



# Terms & Conditions



## AQUA COOLING SOLUTIONS

### Conditions of Supply

<b>1</b>	<b>Interpretation</b>		
1.1	In these Conditions:-		
	“Conditions”	means the standard terms and conditions of supply set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Customer and the Supplier;	1.2 Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.
	“Contract”	means the contract for the supply of the Goods and / or the Services;	1.3 The headings in these Conditions are for convenience only and shall not affect their interpretation.
	“Customer”	means the person who accepts a quotation from the Supplier for the supply of the Goods and / or the Services or whose order for the Goods / Services is accepted by the Supplier;	<b>2</b> <b>Basis of the sale</b>
	“Goods”	means the goods (including any instalment of the goods) which are specified on the Supplier's quotation or order acceptance;	2.1 The Supplier shall supply and the Customer shall acquire the Goods and / or the Services in accordance with any written quotation of the Supplier which is accepted by the Customer, or any written order of the Customer which is accepted by the Supplier, subject in either case to these Conditions, which shall govern the Contract to the exclusion of any other terms and conditions (including any terms or conditions which the Customer purports to apply under any purchase order, confirmation of order, specification or other document).
	“Installation Site”	means the location agreed by the parties as the site at which the Goods will be installed;	2.2 No variation to these Conditions shall be binding unless agreed in Writing between the authorised representatives of the Customer and the Supplier.
	“Services”	means the services of whatever nature, including, without limitation, installation services and  maintenance services which the Supplier agrees to provide to the Customer and which are specified on Supplier's quotation or order acceptance;	2.3 The Supplier's employees or agents are not authorised to make any representations concerning the Goods and / or the Services unless confirmed by the Supplier in Writing. In entering into the Contract the Customer acknowledges that it does not rely on, and waives any claim for breach of, any such representations which are not so confirmed.
	“Supplier”	means Aqua Cooling Solutions; and	2.4 Any advice or recommendation given by the Supplier or its employees or agents to the Customer or its employees or agents as to the suitability, application or use of the Goods or the suitability, content or effect of the Services which is not confirmed in Writing by the Supplier is followed or acted upon entirely at the Customer's own risk, and accordingly the Supplier shall not be liable for any such advice or recommendation which is not so confirmed.
	“Writing”	includes e-mail, facsimile transmission and comparable means of communication.	2.5 All drawings, descriptive matter, specifications and advertising issued by the Supplier and any descriptions or illustrations contained in the Suppliers' catalogues or brochures are issued or published for the sole purpose of giving an

- approximate idea of the Goods described in them. They will not form part of the Contract.
- 2.6 Any typographical, clerical or other error or omission in any sales literature, quotation, acceptance of offer, invoice or other document or information issued by the Supplier shall be subject to correction without any liability on the part of the Supplier.
- 3 Orders and specifications**
- 3.1 No order submitted by the Customer shall be deemed to be accepted by the Supplier unless and until confirmed by the Supplier's authorised representative.
- 3.2 The Customer shall be responsible to the Supplier for ensuring the accuracy of the terms of any order (including any applicable specifications or directions) submitted by the Customer, and for giving the Supplier any necessary information relating to the Goods and / or the Services within a sufficient time to enable the Supplier to perform the Contract in accordance with its terms.
- 3.3 The quantity and description of and any specifications or directions for the Goods and / or the Services shall be those set out in the Supplier's quotation (if accepted by the Customer) or the Customer's order (if accepted by the Supplier).
- 3.4 The Supplier reserves the right to make any changes in the specification of the Goods or the content of the Services which are required to conform with any applicable safety or other statutory requirements or, where the Goods are to be supplied or the Services provided in accordance with the Customer's specification or directions, which do not materially affect their quality or performance.
- 3.5 The Customer may not cancel any order which has been accepted by the Supplier except with the agreement of the Supplier in Writing on terms that the Customer shall indemnify the Supplier in full against all direct loss (including the cost of all labour and materials used), damages charges and expenses incurred by the Supplier as a result of cancellation.
- 3.6 The Supplier may cancel any order which has been accepted by the Customer at any time prior to delivery provided that in the event of such cancellation the Supplier's sole liability to the Customer by reason of such cancellation shall be limited to the refund to the Customer of all sums already paid by the Customer to the Supplier in respect of the order within 14 days of the date of

cancellation. The Supplier shall under no circumstances be liable to the Customer for any consequential loss or damage (whether for loss of profit or otherwise), costs, expenses or other claims for consequential compensation whatsoever and whether caused by the negligence of the Supplier, its employees or agents or otherwise which arise out of or in connection with any cancellation.

**4 Price of the Goods / Services**

- 4.1 The price of the Goods and / or Services shall be the Supplier's quoted price. All prices quoted are valid for 30 days only or until earlier acceptance by the Customer, after which time they may be altered by the Supplier.

**4.2 The Supplier reserves the right, by giving notice to the Customer at any time before delivery, to increase the price of the Goods and / or the Services to reflect any change in delivery dates, specifications or directions for the Goods and / or the Services which are requested by the Customer, or any delay caused by any instructions of the Customer or failure of the Customer to give the Supplier adequate information or instructions.**

- 4.3 The price is exclusive of any applicable value added tax and all costs or charges in relation to loading, unloading, carriage and insurance all of which the Customer shall be additionally liable to pay to the Supplier.

**5 Payment**

- 5.1 Subject to any special terms agreed in Writing between the Customer and the Supplier, the Customer will pay the price of the Goods and Services by way of three equal instalments to be paid at the following intervals:-

5.1.1 the first instalment shall be due immediately following the acceptance by the Customer of the Supplier's written quotation or immediately following the acceptance by the Supplier of the Customer's written order ("the First Instalment");

5.1.2 the Supplier shall be entitled to invoice the Customer for the second instalment at such time as shall be agreed between the parties in Writing ("the Second Instalment") and, in the event that the parties are unable to agree when the Second Instalment is to be paid the Supplier shall be entitled to invoice the

- Customer at any time after the expiration of 30 days from the date of the First Instalment; and
- 5.1.3 the Supplier shall invoice the Customer for the final instalment ("the Final Instalment") on or at any time after delivery of the Goods or performance of the Services (unless the Customer wrongfully fails to take delivery of the Goods or to allow the Supplier to perform the Services) in which event the Supplier shall be entitled to invoice the Customer for the Final Instalment (together with any other outstanding monies owing under the Contract) at any time after the Supplier has tendered delivery of the Goods or performance of the Services.
- 5.2 Unless otherwise agreed in Writing between the Customer and the Supplier, payment must be made by the Customer within 30 days of the date of the relevant invoice (save in the case of the Second Instalment, referred to in clause 5.1.2 above which must be made by the Customer within 7 days of the date of the invoice) without any deduction notwithstanding that delivery of the Goods or performance of the Services may not have taken place and the property in the Goods has not passed to the Customer. 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 No payment shall be deemed to have been received until the Supplier has received cleared funds.
- 5.4 The Customer shall make all payments due under the Contract without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Customer has a valid court order requiring an amount equal to such deduction to be paid by the Supplier to the Customer.
- 5.5 All payments to be made under the Contract shall be made in pounds sterling or Euros. In the event that payment is tendered in Euros then the rate of exchange to be used for converting pounds sterling into Euros and vice versa is to be the exchange rate of the Bank of England plc at the close of business on the date of the invoice.
- 5.6 If the Customer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Supplier, the Supplier shall be entitled at its option to:-
- 5.6.1 cancel the Contract;
- 5.6.2 suspend the Contract until due payment is made; and
- 5.6.3 charge the Customer interest (both before and after any judgment) on the amount unpaid, at the rate of 4 per cent per annum above the base lending rate from time to time of the Bank of England plc, accruing on a daily basis until payment is made, whether before or after any judgment.
- 5.7 If the Supplier opts to cancel or suspend the Contract pursuant to Condition 5.6, it shall be entitled, in addition to any other rights it may have against the Customer, to the following:-
- 5.7.1 in the case of cancellation, recovery of any and all costs and losses (including consequential loss incurred by the Supplier in connection with the production of the Goods and the preparation or performance of the Services to the date of cancellation, to include, without limitation, loss of profits and other financial losses); and
- 5.7.2 in the case of suspension, recovery of any and all costs and losses incurred by the Supplier as a direct result of suspension.
- 6 Installation**
- 6.1 The Customer shall, at its own cost, prepare the Installation Site in accordance with the specifications supplied by the Supplier, including, without limitation, the provision of such facilities and equipment and carry out such works to prepare the Installation Site as may be necessary to enable the Supplier to install the Goods.
- 6.2 If the Customer fails to prepare the Installation Site and / or fails to provide such facilities and equipment referred to in clause 6.1 above the Customer shall indemnify the Supplier for all costs and charges (including storage and transportation costs) incurred by the Supplier as a result of such failure.
- 7 Delivery**
- 7.1 Subject to any special terms agreed in Writing between the Customer and the Supplier, delivery of the Goods and / or the Services shall take place at the Supplier's premises.

- 7.2 The Customer will take delivery of the Goods and / or the Services within fourteen (14) days of the Supplier giving it notice that the Goods are ready for delivery.
- 7.3 Where the Customer requires the Goods to be delivered to its own premises or those of a third party it shall notify the Supplier in Writing and the following provisions shall apply:-
- 7.3.1 all costs of carriage, loading, unloading and insurance shall be borne by the Customer;
- 7.3.2 if, in the Supplier's reasonable opinion, special packaging is required the Customer shall reimburse the Supplier for the costs of such packaging;
- 7.3.3 the Supplier shall not be liable for any damage incurred during transit, howsoever caused;
- 7.3.4 the Supplier shall use its preferred carrier unless the Customer specifies otherwise in Writing;
- 7.3.5 the Supplier's carrier shall provide insurance cover for the Goods equal to the value of the Goods and such insurance premium shall be payable by the Customer in accordance with the provisions of clauses 4.3 and 7.3.1. The Customer shall be responsible to make such additional insurance arrangements as it deems appropriate and neither the carrier nor the Supplier shall be liable if such cover is inadequate.
- 7.4 **Any dates specified by the Supplier for delivery of the Goods and / or provision of the Services are intended to be an estimate only and time for delivery shall not be made of the essence unless previously agreed by the Supplier in Writing. The Supplier shall not be liable for any reasonable delay in delivery of the Goods.**
- 7.5 If the Supplier fails to deliver the Goods and / or perform the Services for any reason whatsoever the Supplier shall return to the Customer all sums already paid by the Customer to the Supplier in respect of the order within 14 days of the date of notification by the Supplier to the Customer that it

is unable to deliver the Goods and / or perform the Services. The Supplier shall under no circumstances be liable to the Customer for any consequential loss or damage (whether for loss of profit or otherwise), costs, expenses or other claims for consequential compensation whatsoever and whether caused by the negligence of the Supplier, its employees or agents or otherwise which arise out of or in connection with any failure to deliver the Goods and / or Services.

- 7.6 If for any reason the Customer will not accept delivery of the Goods and / or products of the Services when they are ready for delivery or within fourteen (14) days of notification that they are ready in accordance with clause 7.2 then:-

7.6.1 risk in the Goods will pass to the Customer (including for loss or damage caused by the Supplier);

7.6.2 the Goods will be deemed to have been delivered; and

7.6.3 the Supplier may store the Goods until delivery whereupon the Customer will be liable for all related costs and expenses (including, without limitation, storage and insurance).

## 8 Risk and Title

- 8.1 Risk of damage to or loss of the Goods shall pass to the Customer from the time of delivery.

8.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, ownership of the Goods shall not pass to the Customer until the Supplier has received (in cash or cleared funds) payment in full of the price of the Goods and any Services and all other goods and services agreed to be supplied by the Supplier to the Customer for which payment is then due.

8.3 Until such time as ownership of the Goods passes to the Customer the Supplier shall be entitled at any time to require the Customer to deliver up the Goods to the Supplier and, if the Customer fails to do so forthwith, to enter upon any premises of the Customer or any third party where the Goods are stored and repossess the Goods.

8.4 While ownership in any of the Goods remains in the Supplier, the Customer shall:-

8.4.1 hold those Goods as the Supplier's bailee and fiduciary agent;

8.4.2 keep those Goods properly stored and in good condition and fully insured;

- 8.4.3 mark and store those Goods so as to identify them as the property of the Supplier;
  - 8.4.4 not to install, merge or attach or the Goods to any other machine or item in any manner whatsoever; and
  - 8.4.5 not sell, mortgage, pledge, lend, hire or otherwise dispose of or transfer or part with possession or physical possession of the Goods.
- 8.5 The Supplier reserves the right to maintain an action for the price notwithstanding the fact that the ownership of the Goods has not passed to the Customer.

**9 Warranties and liability**

9.1 Unless otherwise agreed between the parties in Writing and subject to the conditions set out below the Supplier warrants to the Customer:-

- 9.1.1 that the Goods and / or the Services will correspond with their specification (if any) and be of satisfactory quality for a period of twelve months from the date of delivery; and
- 9.1.2 that the Services will be performed with a reasonable degree of skill and care.

**9.2 The above warranty is given by the Supplier subject to the following conditions:-**

- 9.2.1 the Supplier shall be under no liability in respect of any defect in the Goods or the Services arising from any instruction given or specification supplied by the Customer;**
- 9.2.2 the Supplier shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, misuse or alteration of the Goods without the Supplier's approval or failure to follow the Supplier's instructions (whether oral or in Writing) as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice;**
- 9.2.3 the Supplier shall be under no liability in respect of any defect of the Goods if the Customer has failed to have the Goods serviced by appropriately qualified personnel at**

**least twice during the twelve month period following the date of delivery (and can provide the Supplier with the appropriate documentary evidence of such servicing);**

**9.2.4 the Supplier shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total price for the Goods and the Services (if any) has not been paid by the due date for payment;**

**9.2.5 the Supplier shall be under no liability under the above warranty if the Customer fails to follow the Supplier's instructions (whether oral or in Writing) as to the installation, merging or attaching the Goods to any other machine or item in any manner whatsoever;**

**9.2.6 the Supplier shall be under no liability under the above warranty if the Customer alters the Goods without the prior Written consent of the Supplier;**

**9.2.7 the above warranty does not extend to materials or equipment not manufactured by the Supplier, in respect of which the Customer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Supplier;**

**9.2.8 it is the responsibility of the Customer to make known to the Supplier the specific purposes for which the Goods are required; and**

**9.2.9 the Supplier shall not be liable to the Customer for any defects in the Goods or the Services where such defects were brought to the attention of the Customer before the Contract was made or, where the Customer examined the Goods supplied before the Contract was made.**

**9.3 Any claim by the Customer which is based on unsatisfactory quality of the Goods or Services or their failure to correspond with specification shall (whether or not delivery is refused by the Customer) be notified to the Supplier within fourteen (14) days from the**

	date of delivery or (where the defect or failure was not apparent on reasonable inspection) within fourteen (14) days after discovery of the defect or failure.		return any of the Goods and for the avoidance of doubt the Supplier will not refund the price paid for any returned Goods.
<b>9.4</b>	If the Customer wishes to make any claim under the Contract it shall as soon as reasonably practicable return the Goods or the defective part in question to the Supplier for inspection.	<b>11</b>	<b>Insolvency of Customer</b>
<b>9.5</b>	Where any valid claim in respect of any of the Goods and / or the Services which is based on the unsatisfactory quality, the unfitness of the Goods or their failure to meet specification is notified to the Supplier in accordance with these Conditions, the Supplier shall be entitled at the Supplier's sole discretion to repair or replace the Goods and / or (as appropriate) provide further Services free of charge or, at the Supplier's sole discretion, refund to the Customer the price of the Goods and / or the Services (or a proportionate part of the price), but the Supplier shall have no further liability to the Customer.	11.1	This clause applies if:-
		11.1.1	the Customer makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or
		11.1.2	an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Customer; or
		11.1.3	the Customer ceases, or threatens to cease, to carry on business; or
		11.1.4	the Supplier reasonably apprehends that any of the events mentioned above is about to occur in relation to the Customer and notifies the Customer accordingly.
<b>9.6</b>	Except in respect of death or personal injury caused by the Supplier's negligence, the Supplier's liability to the Customer 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 costs, expenses whatsoever (and whether caused by the negligence of the Supplier, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods or the Services or the use of the Goods by the Customer shall be limited to the value of the Goods or Services in question.	11.2	If this clauses applies then, without prejudice to any other right or remedy available to the Supplier, the Supplier shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Customer, and if the Goods have been delivered or Services performed but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.
<b>9.7</b>	The Supplier shall under no circumstances be liable to the Customer for any consequential loss or damage (whether for loss of profit or otherwise) or other claims for consequential compensation whatsoever (and whether caused by the negligence of the Supplier, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods or the Services or the use of the Goods by the Customer.	<b>12</b>	<b>General</b>
<b>10</b>	<b>Returns and Refunds</b>	12.1	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.
10.1	Save as in accordance with the provisions of Clause 9 the Customer shall not be entitled to	12.2	No waiver by the Supplier of any breach of the Contract by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision.
		12.3	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.

- 12.4 Any dispute arising under or in connection with these Conditions or the sale of the Goods and / or the supply of the Services shall be referred to arbitration by a single arbitrator appointed by agreement or (in default) nominated on the application of either party by the President for the time being of the Law Society in accordance with the Arbitration Act 1996 or any re-enactment or modification thereof for the time being in force.
- 12.5 The Contract shall be governed by the laws of England and the parties hereby submit to the exclusive jurisdiction of the English Courts.