

Abacus Air Conditioning – Standard Terms and Conditions

The buyer's attention is in particular drawn to the provisions of [condition 10.4](#).

1. INTERPRETATION

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

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

Company: Abacus Air Conditioning

Contract: any contract between the Company and the Buyer for the sale and purchase of the Goods and/or Services, incorporating these conditions.

Delivery Point: the place where delivery of the Goods and/or performance of the Services 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).

Services: any services agreed in the Contract to be provided to the Buyer by the Company (including any constituent part of them).

1.2 A reference to a [particular] law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.

1.3 Words in the singular include the plural and in the plural include the singular.

1.4 A reference to one gender includes a reference to the other gender.

1.5 Condition headings do not affect the interpretation of these conditions.

2. APPLICATION OF TERMS

2.1 Subject to any variation under [condition 2.3](#) 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).

2.2 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.

2.3 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 by Peter Strong 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.

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

2.5 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.

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

2.7 Any quotation is given on the basis that no Contract shall come into existence until the Company dispatches an acknowledgement of order to the Buyer. Any quotation is valid for a period of 30 days only from its date, provided that the Company has not previously withdrawn it.

3. DESCRIPTION

3.1 The quantity, nature and description of the Goods and/or Services shall be as set out in the Company's quotation or acknowledgement of order.

4. DELIVERY

4.1 Unless otherwise agreed in writing by the Company, delivery of the Goods and/or Services shall take place at the Buyer's place of business.

4.2 Any dates specified by the Company for delivery of the Goods and/or Services are intended to be an estimate and time for delivery shall not be made of the essence by notice.

4.3 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 and/or Services (even if caused by the Company's negligence).

4.4 If for any reason the Buyer fails to accept delivery and/or performance of any of the Goods and/or Services when they are ready for delivery and/or performance, or the Company is unable to deliver the Goods or to provide the Services on time because the Buyer has not provided appropriate instructions, documents, licenses or authorizations then it shall be open to the Company to cancel delivery and/or performance, or to cancel the Contract in its entirety by way of written notice and within 14 days, without prejudice to the Company's other rights under this Contract.

4.5 Any costs and expenses incurred by the Company in the event that the Buyer refuses to accept delivery and/or performance, as per clause 4.4 above, shall be payable by the Buyer.

4.6 The Company may deliver the Goods by separate installments. Each separate installment shall be invoiced and paid for in accordance with the provisions of the Contract.

4.7 Each installment shall be a separate Contract and no cancellation or termination of any one Contract relating to an installment shall entitle the Buyer to repudiate or cancel any other Contract or installment.

5. NON-DELIVERY AND/OR NON-PERFORMANCE

5.1 The quantity of any consignment of Goods as recorded by the Company on dispatch from the Company's place of business and/or as specified on the documentation provided to the Buyer at the time of delivery shall be conclusive evidence of the quantity received by the Buyer on delivery unless the Buyer can provide conclusive evidence proving the contrary.

5.2 The Company shall not be liable for any non-delivery of Goods and/or non-performance of Services unless the Buyer gives written notice to the Company of the non-delivery within 7 days of the date when the Goods would in the ordinary course of events have been received.

5.3 Any liability of the Company for non-delivery of the Goods and/or non-performance of the Services shall be limited to replacing the Goods and/or to providing the Services within a reasonable time.

6. RISK/TITLE

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

6.2 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:

(a) The Goods and/or the Services; and

(b) All other sums which are or which become due to the Company from the Buyer on any account.

6.3 Until ownership of the Goods has passed to the Buyer, the Buyer shall:

(a) Store the Goods (at no cost to the Company) 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 Goods; and

(c) be responsible for the costs and/or expense arising from any damage caused to the Goods whilst they are in the Company's possession.

6.4 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.

6.5 The Buyer grants the Company, its agents and employees an irrevocable license 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.

6.6 On termination of the Contract, howsoever caused, the Company's (but not the Buyer's) rights contained in this [condition 6](#) shall remain in effect.

7. PRICE

7.1 Unless otherwise agreed by the Company in writing, the price for the Goods and/or Services shall be the price set out in the Company's price list published on the date of delivery or deemed delivery and/or as identified on the documentation provided to the Buyer at the time of delivery.

7.2 If variations and/or additions are made to the order for Goods and/or Services after initial delivery and/or performance, then the price for the Goods and/or Services shall be subject to variation and shall be as stated on the amended documentation provided to the Buyer once any supplemental order has been made.

8. PAYMENT

8.1 Subject to [condition 8.4](#), payment of the price for the Goods and/or Services is due in pounds sterling immediately on delivery of the Goods and/or completion of the Services, unless otherwise agreed.

8.2 Time for payment shall be of the essence, such right to be exercised at the discretion of the Company.

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

8.4 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 Company provides otherwise.

8.5 If the Buyer fails to pay the Company any sum due pursuant to the Contract, the Buyer shall be liable to pay interest to the Company on such sum from the due date for payment at the annual rate of 8%, accruing on a daily basis until payment is made, whether before or after any judgment. The Company reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998 in the event that payment, in the view of the Company, is significantly delayed.

8.6 A deposit of 50% of the Contract price shall be payable before delivery on confirmation of the Buyer's order. The Goods and/or Services shall not be provided until the Company has received the deposit in cleared funds.

9. QUALITY

9.1 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.

9.2 The Company warrants that the Services shall be carried out with reasonable skill and care.

9.3 The Company warrants that any deficiency in the Services provided (subject to the Company's agreement), that is notified to the Company within 12 months of the completion of the Services, shall be rectified by the Company at the Company's expense.

9.4 The Company shall not be liable for a breach of these warranties unless:

(a) The Buyer gives written notice of the defect to the Company within 14 days of the time when the Buyer discovers or ought to have discovered the defect; and

(b) The Company is given a reasonable opportunity after receiving the notice of examining such Goods.

9.5 The Company shall not be liable for a breach these warranties if:

(a) The Buyer makes any further use of the Goods after giving such notice; or

(b) The defect arises because the Buyer failed to follow the Company's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice; or

(c) The Buyer alters or repairs such Goods without the written consent of the Company.

9.6 Subject to the above conditions in clause 9 if any of the Goods are defective as a result of any non or wrongful performance of the Services the Company shall at its option repair or replace such Goods (or the defective part) or refund the price of such Goods at the Contract rate.

9.7 If the Company complies with [condition 9.6](#) it shall have no further liability for a breach of the warranties in respect of such Goods.

10. LIMITATION OF LIABILITY

10.1 Subject to [condition 4](#), [condition 5](#) and [condition 9](#), 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 sub-contractors) to the Buyer in respect of:

(a) Any breach of these conditions;

(b) Any use made or resale by the Buyer of any of the Goods, or of any product incorporating any of the Goods; and

(c) Any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.

10.2 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.

10.3 Nothing in these conditions excludes or limits the liability of the Company:

(a) For death or personal injury caused by the Company's negligence; or

(b) For any matter which it would be illegal for the Company to exclude or attempt to exclude its liability; or

(c) For fraud or fraudulent misrepresentation.

10.4 Subject to [condition 10.2](#) and [condition 10.3](#):

(a) 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

(b) [the Company shall not be liable to the Buyer for loss of profit, loss of business, or in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) whether brought by the Buyer or a third party which arise out of or in connection with the Contract.

11. ASSIGNMENT

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

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

12. 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 [NUMBER] days, the Buyer shall be entitled to give notice in writing to the Company to terminate the Contract.

13. GENERAL

13.1 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.

13.2 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.

13.3 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.

13.4 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.

13.5 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.

13.6 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.

14. COMMUNICATIONS

14.1 All communications between the parties about the Contract shall be in writing and delivered by hand or sent by pre-paid first class post or sent by fax:

(a) (in case of communications to the Company) to its registered office or such changed address as shall be notified to the Buyer by the Company; or

(b) (in the case of the communications to the Buyer) to the registered office of the addressee (if it is a company) or (in any other case) to any address of the Buyer set out in any document which forms part of the Contract or such other address as shall be notified to the Company by the Buyer.

14.2 Communications shall be deemed to have been received:

(a) if sent by pre-paid first class post, two days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting); or

(b) if delivered by hand, on the day of delivery; or

(c) if sent by fax on a working day prior to 4.00 pm, at the time of transmission and otherwise on the next working day.

14.3 Communications addressed to the Company shall be marked for the attention of Mr Wesley Phillips.

Signed on behalf of the Company

Signed on behalf of the Buyer

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Date:

Date: