b) Affixing of the Conformité Européenne ("CE") mark and compliance with all applicable CE Mark legislation.

6. PRICE AND PAYMENT

- 6.1. The price of the Products shall be the price set out in the Order.
- 6.2. The Seller may, by giving notice to the Buyer at any time up to 7 days before delivery, increase the price of the Products to reflect any increase in the cost of the Products that is due to:
- (a) any request by the Buyer to change the delivery date(s), quantities or types of Products ordered; or
 - (b) any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate or accurate information or instructions.
- 6.3. Prices do not include:
- (a) VAT or other sales tax, which, where applicable, will be added to the Buyer's invoice and charged at the rate prevailing at the date of collection or delivery, subject to the receipt of a valid VAT invoice; and
 - (b) any costs of installation, which shall be charged separately.
- 6.4. Invoices for the Products will be issued immediately upon completion of delivery.
- 6.5. All invoices shall be due for payment on or before the last day of the month following date of invoice.
- 6.6. Any default on these payment terms will result in all other invoices due on or before the date of default becoming due for immediate settlement.
- 6.7. The Buyer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). The Seller may at any time, without limiting any other rights or remedies it may have, set-off any amount owing to it by the Buyer against any amount payable by the Seller to the Buyer.

7. TERMINATION

- 7.1. Without limiting its other rights or remedies, the Seller may terminate this Contract with immediate effect by giving written notice to the Buyer if:
- (a) the Buyer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of being notified in writing to do so;
 - (b) the Buyer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
 - (c) the Buyer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or
 - (d) the Buyer's financial position deteriorates to such an extent that in the Seller's opinion the Buyer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 7.2. Without limiting its other rights or remedies, the Seller may suspend provision of the Products under the Contract or any other contract between the Buyer and the Seller if the Buyer becomes subject to any of the events listed in clause 7.1(a) to clause 7.1(d), or the Seller reasonably believes that the Buyer is about to become subject to any of them.
- 7.3. Without limiting its other rights or remedies, the Seller may terminate the Contract with immediate effect by giving written notice to the Buyer if the Buyer fails to pay any amount due under the Contract on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment.
- 7.4. On termination of the Contract for any reason the Buyer shall immediately pay to the Seller all of the Seller's outstanding unpaid invoices and interest.
- 7.5. Termination of the Contract shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of this Contract that existed at or before the date of termination.

8. LIMITATION OF LIABILITY

- 8.1. Nothing in these Conditions shall limit or exclude the Seller's liability for:
- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
 - (b) fraud or fraudulent misrepresentation;
 - (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979;
 - (d) defective products under the Consumer Protection Act 1987; or
 - (e) any matter in respect of which it would be unlawful for the Seller to exclude or restrict liability.
- 8.2. Subject to clause 8.1:
- (a) the Seller shall under no circumstances whatsoever be liable to the Buyer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
 - (b) the Seller's total liability to the Buyer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed 100% of the price of the Products comprised in the relevant Order.

9. LIMITATION OF LIABILITY

9.1. Nothing in these Conditions shall limit or exclude the Seller's liability for:

- (f) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
- (g) fraud or fraudulent misrepresentation;
- (h) breach of the terms implied by section 12 of the Sale of Goods Act 1979;
- (i) defective products under the Consumer Protection Act 1987; or
- (j) any matter in respect of which it would be unlawful for the Seller to exclude or restrict liability.

9.2. Subject to clause 8.1:

- (c) the Seller shall under no circumstances whatsoever be liable to the Buyer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
- (d) the Seller's total liability to the Buyer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed 100% of the price of the Products comprised in the relevant Order.

10. OWNERSHIP

10.1. Risk in the Products shall pass to the Buyer upon completion of delivery.

10.2. Title to the Products shall not pass to the Buyer until the earlier of:

- (a) the Seller receives payment in full (in cash or cleared funds) for the Products; or
- (b) the Buyer resells the Products, in which case title to the Products shall pass to the Buyer at the time specified in clause 9.4.

10.3. Until title passes to the Buyer, the Buyer shall be responsible for insuring the Products against all risks for their full value, and shall readily identify the Products as the Sellers property.

10.4. Subject to clause 9.5, the Buyer may resell or use the Products in the ordinary course of its business (but not otherwise) before the Seller receives payment for the Products. However, if the Buyer resells the Products before that time:

- (a) it does so as principal and not as the Seller's agent; and
- (b) title to the Products shall pass from the Seller to the Buyer immediately before the time at which resale by the Customer occurs.

10.5. If before title to the Products passes to the Buyer the Buyer becomes subject to any of the events listed in clause 7.1, then without limiting any other right or remedy the Seller may have:

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

11. SELLER INSURANCE

The Seller shall effect and maintain third party insurance (including product liability) for the full replacement value of the Products covering the period until completion of delivery.

12. FORCE MAJEURE

Under no circumstances shall the Seller be liable for any failure to carry out its obligations under the Contract, if such failure arises wholly or partly as a result of an act of God, war, storm, flood, fire, strike or any other cause beyond the Seller's reasonable control (a '**Force Majeure Event**').

13. GENERAL

13.1. **Assignment and other dealings.**

- (a) The Seller may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- (b) The Buyer may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of the Seller.

- 13.2. **Entire agreement.**
- (a) This Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
 - (b) Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in this agreement.
- 13.3. **Variation.** No variation of this Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 13.4. **Waiver.** A waiver of any right or remedy is only effective if given in writing. A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not:
- (a) waive that or any other right or remedy; or
 - (b) prevent or restrict the further exercise of that or any other right or remedy.
- 13.5. **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
- 13.6. **Notices.**
- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service, commercial courier, or fax.
 - (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the party's registered office, if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the following day during which trading takes place, after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax, one day after transmission.
 - (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.
- 13.7. **Third party rights.** No one other than a party to this Contract and their permitted assignees shall have any right to enforce any of its terms.
- 13.8. **Governing law.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the law of England and Wales.
- 13.9. **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Contract or its subject matter or formation.