

Terms and conditions of purchase

1.0 Interpretation

In these Conditions:

- a **"Base Rate"** means the rate set from time to time by the Bank of England's Monetary Policy Committee or any successor to it;
- b **"Contract"** means the agreement between the Purchaser and the Seller whether for the sale and purchase of the Goods or the supply and acquisition of the Services as set out in the Purchase Order and these conditions;
- c **"Construction Act"** the Housing Grants, Construction and Regeneration Act 1996 (as amended);
- d **"Customer"** means any person, firm or company buying the Goods or goods upon which the Services have been rendered;
- e **"Collateral Warranties"** means collateral warranties to be given by the Seller in connection with the Services in favour of any third party (including the Customer) requested by the Purchaser on terms to be agreed by the Purchaser and the Seller acting reasonably;
- f **"Deleterious Materials"** means any materials, equipment or products that are generally accepted, or generally suspected, in the construction, engineering or relevant manufacturing industry at the relevant time as: posing a threat to health and safety; posing a threat to the performance of the Goods and/or Services; or not being in accordance with any relevant and accepted international standard, relevant code of practice or good building or engineering practice;
- g **"Goods"** means the goods or materials which from time to time the Purchaser contracts to buy;
- h **"Main Contract"** means a contract between the Purchaser and a third party including the Customer;
- i **"Price"** means the price payable by the Purchaser to the Seller in consideration for the provision of the Goods and/or Services (as appropriate) as set out in the Purchase Order.
- j **"Purchase Order"** means the Purchaser's order for the purchase of the Goods and/or supply of the Services (as appropriate);
- k **"Purchaser"** means Powertherm Contract Services Ltd and its subsidiaries registered in England and Wales with company number 02432954, whose registered office is at 52 Orgreave Drive, Sheffield S13 9NR. and/or any subsidiary as defined in the Companies Act 2006 as amended and/or any other company identified by the Purchaser from time to time;
- l **"Required Standard"** means the exercise of the highest standards of skill, care and diligence to be expected from a highly skilled and experienced seller of services similar in scope, scale and complexity to the Services;
- m **"Seller"** means the person or company to whom the Purchase Order is addressed or who otherwise contracts with the Purchaser for the Goods and/or Services; and
- n **"Services"** means the services which from time to time the Purchaser contracts to buy.

2.0 Basis of contract

- 2.1 Any Purchase Order constitutes an offer by the Purchaser to purchase the Goods and/or acquire the Services subject to these conditions. Unless otherwise specifically agreed in writing any:
 - 2.1.1 offer and/or acceptance of the Purchase Order by the Seller whether express or implied; or
 - 2.1.2 any act by the Seller consistent with fulfilling the Purchase Order;
- 2.2 These conditions shall apply to the Contract to the exclusion of any other terms and conditions contained or referred to in the Seller's quotation, tender, acceptance or otherwise.
- 2.3 No variation to the Purchase Order or these conditions shall be binding unless agreed in writing and signed by the authorised representatives of the Purchaser and the Seller.
- 2.4 Additional conditions which the Purchaser may from time to time be obliged to accept from a Customer and which (inter alia) limit and exclude liability for breaches of contract are binding on the Seller as appropriate and the Seller is deemed to have seen such conditions and

agreed to be bound by the same. A copy of the additional terms and conditions will be supplied on request.

- 2.5 In case of breach Supplier shall compensate Purchaser for all costs in case of faulty supply.

3.0 Specifications

- 3.1 The Seller shall ensure that the Goods shall:
 - 3.1.1 correspond with their description and any applicable specification;
 - 3.1.2 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and fit for any purpose held out by the Seller or made known to the Seller by the Purchaser expressly or by implication, and in this respect the Purchaser relies on the Seller's skill and judgment;
 - 3.1.3 where applicable, be free from defects in design, materials and workmanship and remain so for 12 months after delivery; and
 - 3.1.4 comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods.
- 3.2 The quantity, quality and description of the Goods and the Services shall, subject as provided in these conditions, be as specified in the Purchase Order and in accordance with any applicable specification supplied by the Purchaser to the Seller and at all times shall be free from defects and any Deleterious Materials.
- 3.3 The Goods and Services shall be fit for their intended purpose and shall meet or exceed any performance standards set out in the Purchase Order or any other specification provided by the Purchaser to the Seller including any specification forming part of a Main Contract.
- 3.4 The Seller shall carry out and complete the Services using the Required Standard.
- 3.5 Any specifications supplied by the Purchaser to the Seller, or specifically produced by the Seller for the Purchaser, in connection with the Contract, together with the copyright, design rights or any other intellectual property rights (whether or not registered or capable of registration) in the specification shall be the exclusive property of the Purchaser and such specification shall be clearly marked as the property of the Purchaser. The Seller shall not disclose to any third party such specification except to the extent that it is or becomes public knowledge through no fault of the Seller, or as required for the purpose of the Contract always strictly in accordance with clause 24 of these conditions.
- 3.6 The Seller shall ensure that the Goods and/or Services shall comply with all statutory requirements, regulations and laws both in the UK and in the country of ultimate destination and all EU directives relating to the manufacture and sale of the Goods including the appropriate British or International Standard or equivalent specification.
- 3.7 All Goods shall be carefully packed and protected as necessary for transit according to destination and in accordance with any special arrangements in the Contract. All packages and packaging are non-returnable unless otherwise agreed in advance by the Purchaser.
- 3.8 No variation of or extras to the Purchase Order shall be carried out by the Seller unless agreed by the Purchaser in writing.
- 3.9 The Purchaser reserves the right to make alterations from time to time to any Purchase Order on giving notice to the Seller and the Price for the Goods and/or Services which are supplied to such new specification shall be increased or decreased by such amount as shall be reasonable to reflect such alteration.
- 3.10 Where the Goods are sold by sample the bulk shall correspond in every respect with the sample provided.
- 3.11 The Goods shall be marked in accordance with the Purchaser's instructions and any applicable regulations or requirements of the carrier.
- 3.12 The Seller shall not unreasonably refuse a request by the Purchaser to return any specification or other property of the Purchaser.
- 4.0 **Inspection**
- 4.1 The Purchaser or its nominee shall have the right to inspect and test the Goods during manufacture, processing or storage at the premises of the Seller or any third party at the Seller's cost prior to dispatch for any reason including without limitation to prove the origins or performance

- of the Goods, and the Seller shall provide the Purchaser with all facilities reasonably required for inspection and testing. Such inspection or test shall not relieve the Seller of its obligations under the Contract.
- 4.2 If as a result of inspection or testing the Purchaser is not satisfied that the Goods will comply in all respects with the Contract, and the Purchaser so informs the Seller within 21 days of inspection or testing, the Seller shall take such steps as are necessary to ensure compliance.
- 4.3 The Purchaser shall have the right to reject the Goods or any part thereof which in its opinion do not comply with the requirements of the Contract but failure to reject the same shall not prejudice the Purchaser's rights at any stage.
- 5.0 Price of the goods and services**
- 5.1 The Price of the Goods and the Services shall unless otherwise so stated be:
- 5.1.1 exclusive of any applicable value added tax (which shall be payable by the Purchaser subject to receipt of a VAT invoice); and
- 5.1.2 inclusive of all charges for packaging, packing, shipping, carriage, insurance and delivery of the Goods to the delivery address specified by the Purchaser and any duties, imposts or levies other than value added tax.
- 5.2 No increase in the Price may be made (whether on account of increased material, labour or transport costs, fluctuation in rates of exchange or otherwise) without the prior consent of the Purchaser in writing (which may be given at the Purchaser's sole discretion).
- 6.0 Invoicing**
- Invoices shall be rendered by the Seller in duplicate to the Purchaser's office which issued the Purchase Order, the top copy of which is to be valid for VAT purposes. Invoices must state clearly whether they cover "full order" or "part order" and include full details of the Services provided and/or Goods delivered. The Purchase Order number must be clearly shown on all invoices. Failure to comply with this clause may cause delay in payment.
- 7.0 Terms of payment**
- 7.1 The Seller shall:
- 7.1.1 where the Purchaser is a Subcontractor to a main contractor or other employer and has subcontracted the provision of Goods and/or Services from the Seller, the Purchaser shall pay for the Goods and/or Services delivered and invoiced by the Seller within 10 working days of being paid by the main contractor or other employer;
- 7.1.2 where the Contract relates to (i) the provision of Goods or (ii) Services lasting less than [45] days invoice the Purchaser on or at any time after delivery of the Goods or completion of the Services, as the case may be; or
- 7.1.3 where the Contract relates to the provision of Services lasting more than [45] days submit interim applications for payment on a monthly basis.
- 7.2 Within 14 days of the Purchaser receiving the Seller's interim application for payment under clause 7.1.2 the Purchaser shall issue a payment certificate confirming the Seller's entitlement to payment. Immediately upon receipt of the Purchaser's certificate, the Seller may issue a VAT invoice for the sum stated in the Purchaser's certificate.
- 7.3 The due date for any payment shall be the date the Purchaser receives a valid VAT invoice from the Seller which complies with the requirements of clause 6 ("Due Date").
- 7.4 Subject to 7.1.1 above, payment of the Price shall be made in UK sterling within 90 days of the Due Date or other such payment terms as may be agreed in writing ("Final Date"). A retention of 10% or such alternative rate as may be imposed by any conditions of the Customer shall be deducted and held by the Purchaser where the Goods or Services incorporate an element of labour and a workmanship and materials guarantee applies to the Main Contract. Any retention shall be released in the amount and on the dates stated in the Purchase Order.
- 7.5 No later than five days after the Due Date, the Purchaser shall notify the Seller of 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 Purchaser shall only pay less than the Notified Sum after the Final Date if it has notified the Seller of its intention to pay less ("Pay Less Notice").
- A Pay Less Notice shall only be effective if:
- 7.6.1 it is given not less than five days before the Final Date ("Prescribed Period");
- 7.6.2 it specifies:
- a the sum that the Purchaser considers to be due on the date the Pay Less Notice is served; and
- b the basis on which that sum is calculated.
- 7.7 A notice under clause 7.5 shall suffice as a Pay Less Notice if it complies with the requirements of clause 7.6. The Purchaser reserves the right to suspend or withhold payments in the event of non-compliance by the Seller with these conditions and shall be entitled to set off against the Price any sums owed to the Purchaser by the Seller whether in connection with the Contract or in relation to any other agreement, supply arrangement of project.
- 7.8 If the Purchaser fails to pay an amount due to the Seller by the Final Date and fails to give a Pay Less Notice under clause 7.3, simple interest shall be added to the unpaid amount from the Final Date until the actual date of payment. This shall be calculated on a daily basis at the annual rate of 2% above the Base Rate. The Purchaser and the Seller acknowledge that the Purchaser's liability under this clause 7.8 is a substantial remedy for the purposes of section 9(1) of the Late Payment of Commercial Debts (Interest) Act 1998.
- 7.9 Notwithstanding any other clause of the Contract, and without prejudice to clause 13, if the Seller is Insolvent for purposes of Section 113 of the Construction Act, the Purchaser shall not be required to pay the Seller the Notified Sum on or before the Final Date provided the Seller became Insolvent after the Prescribed Period.
- Notwithstanding any other clause of the Contract, the Purchaser shall not be required to make any payment to the Seller where the Customer or any other third party upon whom the Purchaser is reliant for payment fails to pay the Purchaser on account of the Customer or such other third party being Insolvent for purposes of Section 113 of the Construction Act.
- The Seller shall maintain complete and accurate records of the time spent and materials used by the Seller in providing the Services, and the Seller shall allow the Purchaser to inspect such records at all reasonable times on request.
- 8.0 Delivery**
- 8.1 Delivery shall be deemed to be made when the Goods have been delivered in good condition at the address shown on the Purchase Order during the Purchaser's normal hours of business at a point designated by the Purchaser on the Purchase Order and off loaded or in the case of Services when the Services have been performed. The signature of the Purchaser's representative must be obtained as evidence of receipt of the Goods or, as the case may be, completion of the Services. The Seller shall be obliged to immediately replace all Goods lost or damaged in transit.
- 8.2 The time of delivery of the Goods and of performance of the Services is of the essence of the Contract.
- 8.3 The Purchaser shall be entitled to reject any Goods delivered which are not in accordance with the Contract, and shall not be deemed to have accepted any Goods until the Purchaser has had a reasonable time to inspect them following delivery or, if later, within a reasonable time after any latent defect in the Goods has become apparent.
- 8.4 If the delivery is delayed through any cause beyond the control of the Seller and immediately such cause arises the Seller notifies the Purchaser in writing giving full details, then the Purchaser may (at its sole discretion) grant a reasonable extension of time for the delivery to be effected; provided always that shortage of staff or workmen or any of the Goods or component parts thereof to be provided under the Contract shall not be deemed a cause beyond the Seller's reasonable control.
- 8.5 If the Goods are not delivered or the Services are not performed on the due date or within any extension of time granted by the Purchaser then the Seller shall indemnify the Purchaser in respect of any resulting losses in accordance with clause 11.1.4.
- 8.6 If the Goods are to be delivered or the Services are to be performed by installments, the Contract will be treated as a single contract and not severable.
- 9.0 Risk and property/title**

9.1	The liability for damages to or loss of the Goods or goods upon which the Services have been rendered shall pass to the Purchaser upon delivery to the Purchaser in accordance with the Contract.	13.1.5	(otherwise than for the purpose of amalgamation or reconstruction); an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Seller;
9.2	The property and title in the Goods shall pass to the Purchaser upon delivery, unless payment for the Goods is made prior to delivery, when it shall pass to the Purchaser once payment has been made and the Goods have been appropriated to the Contract.	13.1.6	the Seller ceases, or threatens to cease, to carry on business; or
10.0	Defects after delivery	13.1.7	the Purchaser reasonably apprehends that any of the events mentioned above is about to occur in relation to the Seller and notifies the Seller accordingly.
10.1	Without prejudice to any other remedy, if any Goods or Services are not supplied in accordance with the Contract and/or if within 12 months of the date of delivery any defects develop in the Goods or goods upon which the Services have been rendered under proper use within the period of 12 months commencing from the date of delivery (or such longer period as the Purchaser may require as a specific condition of the Contract) the Seller shall, at the option of the Purchaser and at the Seller's own cost, either replace or repair the defective Goods or (as the case may be) perform such further Services as the Purchaser shall deem necessary so as to remedy the defects.		The Purchaser may, at any time, suspend performance of all or part of its obligations under the Contract by giving written notice to the Seller. The Seller shall resume performance of its obligations as soon as reasonably practicable after receiving a written notice to do so from the Purchaser.
10.2	The Seller warrants to the Purchaser that the Services be performed by appropriately qualified and trained personnel, with all due skill, care and diligence and to such high standard of quality as it is reasonable for the Purchaser to expect in all the circumstances.		
11.0	Indemnity		
11.1	In addition to any other right or remedy available to the Purchaser (whether in law or equity), the Seller agrees to indemnify the Purchaser and the Customer against any and all liabilities, loss (whether direct or indirect and including loss of profits), and expenses (including legal expenses) incurred by the Purchaser and the Customer (including without limitation, any loss in respect of any claim brought against the Purchaser by and any third party) arising from:		
11.1.1	any loss, injury or damage wholly or partly caused by the Goods and/or the Services or their use;	13.3.1	the Purchaser fails to pay in full any sum due to the Seller by the Final Date for payment under clause 7.2; and
11.1.2	any loss, injury or damage in any way connected with the performance of the Contract; and/or	13.3.2	the Purchaser has not given a Pay Less Notice complying with clause 7.4,
11.1.3	any breach by the Purchaser of the terms of the Main Contract due wholly or in part to the Seller's failure to perform its obligations under the Contract; and/or	13.3.3	the Seller may suspend performance of any or all of its obligations under these terms and conditions by giving not less than seven days' written notice to the Purchaser of its intention to do so and stating the ground or grounds on which it intends to suspend performance.
11.1.4	any failure by the Seller to deliver the Goods and/or perform the Services on or by the due date or within any extension of time granted by the Purchaser.		
12.0	Force majeure		
	The Purchaser shall not be liable for any loss or damage caused by the non-performance or the delay in performance of any of the Purchaser's obligations hereunder if the same arises due to any cause beyond the Purchaser's control (" Force Majeure Event "). If such Force Majeure Event lasts for in excess of 30 days the Purchaser shall be entitled to terminate the Contract in accordance with 13.1.1 below.		
13.0	Termination and suspension		
13.1	The Purchaser shall be entitled to terminate the Contract without liability to the Seller by giving notice to the Seller at any time if:	13.4	In the event of a suspension in accordance with clause 13.5, the Purchaser shall pay the Seller a reasonable amount in respect of costs and expenses reasonably incurred by the Seller as a result of any exercise of its right referred to in clause 13.5 and such payment shall be the Seller's sole compensation for suspension of its obligations under these terms and conditions.
13.1.1	there is a Force Majeure Event;	14.0	Insurance
13.1.2	upon termination of the contract between the Purchaser and the Customer without the Purchaser incurring any liability to the Seller save for the payment of such sum as it shall receive from the Customer in respect of the termination after deducting the Purchaser's own costs incurred in relation to the relevant contract provided always that such payment shall not exceed those sums payable to the Seller had the Contract been terminated under clause 13.2;	14.1	The Seller shall throughout the Contract and for a period of 6 years thereafter maintain adequate insurance to cover its liability under the Contract and under common law or statute which shall include but shall not be limited to:
13.1.3	at any time prior to delivery without the Purchaser incurring any liability to the Seller other than to pay for the Goods and/or Services already delivered at the time of service of the notice of termination; and	14.1.1	Employer's liability insurance;
13.1.4	the Seller makes any voluntary arrangement with its creditors (within the meaning of the Insolvency Act 1986) or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation	14.1.2	Public liability insurance (to cover injury to or death of any person or loss of or damage to property);
		14.1.3	Products liability insurance; and
		14.1.4	Professional indemnity insurance, with indemnity limits of not less than £5,000,000 for each and every claim, or such sum as the Purchaser may from time to time reasonably require. The Purchaser shall be entitled to inspect such policy at any time on reasonable notice and shall be supplied with the current premium receipt from time to time on demand.
		15.0	Bonding and collateral warranties
		15.1	If so required by the Purchaser the Seller shall (at its own cost) within 14 days of a request by the Purchaser, provide any of the following documents to the Purchaser:
		15.1.1	an on demand performance bond from an insurance company or bank in a form approved by the Purchaser for an amount not exceeding 15% of the Price; and/or
		15.1.2	a parent company guarantee guaranteeing the due and punctual performance of the Seller's obligations under the Contract; and/or
		15.1.3	Collateral Warranties.
		15.2	The Seller shall ensure that all manufacturer's warranties and guarantees relating to the Goods and/or Services ("Manufacturer's Guarantees") are freely assignable or otherwise transferable to the Purchaser and shall take all necessary steps to effect the assignment or transfer of the Manufacturer's Guarantees to the Purchaser before completion of delivery or completion of the Services (as appropriate).
		16.0	Import/export licences
		16.1	In respect of controls under which Goods are supplied for delivery in the United Kingdom from a territory outside the United Kingdom the Seller shall obtain such licences for the exportation, transportation and

	importation of the Goods as may be required and shall deliver them to the Purchaser to enable import clearance without demurrage.	
16.2	The Seller hereby confirms that it will comply with any guidance issued by the UK Government in relation to prohibited goods and in relation to trade sanctions, arms embargoes and trade restrictions, including trade controls, transit controls and restrictions on terrorist organisations issued by the UK Department of Trade and Industry from time to time.	
17.0	General	23.0
17.1	The Seller shall at all times comply with the Purchaser's Supplier Assessment Pre-Acceptance Questionnaire document current at the time the Seller supplies the Goods and/or the Services (as appropriate).	23.1
17.2	Any notice required or permitted to be given by either party to the other under these conditions shall be in writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.	
17.3	No waiver by the Purchaser of any breach of the Contract by the Seller shall be considered as a waiver of any breach committed by the Seller nor any condition of the Contract.	24.0
17.4	The Contract shall be governed by the laws of England, and the Seller agrees to submit to the exclusive jurisdiction of the English courts.	24.1
18.0	Governing law	Intellectual property rights
	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 laws of England.	24.2
19.0	Jurisdiction	24.3
	Subject to clause 20, each party irrevocably agrees that the courts of England shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Contract or its subject matter or formation (including non-contractual disputes or claims).	24.4
20.0	Disputes	24.5
	Notwithstanding clause 19, subject to either party's right to adjudicate at any time, the parties shall use their reasonable endeavours to resolve any dispute or difference between them through negotiation or mediation. Notwithstanding any other provision of the Contract, either party may refer a dispute arising under the Contract to adjudication at any time under Part I of the Scheme for Construction Contracts (England and Wales) Regulations (as amended), which shall take effect as if it was incorporated into this clause. The adjudicator shall be appointed by the Royal Institute of Chartered Surveyors unless otherwise agreed.	25.0
21.0	Anti-bribery	Confidentiality
	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 the Contract or any agreement to be entered into pursuant to the Contract.	The Seller 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 Seller by the Purchaser, its employees, agents or subcontractors, and any other confidential information concerning the Purchaser's business, its products and services which the Seller may obtain. The Seller 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 Seller'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 Seller may also disclose such of the Purchaser'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 25 shall survive termination of the Contract.
22.0	Counterfeit, fraudulent and substandard items (CFSI)	Severance
22.1	Only new and authentic materials manufactured by an Original Equipment Manufacturer are to be supplied to the Purchaser. The supply of reconditioned, used suspect counterfeit / fraudulent materials / items is prohibited unless otherwise specified in writing by the Purchaser. All products are to be properly packaged and labelled as the brand / trade name specified on the Purchase Order. Proof including documentation / certification shall be made available and provided to authenticate the products and provide traceability to the specified manufacturer.	26.0
22.2	Materials shall be provided with appropriate 'CE' markings and national standards referenced in the specification. The Seller assumes accountability and in the event of non compliance / rejection, shall at the Purchasers option promptly replace, repair or	26.1
26.3	the intended commercial result of the original provision.	26.2
		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
		accept return at full value and shall be responsible for any additional costs related to the corrective action.