

POWER THERM CONTRACT SERVICES LIMITED TERMS AND CONDITIONS OF PURCHASE

1 Definitions & Interpretation

1.1 In these Conditions of Purchase, the following terms shall have the following meanings unless the context otherwise requires:

“Business Day”	means a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.
“Conditions”	means these Terms and Conditions of Purchase as amended from time to time in accordance with clause 16.5.
“Contract”	means the contract between the Purchaser and the Supplier for the sale and purchase of the Goods in accordance with these Conditions, which incorporates the Purchase Order, the Specification (if any) and these Conditions.
“Goods”	means the goods and/or materials (or any part of them) to be supplied by the Supplier, as set out in the Purchase Order.
“Purchase Order”	means the Purchaser’s order for the Goods.
“Purchaser”	means Powertherm Contract Services Ltd.
“Specification”	means any specification for the Goods, including any related plans and drawings, that is agreed in writing by the Purchaser and the Supplier.
“Supplier”	means the person, firm or company from whom the Purchaser purchases the Goods.

1.2 In these Conditions, the following rules of interpretation apply unless the context otherwise requires:

- 1.2.1 a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- 1.2.2 any term importing gender includes any gender, and any term importing the singular includes the plural and vice versa;
- 1.2.3 a reference to a party includes that party’s personal representatives, successors and permitted assigns;
- 1.2.4 any reference to a clause is a reference to a clause of these Conditions;
- 1.2.5 a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted and includes any subordinate legislation made under that statute or statutory provision;
- 1.2.6 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; and
- 1.2.7 clause headings are for ease of reference only and shall not affect the interpretation of these Conditions.

2 Basis of Contract

- 2.1 These Conditions apply to the Contract to the exclusion of any terms that the Supplier seeks to impose or incorporate via any quotation or otherwise, or which are implied by trade, custom, practice or course of dealing.
- 2.2 The Purchase Order constitutes an offer by the Purchaser to purchase the Goods in accordance with these Conditions.
- 2.3 The Purchase Order shall be deemed to be accepted by the Supplier on the earlier of:
 - 2.3.1 the Supplier issuing a written acceptance of the Purchase Order; and
 - 2.3.2 the Supplier doing any act consistent with fulfilling the Purchase Order, at which point the Contract shall come into existence.
- 2.4 The Purchaser’s rights and remedies under these Conditions are in addition to its rights and remedies implied by law.

3 Goods

- 3.1 The Supplier warrants and undertakes to the Purchaser 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, as amended) and fit for any purpose held out by the Supplier or made known to the Supplier by the Purchaser expressly or by implication;
 - 3.1.3 be free from defects in design, material and workmanship and remain so for 12 months after the date of 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 Supplier shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract.
- 3.3 The Purchaser shall have the right to inspect and test the Goods at any time before delivery. If, following such inspection or testing, the Purchaser considers that the Goods do not comply or are unlikely to comply with clause 3.1, the Purchaser shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure

compliance. The Purchaser shall have the right to conduct further inspections and tests after the Supplier has carried out its remedial actions.

- 3.4 Notwithstanding any inspection or testing, the Supplier shall remain fully responsible for the Goods and any inspection or testing shall not reduce or otherwise affect the Supplier's obligations under the Contract.
- 3.5 No material modification to the Goods shall be made without the Purchaser's written authorisation.

4 Delivery

- 4.1 The Supplier shall ensure that:
 - 4.1.1 the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition;
 - 4.1.2 each delivery of the Goods is accompanied by a delivery note which shows the date of delivery, the type and quantity of the Goods, special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and
 - 4.1.3 if the Supplier requires the Purchaser to return any packaging material to the Supplier, that fact is clearly stated on the delivery note. Any such packaging material shall be returned at the cost of the Supplier.
- 4.2 Time for the delivery of the Goods is of the essence. The Supplier shall deliver the Goods:
 - 4.2.1 on the date specified in the Purchase Order, or, if no such date is stated, on such date as is agreed by the parties;
 - 4.2.2 to the location specified in the Purchase Order, or as otherwise agreed by the parties; and
 - 4.2.3 during the Purchaser's normal business hours, or as instructed by the Purchaser.
- 4.3 Delivery of the Goods shall be completed when the Supplier has unloaded the Goods at the location referred to in clause 4.2.2.
- 4.4 The Supplier shall not deliver the Goods in instalments without the Purchaser's prior written consent. Where it is agreed that the Goods are to be delivered by instalments, they may be invoiced and paid for separately. However, failure by the Supplier to deliver any one instalment on time or at all, or any defect in an instalment, shall entitle the Purchaser to the remedies set out in clause 5.

5 Remedies for Non-Delivery or Damaged Goods

- 5.1 If the Supplier does not deliver the Goods in accordance with the requirements of the Contract, or delivers the incorrect quantity of Goods, or delivers Goods which are damaged, then without limiting any of its other rights or remedies, the Purchaser shall have the right to any one or more of the following remedies at its discretion, whether or not it has accepted delivery of the Goods:
 - 5.1.1 require the Supplier to deliver any missing Goods and/or replacements for any damaged Goods as soon as practicable;
 - 5.1.2 reject the Goods (in whole or in part) and return them to the Supplier at the Supplier's risk and expense, in which case the Supplier shall provide a full refund of the price of the rejected Goods (if paid);
 - 5.1.3 obtain alternative goods from other sources, in which case the Supplier shall pay to the Purchaser any additional costs the Purchaser incurs, and the quantity of Goods which remains to be delivered under the Contract shall be reduced accordingly;
 - 5.1.4 terminate the Contract forthwith by serving notice on the Supplier, in which case clause 13.3 shall apply; or
 - 5.1.5 claim damages for any other costs, losses or expenses incurred by the Purchaser which are in any way attributable to the Supplier's failure to carry out its obligations under the Contract.
- 5.2 Without prejudice to clause 5.1, where the Supplier does not deliver the Goods in accordance with clause 4.2.1 the Purchaser may, without limiting any other rights or remedies it may have, deduct 1% of the overall price of the Goods (as set out in the Purchase Order) for each week of delay.

6 Title and Risk

- 6.1 Title to the Goods shall pass to the Purchaser on completion of delivery as set out in clause 4.3 or upon payment being made, whichever is the earlier. The Supplier shall have no right to claim or retake possession of the Goods once title passes to the Purchaser.
- 6.2 The Supplier warrants that it has good title to the Goods and that the Goods are free and clear of any lien, encumbrance or rights of any third party.
- 6.3 Risk of loss or damage to the Goods shall pass to the Purchaser on completion of delivery as set out in clause 4.3.

7 Price and Payment

- 7.1 The price of the Goods shall be set out in the Purchase Order. The price of the Goods shall remain fixed for the duration of the Contract. The price is exclusive of VAT, but includes every cost and expense of the Supplier directly or indirectly incurred in connection with the provision of the Goods (including packaging, insurance and carriage). No extra charges shall be effective unless agreed in writing by the Purchaser in advance.
- 7.2 The Supplier may invoice the Purchaser on or at any time after completion of delivery of the Goods. Each invoice shall be in the form of a valid VAT invoice and shall include such supporting information reasonably required by the Purchaser to verify the accuracy of the invoice.
- 7.3 The Purchaser shall pay correctly rendered invoices within 60 days of receipt of the invoice, unless otherwise agreed. Payment shall be made to the bank account nominated in writing by the Supplier.

- 7.4 If the Purchaser fails to pay any amount properly due and payable by it under the Contract, the Supplier shall have the right to charge interest on the overdue amount at the rate of 3% per annum above the Bank of England base rate for the time being accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment. The parties agree that this rate of interest is a substantial contractual remedy pursuant to the Late Payment of Commercial Debts (Interest) Act 1998 (as amended).
- 7.5 The Purchaser may, without limiting any other rights or remedies it may have, set off any liability of the Supplier to the Purchaser against any liability of the Purchaser to the Supplier, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under the Contract.

8 Defective Goods

- 8.1 If the Goods are found to be defective or otherwise do not comply with the requirements of clause 3.1 within 12 months of the date of completion of delivery as set out in clause 4.3, then without limiting any of its other rights or remedies, the Purchaser shall have the right to any one or more of the following remedies at its discretion, whether or not it has accepted the Goods:
- 8.1.1 require the Supplier to repair or replace the Goods at the Supplier's expense;
 - 8.1.2 return the Goods to the Supplier at the Supplier's risk and expense, or require the Supplier to collect the Goods, in which case the Supplier shall provide a full refund of the price of those Goods (if paid);
 - 8.1.3 obtain alternative goods from other sources, or arrange for a third party to repair the Goods, in which case the Supplier shall pay to the Purchaser any costs the Purchaser incurs;
 - 8.1.4 terminate the Contract forthwith by serving notice on the Supplier, in which case clause 13.3 shall apply; or
 - 8.1.5 claim damages for any other costs, losses or expenses incurred by the Purchaser which are in any way attributable to the Supplier's failure to carry out its obligations under the Contract.
- 8.2 If it is necessary to open up or dismantle any works or assemblies to permit any repair or replacement of defective Goods, the Supplier shall bear the cost of such opening up or dismantling and of re-assembly and making good after repairs, replacements and testing of such Goods have been completed to the Purchaser's reasonable satisfaction.
- 8.3 Goods repaired, rectified or replaced shall be subject to the provisions of this clause 8 for a period of 12 months from the date they were repaired, rectified or replaced.

9 Confidentiality

- 9.1 Each party shall:
- 9.1.1 keep in strict confidence all business and customer information, technical or commercial know-how, specifications, inventions and processes which are disclosed to it by or on behalf of the other party;
 - 9.1.2 only disclose such confidential information to those of its employees, agents and sub-contractors who need to know the same for the purpose of discharging its obligations under the Contract; and
 - 9.1.3 ensure that such employees, agents and sub-contractors keep such information confidential.
- 9.2 This clause 9 shall survive termination of the Contract.

10 Insurance

- 10.1 During the term of the Contract and for a period of 6 years thereafter, the Supplier shall maintain in force, with reputable insurance companies, product liability insurance and public liability insurance to cover such liabilities as may arise under or in connection with the Contract, and shall, on the Purchaser's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.

11 Indemnity

- 11.1 The Supplier shall keep the Purchaser indemnified in full against all liabilities, costs, expenses, damages and losses (whether direct or indirect), including any interest, penalties, and legal and other professional fees and expenses awarded against or incurred or paid by the Purchaser as a result of or in connection with:
- 11.1.1 any claim made against the Purchaser for actual or alleged infringement of a third party's intellectual property rights arising out of, or in connection with, the supply or use of the Goods, to the extent that the claim is attributable to the acts or omissions of the Supplier, its employees, agents or sub-contractors;
 - 11.1.2 any claim made against the Purchaser by a third party arising out of, or in connection with, the supply of the Goods, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Supplier, its employees, agents or sub-contractors; and
 - 11.1.3 any claim made against the Purchaser by a third party for death, personal injury or damage to property arising out of, or in connection with, defects in the Goods, to the extent that such defects are attributable to the acts or omissions of the Supplier, its employees, agents or sub-contractors.
- 11.2 This clause 11 shall survive termination of the Contract.

12 Liability for Breach

- 12.1 The Supplier acknowledges and agrees that where there is a breach of the Contract on the part of the Supplier, such breach may disrupt and/or delay the Purchaser in performing obligations pursuant to a contract with a third party, thereby causing the Purchaser to suffer and/or incur loss and/or damage which the Purchaser shall be entitled to recover from the Supplier.
- 12.2 The Purchaser shall have no liability to the Supplier for any loss of profit or indirect or consequential losses arising out of, under or in relation to the Contract.

13 Termination

- 13.1 The Purchaser may terminate the Contract in whole or in part at any time with immediate effect by giving the Supplier written notice, in which case the Purchaser shall pay the Supplier for Goods already properly delivered or provided in accordance with the Contract together with fair and reasonable compensation for work-in-progress at the time of termination, but such compensation shall not include loss of anticipated profits or any indirect or consequential loss.
- 13.2 Without prejudice to the Purchaser's right to terminate the Contract at any time in accordance with clause 13.1, and without prejudice to any other rights or remedies, the Purchaser shall have the option by notice in writing to the Supplier to terminate the Contract immediately if:
- 13.2.1 the Supplier becomes insolvent as defined in sections 113(2) to 113(5) of the Housing Grants, Construction and Regeneration Act 1996 (as amended); or
- 13.2.2 the Purchaser reasonably believes that the Supplier is about to become subject to any such insolvency events.
- 13.3 Following termination of the Contract pursuant to clause 13.2, the Purchaser shall pay the Supplier for Goods already properly delivered or provided in accordance with the Contract but shall have no other liability of whatsoever nature to the Supplier under or in connection with the Contract.
- 13.4 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination. Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

14 Force Majeure

- 14.1 Neither party shall be liable to the other for any delay or failure in performing its obligations under the Contract to the extent that such delay or failure is caused by an event or circumstance that is beyond the reasonable control of that party, and which by its nature could not have been foreseen by such party or, if it could have been foreseen, was unavoidable.
- 14.2 The Supplier shall use all reasonable endeavours to cure any such events or circumstances affecting the Supplier's performance under the Contract.
- 14.3 If any event or circumstance prevents the Supplier from carrying out its obligations under the Contract for a continuous period of more than 28 days, the Purchaser may terminate the Contract immediately by giving written notice to the Supplier, in which case clause 13.3 shall apply.

15 Service of Notices

- 15.1 Any notice or communication given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or commercial courier or sent by post, fax or email to the relevant party at its registered office (if it is a company) or its last known place of business (in any other case), or to such address or contact details specified by the relevant party by notice in writing to the other party.
- 15.2 Notices and communications given in accordance with clause 15.1 shall be deemed to have been received, if delivered by hand or by commercial courier, on the date and at the time of delivery, as evidenced by a signed delivery receipt; if sent by post, at 9:00am on the second Business Day after the date of posting; and if sent by fax or email, on the date and at the time of transmission or sending.
- 15.3 The provisions of this clause 15 shall not apply to the service of any proceedings or other documents in any legal action.

16 General

- 16.1 **Assignment and subcontracting.** The Purchaser may at any time assign, transfer, sub-contract or deal in any other manner with any or all of its rights or obligations under the Contract. The Supplier may not assign, transfer, sub-contract or deal in any other manner with any or all of its rights or obligations under the Contract without the Purchaser's prior written consent.
- 16.2 **Severance.** If any court or other competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted or modified to the extent necessary to make it valid, legal and enforceable, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- 16.3 **No waiver.** No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
- 16.4 **Third party rights.** A person who is not a party to the Contract shall not have any rights to enforce its terms.
- 16.5 **Variation.** Except as set out in these Conditions, any variation to the Contract, including the introduction of any additional terms and conditions, shall only be binding when agreed in writing and signed by the Purchaser.
- 16.6 **Entire agreement.** The Contract constitutes the entire agreement and understanding between the parties in relation to its subject matter and supersedes all previous agreements (whether written or oral) between the parties relating thereto. Each party acknowledges that, in entering into the Contract, it has not relied on, and shall have no right or remedy in respect of, any written or oral statement, representation, misrepresentation, assurance or warranty (whether express or

implied) other than as expressly set out in the Contract. Nothing in this clause 16.6 shall limit or exclude any liability for fraud or for fraudulent misrepresentation.

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