

General Terms and Conditions for Supply of Goods and Services

1.0 Definitions

In these Conditions, the following definitions apply:

- 1.1 **"Conditions"** these terms and conditions as amended from time to time in accordance with clause 14.7.
- 1.2 **"Contract"** the contract between Powertherm and the Customer for the supply of Goods and/or Services in accordance with these Conditions.
- 1.3 **"Customer"** the person or firm who purchases the Goods and/or Services from Powertherm.
- 1.4 **"Deliverables"** the deliverables or system set out in the Order.
- 1.5 **"Goods"** the goods (or any part of them) set out in the Order.
- 1.6 **"Goods Specification"** any specification for the Goods, including any relevant plan(s) or drawing(s), that is/are agreed in writing by the Customer and Powertherm.
- 1.7 **"Main Contract"** means any contract or agreement between the Customer and a third party.
- 1.8 **"Order"** the Customer's order for the supply of Goods and/or Services, on Powertherm's quotation.
- 1.9 **"Powertherm"** Powertherm Contract Services Ltd and its subsidiaries registered in England and Wales with company number 02432954, whose registered office is at 52 Orgrave Drive, Sheffield S13 9NR.
- 1.10 **"Services"** the services, including the Deliverables, supplied by Powertherm to the Customer as set out in the Service Specification.
- 1.11 **"Service Specification"** the description or specification for the Services provided in writing by Powertherm to the Customer.

2.0 Basis of contract

- 2.1 The Order constitutes an offer by the Customer to purchase Goods and/or Services in accordance with these Conditions.
- 2.2 The Order shall only be deemed to be accepted when Powertherm issues written acceptance of the Order at which point and on which date the Contract shall come into existence (Commencement Date) and shall continue unless terminated earlier in accordance with clause 12 for the duration specified in the Order. In the event of the duration extending beyond the period specified in the Order, through no fault of Powertherm, the parties shall meet in order to discuss the terms and conditions in the Contract including the price quoted. In the event of the parties failing to meet and/or reaching a mutual satisfactory understanding on the price quoted Powertherm shall have the right to terminate in accordance with clause 12.1 (l).
- 2.3 No Order which has been accepted by Powertherm may be cancelled by the Customer except with the written agreement of Powertherm and on terms that the Customer shall indemnify Powertherm 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 and other professional costs and expenses) suffered or incurred by Powertherm as a result of cancellation.
- 2.4 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, guarantee, assurance or warranty made or given by or on behalf of Powertherm which is not set out in the Contract.

- 2.5 Any advice or recommendation given by Powertherm, or its employees or agents to the Customer, or its employees or agents as to the storage, application or use of the Goods/Deliverables which is not confirmed in writing by Powertherm is followed or acted upon entirely at the Customer's own risk, and accordingly Powertherm shall not be liable for any such advice or recommendation which is not so confirmed.
- 2.6 Any samples, drawings, descriptive matter or advertising issued by Powertherm and any descriptions of the Goods or illustrations or descriptions of the Services contained in Powertherm's catalogues or brochures or website, if any, are issued or published for the sole purpose of giving an approximate idea of the Services and/or Goods described in them. They shall not form part of the Contract or have any contractual force.
- 2.7 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing. All warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- 2.8 Any quotation given by Powertherm shall be valid for a period of 30 days from its date of issue, unless otherwise agreed in writing by Powertherm.
- 2.9 All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.

3.0 Goods/Services

- 3.1 The Goods are described in the Goods Specification.
- 3.2 Powertherm shall provide the Services to the Customer in accordance with the Service Specification in all material respects.
- 3.3 If during the performance of the Contract the Goods Specification, Service Specification and/or the Order including the quantities therein is significantly amended / increased, through no fault of Powertherm, the parties shall meet in order to discuss the Conditions of including the price quoted in the Order; provided always that Powertherm shall be under no obligation to comply with such amended or increased Goods Specification, Service Specification and/or the Order unless it agrees in writing to do so.
- 3.4 To the extent that the Goods/Services are to be manufactured/provided in accordance with a Goods/Service Specification supplied by the Customer, the Customer shall indemnify Powertherm 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 and other professional costs and expenses) suffered or incurred by Powertherm in connection with any claim made against Powertherm for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with Powertherm's use of the Goods/Service Specification. For the avoidance of doubt this clause 3.4 shall survive the termination of the Contract.
- 3.5 Powertherm reserves the right to amend the Goods Specification and / or Services Specification if required by any applicable statutory or regulatory requirements which do not materially affect the nature or quality of the Goods/Services, and Powertherm shall notify the Customer in any such event.
- 3.6 Powertherm warrants to the Customer that the Services will be provided using reasonable care and skill.

4.0 Delivery of goods/supply of services

4.1 Powertherm shall ensure that:

- (a) each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, all relevant Customer and Powertherm reference numbers, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Order is being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and
- (b) if Powertherm requires the Customer to return any packaging material to Powertherm, that fact is clearly stated on the delivery note. The Customer shall make any such packaging materials available for collection at such times as Powertherm shall reasonably request.

4.2 Powertherm shall deliver the Goods to the location set out in the Order or such other location as the parties may agree (Delivery Location) in writing at any time after Powertherm notifies the Customer that the Goods are ready.

4.3 Powertherm shall use all reasonable endeavours to meet any performance dates for the Good/Services specified in the Order, but any such dates shall be estimates only and time shall not be of the essence for the delivery of the Goods/performance of the Services. Powertherm shall have no liability for any failure to deliver the Goods/perform the Services to the extent that such failure is caused by a Force Majeure Event, the Customer's failure to provide Powertherm with adequate delivery instructions for the Goods or any relevant instruction related to the supply of the Goods/Services or caused by any other acts, omissions and circumstances for which Powertherm is not liable according to these Conditions, the Order, the Contract and/or any applicable law. Powertherm shall be entitled to additional compensation in the event of the supply of Goods/Services taking longer than the duration stated.

4.4 Delivery of the Goods shall be completed on the Goods' arrival at the Delivery Location.

4.5 If Powertherm fails to deliver the Goods, 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 Goods.

4.6 If the Customer fails to accept or take delivery of the Goods/Services within 5 working days of Powertherm notifying the Customer that the Goods are ready/Services are completed, then except where such failure or delay is caused by a Force Majeure Event or by Powertherm's failure to comply with its obligations under the Contract in respect of the delivery of the Goods/Services:

- (a) delivery of the Goods/Services shall be deemed to have been completed at 9.00 am on the fifth working day following the day on which Powertherm notified the Customer that the Goods were ready/Services were completed; and
- (b) Powertherm shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).

4.7 After Powertherm notified the Customer that the Goods are ready for delivery and the Customer has not accepted delivery of them within 5 working days, Powertherm will keep the Goods for a maximum of 30 days and charge for storage after the initial 5 days thereafter Powertherm may resell or otherwise dispose

of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.

4.8 The Customer shall not be entitled to reject the Goods if Powertherm delivers up to and including 5 per cent more or less than the quantity of Goods ordered, but a pro-rata adjustment shall be made to the Order invoice on receipt of notice from the Customer that the wrong quantity of Goods was delivered.

4.9 Powertherm may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

5.0 Quality of goods and services

5.1 Powertherm warrants that on delivery, and for a period of 12 months from the date of delivery (Goods Warranty Period), the Goods where they have been manufactured by Powertherm shall:

- (a) conform in all material respects with their description and the Goods Specification;
- (b) be free from material defects in design, material and workmanship; and
- (c) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).

5.2 Where Goods are supplied with the benefit of Original Equipment Manufacturer Warranties these will apply to the Goods supplied in lieu of the warranty in 5.1 above.

5.3 Subject to clause 5.4, if:

- (a) the Customer gives notice in writing during the Goods Warranty Period within 5 working days from the time of discovery that some or all of the Goods do not comply with the warranty set out in clause 5.1;
- (b) Powertherm is given a reasonable opportunity of examining such Goods; and
- (c) the Customer (if asked to do by Powertherm) returns such Goods to Powertherm's place of business at the Customer's cost;

Powertherm shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.

5.4 Powertherm shall not be liable for the Goods' failure to comply with the warranty in clause 5.1 if:

- (a) the Customer makes any further use of such Goods after giving a notice in accordance with clause 5.3;
- (b) the defect arises because the Customer failed to follow Powertherm's verbal or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice;
- (c) the defect arises as a result of Powertherm following any drawing, design or Goods Specification supplied by the Customer or on its behalf;
- (d) the Customer alters or repairs such Goods without the written consent of Powertherm;
- (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions;
- (f) the Goods differ from the Service Specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards.

- 5.5 Except as provided in this clause 5, Powertherm shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.1 and Powertherm shall in no circumstances incur any liability to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, in respect of the Goods (including any liability arising from as a result of any latent defect(s)) following the expiry of the Goods Warranty Period.
- 5.6 The terms of these Conditions shall apply to any repaired or replacement Goods supplied by Powertherm under clause 5.3.
- 5.7 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.
- 5.8 Powertherm warrants that the Services were carried out using reasonable care and skill and that from 12 months from the date Powertherm last provided the Services, (Services Warranty Period), the Services shall:
- (a) conform in all material respects with their description and the Services Specification; and
 - (b) be free from material defects in workmanship.
- 5.9 Subject to clause 5.8, if:
- (a) the Customer gives notice in writing during the Services Warranty Period within 5 working days from the time of discovery that some or all of the Services do not comply with the warranty set out in clause 5.8;
 - (b) Powertherm is given a reasonable opportunity of reviewing the Services and Deliverables; and the Customer (if asked to do by Powertherm) returns any Deliverables to Powertherm's place of business at the Customer's cost;
- Powertherm shall, at its option, repair or replace the defective Deliverables or otherwise re-perform the Services or refund the price of the defective Services in full.
- 5.10 Powertherm shall not be liable for the Services failure to comply with the warranty in clause 5.8 if:
- (a) the Customer makes any further use of such Services after giving a notice in accordance with clause 5.9;
 - (b) the defect arises because the Customer failed to follow Powertherm's verbal or written instructions as to the use of the Services or (if there are none) good industry practice;
 - (c) the defect arises as a result of Powertherm following any drawing, design or specification supplied by the Customer or on its behalf;
 - (d) the Customer alters or repairs the Services without the written consent of Powertherm;
 - (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions;
 - (f) the Services differ from the Service Specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards.
- 5.11 Except as provided in this clause 5.11, Powertherm shall have no liability to the Customer in respect of the Services failure to comply with the warranty set out in clause 5.8 and Powertherm shall in no circumstances incur any liability to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, in respect of the Services (including any liability arising from as a result of any latent defect(s)) following the expiry of the Services Warranty Period.
- 5.12 The terms of these Conditions shall apply to any repaired, replacement or re-performed Services supplied by Powertherm under clause 5.9.
- 5.13 To the extent that the Sale of Goods and Services Act 1982 applies to the Services, any terms implied are, to the fullest extent permitted by law, excluded from the Contract.
- 6.0 Title and risk**
- 6.1 The risk in the Goods shall pass to the Customer on completion of Services/delivery. Notwithstanding any other provisions in these Conditions, the Customer shall bear the risk of any and all damage to the Goods caused by any third parties. Any and all repairs made by Powertherm may be subject to additional and/or separate payment(s).
- 6.2 Title to the Goods shall not pass to the Customer until Powertherm receives payment in full (in cash or cleared funds) for the Goods and any other goods that Powertherm has supplied to the Customer.
- 6.3 Until title to the Goods has passed to the Customer, the Customer shall:
- (a) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as Powertherm's property and to clearly mark them as Powertherm's property;
 - (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - (c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on Powertherm's behalf from the date of delivery;
 - (d) notify Powertherm immediately if it becomes subject to any of the events listed in clause 12.1(b) to clause 12.1(k);
 - (e) give Powertherm such information relating to the Goods as Powertherm may require from time to time; and
 - (f) not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of Powertherm, provided that if the Customer does so all moneys owing by the Customer to Powertherm shall (without prejudice to any other right or remedy of Powertherm) immediately become due and payable.
- 6.4 Subject to clause 6.5, the Customer may resell or use the Goods in the ordinary course of its business (but not otherwise) before Powertherm receives payment for the Goods. However, if the Customer resells the Goods before that time:
- (a) it does so as principal and not as Powertherm's agent; and
 - (b) title to the Goods shall pass from Powertherm to the Customer immediately before the time at which resale by the Customer occurs.
- 6.5 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 12.1(b) to clause 12.1(l), then, without limiting any other right or remedy Powertherm may have:
- (a) the Customer's right to resell Goods or use them in the ordinary course of its business ceases immediately; and
 - (b) Powertherm may at any time:
 - (i) require the Customer to deliver up all Goods in its possession which have 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 Goods are stored in order to recover them.

7.0 Customer's obligations

7.1 The Customer shall:

- (a) ensure that the terms of the Order and (if submitted by the Customer) the Goods Specification/Service Specification are complete and accurate;
- (b) co-operate with Powertherm in all matters relating to the Goods/Services;
- (c) jointly with Powertherm (except as expressly provided under the Contract) obtain all licenses, consents, permits, authorisation and approvals required by a competent authority relating to the supply of Goods/Services stated in the Contract in sufficient time. The Customer needs to apply in the name of Powertherm for access to the site where the Goods and/or Services are to be performed;
- (d) provide Powertherm, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by Powertherm to provide the Goods/Services;
- (e) provide Powertherm with such information and materials as Powertherm may reasonably require to deliver/supply the Goods/Services, and ensure that such information is accurate in all material respects;
- (f) prepare the Customer's premises for the delivery/supply of the Goods/Services;
- (g) keep and maintain all materials, equipment, documents and other property of Powertherm (Powertherm Materials) at the Customer's premises in safe custody at its own risk, maintain Powertherm Materials in good condition until returned to Powertherm, and not dispose of or use Powertherm Materials other than in accordance with Powertherm's written instructions or authorisation.

7.2 If Powertherm's performance of any of its obligations in respect of the Goods/Services is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (Customer Default):

- (a) Powertherm shall without limiting its other rights or remedies have the right to suspend performance 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 to the extent the Customer Default prevents or delays Powertherm's performance of any of its obligations;
- (b) Powertherm shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from Powertherm's failure or delay to perform any of its obligations as set out in this clause 7.2; and
- (c) the Customer shall reimburse Powertherm on written demand for any costs or losses sustained or incurred by Powertherm arising directly or indirectly from the Customer Default.

8.0 Charges and payment

8.1 The price for Goods shall be the price set out in the Order or, if no price is quoted, the price set out in Powertherm's published

price list plus VAT as at the date of delivery. The price of the Goods is exclusive of all costs and charges of packaging, insurance, transport of the Goods/Services, which shall be paid by the Customer when it pays for the Goods/Services.

8.2 The charges for Services shall be on a time and materials basis:

- (a) unless otherwise agreed, the charges shall be calculated in accordance with Powertherm's standard daily fee rates, as set out in Powertherm's quotation or related attached document or as otherwise agreed;
- (b) Powertherm's standard daily fee rates for each individual person are calculated on the basis of a 38 hour working week from 8.00am to 4.30pm Monday to Thursday and 8.00am to 3.30pm on a Friday;
- (c) Powertherm shall be entitled to charge an overtime rate as set out in the quotation or related attachment or agreed between the parties; and
- (d) Powertherm shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom Powertherm engages in connection with the Services including, but not limited to, travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by Powertherm for the performance of the Services, and for the cost of any materials.

8.3 Powertherm reserves the right to:

- (a) increase its standard daily fee rates for the charges for the Services, provided that such charges cannot be increased more than once in any 12 month period. Powertherm will give the Customer written notice of any such increase one month before the proposed date of the increase. If such increase is not acceptable to the Customer, it shall notify Powertherm in writing within 14 days' of the date of Powertherm's notice and Powertherm shall have the right without limiting its other rights or remedies to terminate the Contract by giving 4 weeks' written notice to the Customer. The Customer shall not be entitled to claim any payments (including damages) caused by the aforementioned termination of Contract; and
- (b) increase the price of the Goods, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Goods to Powertherm that is due to:
 - (i) any factor beyond the control of Powertherm (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
 - (ii) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Goods Specification; or
 - (iii) any delay caused by any instructions of the Customer in respect of the Goods or failure of the Customer to give Powertherm adequate or accurate information or instructions in respect of the Goods.

8.4 In respect of Goods, Powertherm shall invoice the Customer on or at any time after completion of delivery. The Customer shall pay each invoice submitted by Powertherm:

- (a) within 30 calendar days of the date of the invoice; and

(b) in full and in cleared funds to a bank account nominated in writing by Powertherm, and time for payment shall be of the essence of the Contract.

- 8.5 In respect of Services, Powertherm shall submit interim applications for payment on a monthly basis. Within 14 days of submission of Powertherm's interim application for payment the Customer shall issue a payment certificate confirming Powertherm's entitlement to payment. Immediately upon issue of the Customer's certificate, Powertherm may issue a VAT invoice. The due date for payment shall be the date Powertherm issues a valid VAT invoice (Due Date). Full payment, of all invoices subject only to agreed retentions, shall be made on or before 28 calendar days from the date of issue of Powertherm's invoice (Final Date). The time of payment shall be of the essence and all payments shall be made in full and clear funds to a bank account nominated in writing by Powertherm.
- 8.6 No later than five days after the Due Date, the Customer shall notify the amount (if any) it proposes to pay and the basis on which that amount was calculated (Notified Sum). It is immaterial that the Notified Sum is a zero value. The Customer shall only pay less than the Notified Sum after the Final Date if it has notified the Powertherm of its intention to pay less (Pay Less Notice).
- 8.7 A Pay Less Notice shall only be effective if:
- (a) It is given not less than five days before the Final Date; and
 - (b) It specifies:
 - (i) the sum that the Customer considers to be due on the date the Pay Less Notice is served; and
 - (ii) the basis on which that sum is calculated.
- 8.8 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (VAT). Where any taxable supply for VAT purposes is made under the Contract by Powertherm to the Customer, the Customer shall, on receipt of a valid VAT invoice from Powertherm, pay to Powertherm such additional amounts in respect of VAT as are chargeable on the supply of the Services or Goods at the same time as payment is due for the supply of the Services or Goods.
- 8.9 If the Customer fails to make any payment due to Powertherm under the Contract by the relevant final date for payment, then the Customer shall pay interest on the overdue amount at the rate of 8% per annum above Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the relevant final date for payment until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount. Any payments made by Customer shall be credited initially against interest and subsequently against the main debts.
- 8.10 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding except as required by law. Powertherm may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by Powertherm to the Customer.

9.0 Intellectual property rights

- 9.1 All patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of,

confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world (Intellectual Property Rights) in or arising out of or in connection with the Goods and/or Services shall be owned by Powertherm.

- 9.2 The Customer acknowledges that, in respect of any third party Intellectual Property Rights in the Goods and/or Services, the Customer's use of any such Intellectual Property Rights is conditional on Powertherm obtaining a written licence from the relevant licensor on such terms as will entitle Powertherm to license such rights to the Customer.
- 9.3 All materials produced by Powertherm are the exclusive property of Powertherm unless expressly agreed otherwise in writing.

10.0 Confidentiality

- 10.1 A party (receiving party) 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 receiving party by the other party (disclosing party), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products and services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Contract. The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction. This clause 10 shall survive termination of the Contract.

11.0 Limitation of liability

- 11.1 Powertherm shall under no circumstances whatever be liable to the Customer, 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
- 11.2 Powertherm shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any costs, losses or liabilities incurred by the Customer under or in connection with any Main Contract; and
- 11.3 Powertherm's total liability to the Customer 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 50 % of the price for the Goods and/or Services provided by Powertherm and paid for by the Customer.
- 11.4 Nothing in these Conditions shall limit or exclude the Powertherm'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 Supplier to exclude or restrict liability.

11.5 This clause 11 shall survive termination of the Contract.

12.0 Termination

12.1 Without limiting its other rights or remedies, Powertherm may terminate the Contract with immediate effect by giving written notice to the Customer if:

- (a) the Customer commits a material breach of its obligations under this Contract and (if such breach is remediable) fails to remedy that breach within 14 days after receipt of notice in writing to do so;
- (b) the Customer 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;
- (c) the Customer 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;
- (d) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Customer (being a company);
- (e) 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;
- (f) 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 (being a company);
- (g) the holder of a qualifying charge over the assets of the Customer (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (h) 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;
- (i) any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 12.1(b) to clause 12.1(h) (inclusive);
- (j) the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business;
- (k) the Customer's financial position deteriorates to such an extent that in Powertherm's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- (l) if the parties can not mutually agree upon the extension of the duration under the Order/Contract.

12.2 Without limiting its other rights or remedies, Powertherm may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Contract on the due date for payment.

12.3 Without limiting its other rights or remedies, Powertherm may suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Customer and Powertherm if the Customer fails to pay any amount due under this Contract on the due date for payment, the Customer becomes subject to any of the events listed in clause 12.1(b) to clause 12.1(l), or Powertherm reasonably believes that the Customer is about to become subject to any of them.

12.4 On termination of the Contract for any reason:

- (a) the Customer shall immediately pay to Powertherm all of Powertherm's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has yet been submitted, Powertherm shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- (b) the Customer shall return all of Powertherm Materials and any Deliverables which have not been fully paid for, if so requested by Powertherm. If the Customer fails to do so, then Powertherm may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;
- (c) the accrued rights and remedies of Powertherm as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
- (d) clauses which expressly or by implication have effect after termination shall continue in full force and effect.

13.0 Force majeure

13.1 For the purposes of this Contract, Force Majeure Event means an event beyond the reasonable control of Powertherm including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of Powertherm or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, pandemic, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.

13.2 Powertherm shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.

13.3 If the Force Majeure Event prevents Powertherm from providing any of the Services and/or Goods for more than 4 weeks, Powertherm shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Customer.

14.0 General

14.1 Assignment and other dealings.

- (a) Powertherm may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under the Contract

and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party.

- (b) The Customer shall not, without the prior written consent of Powertherm, assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract.

14.2 Notices.

Any notice or other communication given to a party under or in connection with this Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally or sent by prepaid first-class post or other next working day delivery service, or by commercial courier or fax.

14.3 Severance.

- (a) 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.
- (b) If any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

14.4 Waiver.

A waiver of any right under the Contract or law is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by Powertherm in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor prevent or restrict its further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

14.5 No partnership or agency.

Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, nor constitute either party the agent of another party for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.

14.6 Third parties.

A person who is not a party to the Contract shall not have any rights to enforce its terms.

14.7 Variation.

Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions shall be effective unless it is agreed in writing and signed by Powertherm.

14.8 Governing law.

This agreement 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.

14.9 Jurisdiction.

Subject to clause 14.10, each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).

14.10 Mediation.

Notwithstanding clause 14.9, if any dispute arises in connection with these terms and conditions, the parties agree to enter into mediation in good faith to settle such a dispute in accordance with the CEDR Model Mediation Procedure, unless otherwise agreed by the parties within 14 days of notice of a dispute, the mediator will be nominated by CEDR.

14.11 Anti-Bribery

Both parties confirm they will comply with any and all anti-corruption and /or anti-bribery laws and regulations now or from time in force in any jurisdiction which may be applicable to the respective parties to, or the terms or implementation of this contract or any agreement to be entered into pursuant to this contract.

14.12 CDM Regulation

The Customer shall act as the 'Principal Contractor' and the 'Client' for the purposes of the CDM Regulations 2015 and shall properly and fully perform and discharge all duties imposed upon the 'Principal Contractor' and the 'Client' under the CDM Regulations 2015.

14.13 Export

Where the Goods manufactured by or otherwise supplied by Powertherm to the Customer are for export outside of the UK, the Customer is liable for all and any costs, licences and/or additional taxes, levies or imposts which may become due in connection with any such exports.