

TEDDINGTON APPLIANCE CONTROLS LIMITED

STANDARD CONDITIONS OF SALE.

1. INTERPRETATION

1.1 In these Conditions the following definitions apply

"**Buyer**" means the person placing an Order with the Seller;

"**Commencement Date**" has the meaning set out in clause 2.3.

"**Conditions**" means the standard terms and conditions of sale set out in this document as amended from time to time in accordance with clause 2.9 and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Buyer and the Seller;

"**Contract**" means the contract for the purchase and sale of the Goods and/or the Services in accordance with these Conditions;

"**Force Majeure Event**" has the meaning given to it in clause 12 of these Conditions;

"**Goods**" means the goods (including any instalment of the goods or any parts for them) which the Seller is to supply in accordance with these Conditions;

"**Goods Specification**" means any specification for the Goods, including any relevant plans or drawings, that is agreed in writing by the Buyer and the Seller;

"**Intellectual Property Rights**" means all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world;

"**Order**" means the Buyer's order for the supply of Goods and/or Services,

"**Seller**" means Teddington Appliance Controls Limited a company registered in England with registered number 5763842 whose registered office is at Daniels Lane, Holmbush, St. Austell, Cornwall PL25 3HG;

"**Services**" shall include any design or other services to be provided by the Company pursuant to the Contract whether in relation to the supply of Goods or otherwise and where the Contract is or includes work or work and materials or the supply of labour;

"**Service Specification**" means the description or specification for the Services provided in writing by the Seller to the Buyer in a specification sheet;

"**Specifications**" means either of the Goods Specification and the Services Specification or both as applicable in the context.

"**writing**" includes any communication effected by email, telex, cable, facsimile transmission or any comparable means.

1.2 Construction. In these Conditions, the following rules apply :

- a) a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- b) a reference to a party includes its personal representatives, successors or permitted assigns;
- c) any reference in these Conditions to a statute or a provision of a statute shall be construed as a reference to that statute or provision as amended, re-enacted or extended at the relevant time;
- d) 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.
- e) unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- f) unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- g) the headings in these Conditions are for convenience only and shall not affect their interpretation.

2. BASIS OF THE SALE OF GOODS AND/OR SUPPLY OF THE SERVICES

2.1 Any quotation or estimate given by the Seller is an invitation to the Buyer to make an offer only and no order of the Buyer placed with the Seller in pursuance of a quotation or estimate or otherwise shall be binding on the Seller unless and until it is accepted by the Seller.

2.2 The Order constitutes an offer by the Buyer to purchase Goods and/or Services in accordance with these Conditions.

2.3 Unless otherwise agreed in writing by the Seller, the Order shall only be deemed to be accepted when the Seller issues written acceptance of the Order or when the Seller starts manufacturing the Goods or starts providing the Services in the Order (whichever is sooner) at which point and on which date the Contract shall come into existence (**Commencement Date**).

2.4 The Seller shall sell and the Buyer shall purchase the Goods and/or the Services on an ex-works basis. Any Contract shall incorporate and be subject to these Conditions and receipt of the Goods by the Buyer or performance of the Services by the Seller shall be deemed to be conclusive proof that the Buyer has accepted these Conditions in the absence of any express or other implied acceptance of these Conditions by the Buyer. These Conditions, shall govern the Contract to the exclusion of any other terms and conditions subject to which any such quotation is accepted or purported to be accepted, or any such Order is made or purported to be made, by the Buyer.

- 2.5 All other terms and conditions (except those implied in favour of the Seller which are not consistent with these Conditions) whether or not the same are endorsed upon, delivered with or referred to in any purchase order or any other document delivered or sent by the Buyer to the Seller are expressly excluded.
- 2.6 Any reference in the Contract to the Buyer's order, specification or like document will not be deemed to imply that any terms or conditions endorsed upon, delivered with or referred to in such order, specification or like document will have effect.
- 2.7 The Contract constitutes the entire agreement between the parties. The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Seller which is not set out in the Contract.
- 2.8 Any samples, drawings, descriptive matter or advertising issued by the Seller and any illustrations or descriptions of the Goods or descriptions of the Services contained in the Seller's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods and/or Services described in them. Such items shall not form part of the Contract or have any contractual force.
- 2.9 No variation to these Conditions shall be binding unless agreed in writing between the authorised representatives of the Buyer and signed by a director of the Seller.
- 2.10 The Seller's employees or agents are not authorised to make any representations concerning the Goods and/or the Services unless confirmed by the Seller in writing. In entering into the Contract the Buyer acknowledges that it does not rely on, and waives any claim for breach of, any such representations that are not so confirmed.
- 2.11 Any advice or recommendations given by the Seller or its employees or agents to the Buyer or its employees or agents as to the nature of the Goods and/or the Services or as to the storage, application or use of the Goods which are not confirmed in writing by the Seller are followed or acted upon entirely at the Buyer's own risk, and accordingly the Seller shall not be liable for any such advice or recommendations which are not so confirmed.
- 2.12 Any typographical, clerical or other errors or omissions in any sales literature, quotation, price list, offer, acceptances, invoice, Specification or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.
- 2.13 The Seller shall provide the Goods and/or Services set out in the Specification to the Buyer subject to these Conditions.
- 2.14 Any changes or additions to the Goods and/or Services in the Specification or these Conditions must be agreed in writing by the Buyer and the Seller. The Goods and/or Services shall be provided in accordance with the Specification and otherwise in accordance with the Seller's current brochure or other published literature relating to the Goods and/or Services in the Specification from time to time, subject to these Conditions.

- 2.15 Further details about the Specification, and advice or recommendations about its provision or utilisation, which are not given in the Seller's brochure or other promotional literature may be made available on written request.
- 2.16 In no circumstances shall a Buyer cancel or vary an Order that has been acknowledged by the Seller without the Seller's written agreement.
- 2.17 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. ORDERS AND SPECIFICATIONS

- 3.1 The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any Order (including any applicable specification) submitted by the Buyer, and for giving the Seller any necessary information relating to the Goods and/or the Services within sufficient time to enable the Seller to perform the Contract in accordance with its terms.
- 3.2 The quantity, quality and description of and any Specification shall be as set out in the Buyer's Order (if accepted by the Seller), or as otherwise agreed in writing between the Buyer and the Seller.
- 3.3 If the Goods are to be manufactured or any process is to be applied to the Goods by the Seller or if the Services are to be performed by the Seller in accordance with a Specification submitted by the Buyer, the Buyer shall indemnify the Seller in full against all liabilities, costs damages, expenses 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 the Seller in connection with any claim made against the Seller for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Seller's use of the Buyer's Specification. This clause 3.3 shall survive termination of the Contract.
- 3.4 The Seller reserves the right to make any changes in the Specifications which are required to conform with any applicable safety or other statutory requirements or, where the Goods and/or the Services are to be supplied to the Seller's specification, which do not materially affect their quality or performance.
- 3.5 No Order which has been accepted by the Seller may be cancelled by the Buyer except with the agreement in writing of the Seller and on terms that the Buyer shall indemnify the Seller in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Seller as a result of cancellation.

4. PRICE OF THE GOODS

- 4.1 The price of the Goods and/or the Services shall be the Seller's quoted price or, where no price has been quoted (or a quoted price is no longer valid), the price listed in the Seller's published price list current at the date of acceptance of the Order.

Where the Goods and/or the Services are supplied for export from the United Kingdom, the Seller's published export price list shall apply. All prices quoted are valid for 30 days only or until earlier acceptance by the Buyer, after which time they may be altered by the Seller without giving notice to the Buyer.

- 4.2 Except as otherwise stated under the terms of any quotation or in any price list of the Seller, and unless otherwise agreed in writing between the Buyer and the Seller, all prices are given by the Seller on an ex works basis and where the Seller agrees to deliver the Goods or perform the Services otherwise than at the Seller's premises, the Buyer shall be liable to pay the Seller's charges for transport, packaging, insurance and installation. In addition the Buyer shall be liable for all export or import or other applicable duties.
- 4.3 The price is exclusive of any applicable value added tax, which the Buyer shall be additionally liable to pay to the Seller at the rate applicable at the appropriate tax point.
- 4.4 The cost of carriage of Goods and of pallets and returnable containers will be charged to the Buyer in addition to the price of the Goods, and/or the Services, but full credit will be given to the Buyer provided they are returned undamaged to the Seller, before the due payment date.
- 4.5 Where it is discovered by the Seller that any quotation or estimate given by it contains an accidental error or omission then, notwithstanding the quotation or estimate given, the Seller shall be entitled to invoice the Buyer and receive payment in accordance either with the price given in the quotation or estimate or the Seller's price at the date of despatch whichever is the greater.
- 4.6 The Seller expressly reserves the right to increase the contract price at any time after the date of acknowledgement of Order by such additional sum or sums as from time to time be necessary to cover the increased cost of production due to:
- a) alteration of the Buyer's requirements;
 - b) further experimental work considered by the Seller to be necessary and not included at the time of acknowledgement or Order;
 - c) suspension or delay of work on the Buyer's instruction or as a result of a lack of adequate instructions or information provided by the Buyer.
- 4.7 All Orders are subject to a minimum order charge of £250.00 excluding VAT unless otherwise agreed in writing. The Seller reserves the right to amend this charge at its sole discretion.
- 4.8 The Seller when manufacturing the Goods to Specifications supplied by the Buyer:
- a) reserves the right to charge for and supply any excess Goods manufactured up to within 5% of the quantity ordered;
 - b) the Seller shall fully and effectually indemnify the Buyer against all costs, claims, losses and damages suffered or incurred by the Seller arising from any infringements

of patents, registered designs or trademarks or other industrial monopoly rights;

- c) shall in no way be liable for any loss or damage of whatsoever nature arising in any way out of, or out of the use of, defective designs Specifications or information supplied by or on behalf of the Buyer and the Buyer shall keep the Seller fully and effectually indemnified in respect thereof.

5. TERMS OF PAYMENT

- 5.1 Subject to any special terms agreed in writing between the Buyer and the Seller, the Seller shall invoice the Buyer for the price of the Goods and/or the Services on or at any time after delivery of the Goods or performance of the Services, unless the Goods are to be collected by the Buyer or the Buyer wrongfully fails to take delivery of the Goods, in which event the Seller shall be entitled to invoice the Buyer for the price at any time after the Seller has notified the Buyer that either the Services have been performed or (as the case may be) that the Goods are ready for collection or (as the case may be) the Seller has tendered delivery of the Goods and/or had performed the Services.
- 5.2 The Buyer shall pay the price of the Goods and/or the Services (without any deduction) within 30 days from the end of the month of the Seller's invoice (**Due Date**), notwithstanding that delivery may not have taken place and the property in the Goods has not passed to the Buyer. The time of payment of the price shall be of the essence of the Contract. Receipts for payment will be issued only upon request.
- 5.3 If the Buyer fails to make any payment on the Due Date under this Agreement or any other agreement between them then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to;
- a) cancel the Order or suspend any further deliveries to the Buyer;
 - b) appropriate any payment made by the Buyer to such of the Goods and/or the Services (or the goods or the services supplied under any other contract between the Buyer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer); and
 - c) charge the Buyer interest (both before and after any judgment) on the amount unpaid, at the rate of 4 per cent per annum above the Bank of England base rate from time to time accruing on a daily rate from the Due Date until payment in full is made, whether before or after judgment, and compounding quarterly
 - d) an indemnity in respect of all reasonable legal and other costs in obtaining payment thereafter.
- 5.4 The Buyer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Buyer shall not be entitled to assert any credit, set-off or counterclaim against the Seller in order to justify withholding payment of any such amount in whole or in part. The Seller may, without limiting its other rights or remedies, set off any amount owing to it by the Buyer against any

amount payable by the Seller to the Buyer.

reasonable storage and selling expenses) account to the Buyer for the excess over the price under the Contract or charge the Buyer for any short fall below the price under the Contract.

6. DELIVERY OF GOODS AND PERFORMANCE OF SERVICES

6.1 Delivery of the Goods shall be made by the Buyer collecting the Goods at the Seller's premises at any time after the Seller has notified the Buyer that the Goods are ready for collection, or when the Seller delivers the Goods to the Buyer's premises or as otherwise instructed by the Buyer. In the case of Services, performance shall be deemed to be when the Seller completes the performance of the Services at the Buyer's premises or at some other place for performance agreed to by the Seller.

6.2 Any dates quoted for delivery of the Goods or performance of the Services are approximate only and the Seller shall not be liable for any delay in delivery of the Goods or performance of the Services howsoever caused. Time for delivery or performance shall not be of the essence unless previously agreed by the Seller in writing. The Seller shall not be liable for any delay in the delivery of the Goods and/or performance of the Services that is caused by a Force Majeure Event or the Buyer's failure to provide the Seller with adequate delivery instructions or any other instructions that are relevant to the supply of Goods and/or the performance of the Services.

6.3 The Goods may be delivered or the Services performed by the Seller in advance of the quoted delivery or performance date upon giving reasonable notice to the Buyer.

6.4 Where the Goods are to be delivered or the Services performed in instalments, each delivery or performance shall constitute a separate contract and failure by the Seller to deliver or perform any one or more of the instalments in accordance with these Conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.

6.5 If the Seller fails to deliver the Goods or perform the Services for any reason other than a Force Majeure Event or the Buyer's fault and the Seller is accordingly liable to the Buyer, the Seller's liability shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest available market) of similar goods or similar services to replace those not delivered over the price of the Goods or the Services (as the case may be).

6.6 If the Buyer fails to take delivery of the Goods or accept performance of the Services or fails to give the Seller adequate delivery instructions at the time stated for delivery and/or performance (otherwise than by reason of a Force Majeure Event or by reason of the Seller's fault) then, without prejudice to any other right or remedy available to the Seller, delivery of the Goods and/or performance of the Services will be deemed to have been completed at 9am on the 5 day following the day on which the Seller notified the Buyer that the Goods were ready and/or the Services were ready to be performed and the Seller may;

- a) store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or
- b) sell the Goods at the best price readily obtainable and (after deducting all

6.7 The Buyer shall not be entitled to reject the Goods if the Seller delivers up to and including 5 per cent or less than the quantity of Goods ordered,

6.8 The Seller 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 Buyer to cancel any other instalment.

6.9 If the Seller's performance of any of its obligations in respect of the Services is prevented or delayed by any act or omission by the Buyer or failure by the Buyer to perform any relevant obligation (**Buyer Default**):

- a) the Seller shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Buyer remedies the Buyer Default, and to rely on the Buyer Default to relieve it from the performance of any of its obligations to the extent the Buyer Default prevents or delays the Seller's performance of any of its obligations;
- b) the Seller shall not be liable for any costs or losses sustained or incurred by the Buyer arising directly or indirectly from the Seller's failure or delay to perform any of its obligations as set out in this clause 6.9; and
- c) the Buyer shall reimburse the Seller on written demand for any costs or losses sustained or incurred by the Seller arising directly or indirectly from the Buyer Default.

7. RISK, PROPERTY AND RETENTION OF TITLE

7.1 Risk of damage to or loss of the Goods shall pass to the Buyer –

- a) in the case of Goods to be delivered at the Seller's premises, at the time when the Seller notifies the Buyer that the Goods are available for collection; or
- b) in the case of Goods to be delivered otherwise than at the Seller's premises, at the time of delivery or, if the Buyer wrongfully fails to take delivery of the Goods, the time when the Seller has tendered delivery of the Goods.

7.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, the property in the Goods shall not pass to the Buyer until the Seller has received in cash or cleared funds payment in full for:

- a) the Goods and/or Services; and
- b) any other goods or services that the Seller has supplied to the Buyer in

- respect of which payment has become due
- 7.3 Until such time as the title in the Goods passes to the Buyer, the Buyer shall -
- a) hold the Goods on a fiduciary basis as the Seller's bailee
 - b) store the Goods separately from all other goods held by the Buyer so that they remain identifiable as the Seller's property;
 - c) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - d) maintain the Goods in satisfactory condition and keep them insured against all risk for their full price from the date of delivery;
 - e) notify the Seller immediately if it becomes subject to any of the events listed in clause 14; and give the Seller such information relating to the Goods as the Seller may require from time to time,

Notwithstanding the above, the Buyer shall be entitled to resell or use the Goods in the ordinary course of its business.

- 7.4 Provided the Goods are still in existence and have not been resold, the Seller shall be entitled at any time to require the Buyer to deliver up the Goods to the Seller and, if the Buyer fails to do so forthwith, to enter upon any premises of the Buyer or any third party where the Goods are stored and repossess the Goods.
- 7.5 The Buyer shall 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 the Seller, but if the Buyer does so, all money owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.

8. BUYER'S OBLIGATIONS

- 8.1 The Buyer shall:
- a) ensure that the terms of the Order and (if submitted by the Buyer) the Goods Specification are complete and accurate;
 - b) co-operate with the Seller in all matters relating to the Services;
 - c) provide the Seller with such information and materials as the Seller may reasonably require to supply the Services, and ensure that such information is accurate in all material respects;
 - d) obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start.

9. INTELLECTUAL PROPERTY RIGHTS

- 9.1 All Intellectual Property Rights in or arising out of or in connection with the Goods

and/or Services shall be owned by the Seller or third party supplier (as the case may be).

- 9.2 The Buyer acknowledges that, in respect of any third party Intellectual Property Rights in the Goods and/or Services, the Buyer's use of any such Intellectual Property Rights is conditional on the Seller obtaining a written licence from the relevant licensor on such terms as will entitle the Seller to license such rights to the Buyer.

10. CONFIDENTIALITY

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 or its products or its services which the Receiving Party may obtain. The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party. This clause 10 shall survive termination of the Contract.

11. WARRANTIES AND LIABILITY

- 11.1 Subject to the conditions set out below the Seller warrants that the Goods will correspond in all material respects with their description and any Specification at the time of delivery and will be free from defects in material and workmanship for a period of six months from the date of their initial use or twelve months from delivery, whichever is the first to expire and that for a period of 12 months from point of delivery of the Goods at the stipulated place of delivery; the Seller (subject to clause 11.3 below) undertakes to at its option to repair, replace any part supplied by it which is found to be defective as a result of a fault in the manufacture or refund the price of the Goods in full, provided that the defective part is returned to the Seller carriage prepaid, but no greater liability than any such repair or replacement shall attach to the Seller under this warranty. Any parts so repaired or replaced free of charge under the warranty will be subject to the warranty during the remainder of the said guarantee period only.
- 11.2 The Seller further warrants that on delivery and for a period of 12 months from the date of delivery the Goods shall be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and shall be fit for any purpose held out by the Seller.
- 11.3 The Seller must, in order to be bound by the warranty contained in Clauses 11.1 and 11.2 above, be notified of any defect, shortage or non-delivery of the Goods before five days have elapsed after the date of delivery of the Goods and the Seller is given a reasonable opportunity to examining such Goods. If delivery is not refused, and the Buyer does not notify the Seller accordingly the Buyer shall not be entitled to reject the Goods and the Seller shall have no liability for such defect or failure; and the

- Buyer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.
- 11.4 The warranties contained in Clause 11.1 and 11.2 (**Warranties**) shall not extend to parts supplied to the Seller by the Buyer.
- 11.5 No claim will be met by the Seller under these Warranties if-
- a) such parts are rendered defective as the result of fair wear and tear, wilful damage, negligence carelessness or abuse of whatsoever kind in work, accident or use of the Goods beyond their designed capabilities;
 - b) the faults occurred after a mounting or defective setting of the Goods not carried out by the Seller's employees or agents;
 - c) the defect arises because the Buyer failed to follow the Seller's oral or written instructions as to storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice;
 - d) the defect arises as a result of the Seller following any drawing, design or Specification supplied by the Buyer
 - e) the defective part has been repaired replaced or modified other than by the Seller's employee or nominee;
 - f) the Buyer makes further use of such Goods after giving notice in accordance with clause 11.3;
 - g) the Goods differ from the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards.
 - h) the terms of payment set out in Clause 5 of these Conditions have not been complied with;
 - i) notice of the fault was not, on its initial discovery, immediately given to the Seller.
- 11.6 These warranties shall not extend to proprietary goods manufactured by any person other than the Seller and the Seller shall in not be liable for any loss caused in any way by any such defective parts and so far as is possible, the Seller will pass on to the Buyer the benefit of any manufacturer's warranty given by such other person. Except as provided in this clause 11, the Seller shall have no liability to the Buyer in respect of the Goods' failure to comply with the Warranties.
- 11.7 In consideration of and subject to the above Warranties and the benefit of any warranty given by the manufacturer (if any) the Buyer agrees that the Seller shall not in any event be liable for loss, damage or expense whatsoever and howsoever caused arising out of or in connection with the sale, manufacture or delivery of the Goods and/or performance of the Services except only in the case of misrepresentations to the extent that a Court may consider reliance on this exclusion not to be fair and reasonable in the circumstances of the case.
- 11.8 The Seller shall provide the Services to the Buyer in accordance with the Service Specification in all material respects.
- 11.9 The Seller warrants to the Buyer that the Services will be provided using reasonable care and skill.
- 11.10 Nothing in these Conditions shall limit or exclude the Seller's liability for:
- a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable)
 - b) fraud or fraudulent misrepresentation;
 - c) breach of the terms implied by section 12 of the Sale of Goods Act 1979;
 - d) defective products under the Consumer Protection Act 1987; or
 - e) any matter in respect of which it would be unlawful for the Seller to exclude or restrict liability
- 11.11 Except in respect of death or personal injury caused by the Seller's negligence, or as expressly provided in these Conditions, the Seller shall not be liable to the Buyer by reason of any representation, or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for any loss of profit or any indirect, special or consequential loss, damage costs, expenses or other claims for compensation (whether caused by the negligence of the Seller, its servants or agents or otherwise) which arise out of or in connection with the supply of the Goods and/or Services or their use or resale by the Buyer.
- 11.12 Subject to clause 11.13 the Seller's total liability 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 circumstance exceed the total amount paid for the Goods and/or Services (as applicable).
- 11.13 Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 11.14 This clause 11 shall survive termination of the Contract.
- 12 FORCE MAJEURE**
- 12.1 The Seller shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Seller's obligations in relation to the Goods, if the delay or failure was due to any cause beyond the Seller's reasonable control (Force Majeure Event). Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Seller's reasonable control;
- a) act of God, explosion, flood, tempest, fire or accident; war or threat of war, sabotage, insurrection, civil disturbance or requisition or an act of terrorism;

- b) acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;
 - c) import or export regulations or embargoes;
 - d) strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Seller or of a third party);
 - e) difficulties in obtaining raw materials, labour, fuel, parts or machinery;
 - f) power failure or breakdown in machinery.
- 12.2 The Seller shall not be liable to the Buyer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.
- 12.3 If the Force Majeure Event prevents the Seller from providing any of the Goods and/or Services for more than 4 weeks, the Seller shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Buyer.

13 EXPORT TERMS

- 13.1 In these Conditions "Incoterms" means the international rules for the interpretation of trade terms of the International Chamber of Commerce as in force at the date when the Contract is made. Unless the context otherwise requires, any term or expression which is defined in or given a particular meaning by the provisions of Incoterms shall have the same meaning in these Conditions, but if there is any conflict between the provisions of Incoterms and these Conditions, the latter shall prevail.
- 13.2 Where the Goods are supplied for export from the United Kingdom, the following provisions shall (subject to any special terms agreed in writing between the Buyer and the Seller) apply notwithstanding any other provision of these Conditions.
- 13.3 The Buyer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and for the payment of any duties thereon.
- 13.4 Unless otherwise agreed in writing between the Buyer and the Seller, the Goods shall be delivered ex-works and the Seller shall be under no obligation to give notice under section 32(3) of the Sale of Goods Act 1979.

14 TERMINATION

- 14.1 Without limiting its other rights or remedies, either party may terminate the Contract with immediate effect by giving written notice to the other if:

- a) either party commits a material breach of its obligations under this Contract and (if such breach is remediable) fails to remedy that breach within 5 days after receipt of notice in writing of the breach;
 - b) either party 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 or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
 - c) either party 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 other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
 - 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 either party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of either party with one or more other companies or the solvent reconstruction of either party;
 - e) either party (being an individual) is the subject of a bankruptcy petition or order;
 - f) a creditor or encumbrancer of either 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;
 - g) 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 either party (being a company);
 - h) a floating charge holder over the assets of either party (being a company) has become entitled to appoint or has appointed an administrative receiver;
 - i) a person becomes entitled to appoint a receiver over the assets of either party or a receiver is appointed over the assets of either party;
 - j) any event occurs, or proceeding is taken, with respect to either party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 14.1(b) to clause 14.1(i) (inclusive);
 - k) either party suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business; or
 - l) either party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.
- 14.2 Without limiting its other rights or remedies, the Seller shall have the right to suspend all further deliveries of Goods or suspend the supply of Services under the Contract or any other contract between the Buyer and the Seller if:

- a) the Buyer fails to make pay any amount due under this Contract on the due date for payment; or
 - b) the Buyer becomes subject to any of the events listed in clause 14.1(b) to clause 14.1(l), or the Seller reasonably believes that the Buyer is about to become subject to any of them.
- 15 CONSEQUENCES OF TERMINATION**
- On termination of the Contract for any reason:
- a) the Buyer shall immediately pay to the Seller all of the Seller's outstanding unpaid invoices and interest and, in respect of Goods and Services supplied but for which no invoice has yet been submitted, the Seller shall submit an invoice, which shall be payable by the Buyer immediately on receipt;
 - b) the Buyer shall be entitled to resell or use the Goods in the ordinary course of its business, but provided the Goods are still in existence and have not been resold, the Seller shall be entitled at any time to require the Buyer to return all Goods which have not been fully paid for. If the Buyer fails to do so, then the Seller may enter the Buyer's premises and take possession of them. Until they have been returned, the Buyer shall be solely responsible for their safe keeping and will not use them for any purpose or dispose of them in any manner;
 - c) the accrued rights and remedies of the parties 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.
- 16 GENERAL**
- 16.1 The Seller is a member of a group of companies whose holding company is Henderson Industries Limited, and accordingly the Seller may perform any of its obligations or exercise any of its rights hereunder by itself or through any other member of its group, provided that any act or omission of any such other member shall be deemed to be the act or omission of the Seller.
 - 16.2 The Seller shall be entitled to perform any of the obligations undertaken by it and to exercise any of the rights granted to it under the Contract through any agents or subcontractors appointed by it in its absolute discretion for that purpose.
 - 16.3 Assignment and subcontracting:
 - a) The Seller may at any time assign, transfer, 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 Buyer shall not, without the prior written consent of the Seller, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
 - 16.4 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.
 - 16.5 Any notice or other communication shall be deemed to have been duly received if delivered personally, when left at such addressor, if sent by prepaid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed, or if sent by fax, on the next Business Day after transmission, if sent by e-mail, upon sending to the correct e-mail address, irrespective of whether the e-mail is subsequently opened and read by the recipient. This clause 16.5 shall not apply to the service of any proceedings or other documents in any legal action.
 - 16.6 No partnership: Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.
 - 16.7 No failure or delay by either party in exercising any of its rights under the Contract shall be deemed to be a waiver of that right, and no waiver by either party of any breach of the Contract by the other shall be considered as a waiver of any subsequent breach of the same or any other provision. Unless specifically provided otherwise, rights arising under the Contract are cumulative and to not exclude rights provided by law.
 - 16.8 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby.
 - 16.9 During all stages of design and manufacture of the Goods and performance of the Services the Seller shall take all reasonable precautions to procure that the Goods and Services comply with the Health and Safety at Work Act 1974 (as amended from time to time). Users of the Goods are reminded that they have similar obligations under the 1974 Act (as amended) and must ensure that the Goods supplied by the Seller are installed and operated in such a way that there is no risk to health or safety at the place of work.
 - 16.10 The Contract shall be governed by the laws of England and Wales.

- 16.11 The parties to the Contract irrevocably agree, for the sole benefit of the Seller that, subject as provided below, the courts of England and Wales shall have exclusive jurisdiction over any dispute or claim arising out of or in connection with the Contract or its subject matter or formation (including non-contractual claims). Nothing in this clause shall limit the right of the Seller to take proceedings against the Buyer in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the Seller taking of proceedings in any other jurisdictions, whether concurrently or not, to the extent permitted by the law of such other jurisdiction.
- 16.12 The Buyer irrevocably consents to any process in any legal action or proceedings under clause 16.11 above being served on it in accordance with the provisions of this Contract relating to service of notices. Nothing contained in this Contract shall affect the right to serve process in any other manner permitted by law
- 16.13 A person who is not a party to the Contract shall not have any rights under or in connection with it save for any group company of Henderson Industries Limited who shall have the ability to enforce the terms of the Contract as if it was a party to it.

Teddington Appliance Controls Limited

May 2012