

# AMP AIR CONDITIONING LIMITED

## TERMS AND CONDITIONS OF SALE

Effective 17/10/2016

### 1. GENERAL

Any Goods supplied by the Company are subject to these terms and conditions of sale (**Terms and Conditions**) which supersede all other terms and conditions, representations or undertakings made by the Buyer or the Company whether during the course of negotiations between the Buyer and the Company or whether before or after these Terms and Conditions. Acceptance of the Goods shall be deemed to be acceptance of these Terms and Conditions.

### 2. DEFINITION OF TERMS

- In these conditions the "Company" shall mean AMP Air Conditioning Limited.
- The "Goods" shall mean all or any of the Goods which from time to time the Company offers for sale and which form the subject matter of the Contract.
- The "Buyer" shall mean the company, firm or person who places an Order with the Company or otherwise agrees to buy from the Company any of the Goods.
- The "Contract" shall mean the Contract on these Terms and Conditions for the sale by the Company to the Buyer of the Goods.
- The "Order" shall mean the Buyer's Order for the Goods, as set out in the Buyer's purchase order form or Buyer's written acceptance of the Company's quotation/estimate as the case may be.
- "Force Majeure Event" has the meaning given in clause 14(a).

### 3. THE COMPANY'S TERMS AND CONDITIONS

- For the avoidance of doubt, these Terms and Conditions are expressly incorporated into any Contract entered into with the Buyer.
- The Company does not sell the Goods subject to any warranty, condition or stipulation, either express or implied by common law or by statute unless such warranty, condition or stipulation is contained in these Terms and Conditions. The Buyer acknowledges that it has not entered into the Contract in reliance upon any warranty, condition or stipulation other than a warranty, condition or stipulation that is contained in these Terms and Conditions.
- The Company shall not be liable for to the Buyer, whether in contract tort (including negligence), breach of statutory duty or otherwise, for any loss of profit or any indirect or consequential loss arising under or in connection with this contract other than for death or personal injuries caused by the negligence of the Company or of its employees.
- No variations or additions to these Terms and Conditions shall be binding upon the Company unless expressly accepted by the Company in writing under the hand of an authorised official of the Company and these Terms and Conditions shall apply to the Contract to the exclusion of any other terms that the Buyer seeks to incorporate, or which are implied by trade, custom, practice, course of dealing or terms of trading of the Buyer.

### 4. ACCEPTANCE

- All Orders provided by the Buyer must be in writing and must provide sufficient information to enable the Company to proceed without delay with the execution of the Order. All Orders are subject to the availability of the Goods at the time the Order is placed.
- The Order constitutes an offer by the Buyer to purchase the Goods in accordance with these Terms and Conditions. The Buyer is responsible for ensuring that the terms of the Order and any applicable specification are complete and accurate.
- A quotation/estimate given by the Company shall not constitute an offer.
- Any quotation/estimate given by the Company shall only be valid for 30 days from its date of issue.
- Orders shall not be binding on the Company unless accepted by the Company in writing and made subject to these Terms and Conditions. Submission by the Buyer of an Order to the Company shall be deemed conclusive evidence of the Buyer's acceptance of these Terms and Conditions.
- If the Buyer requests changes to an accepted Order then this request shall be treated as a separate Order, unless otherwise agreed in writing by the Company. If changes are made to an accepted Order at the Buyer's request then the price, discount on and delivery date of the original Order are subject to change.

### 5. PATENTS, INTELLECTUAL PROPERTY AND NOTICES

- The Company gives no warranty or indemnity in respect of any actual or alleged infringement of the patents, registered or unregistered design, right, copyright, or any other industrial or intellectual property right relating to the Goods.
- The Buyer shall have no rights to any intellectual property owned by or licensed to the Company.
- All designs, samples, models, experimental equipment, marketing devices, accessories and other items relating to the Goods or their development or creation shall remain the Company's property, shall be treated as confidential and shall not be copied, reproduced or disclosed to any person without the Company's prior written consent.
- The Buyer shall not allow any trademark or instruction or warning applied to the Goods to be obliterated or obscured.

### 6. PRICE

- The price shall be that ruling according to the Company's price list for the Goods, in force at the date of delivery, less such discount (if any) as agreed by the Company and the Buyer in writing.
- The Company may at any time amend the price list for the Goods. Any such amendments shall be published on the Company's website and it is the Buyer's responsibility to check the price list for the Goods in force from time to time. The Company will notify the Buyer in writing of any changes to the price list for the Goods which takes place between the date on which an Order is placed and the date set for delivery of the Goods to the Buyer and the Buyer shall be bound by the prices for the Goods so notified.
- The Buyer shall be liable for any increase in the price or expenses (including delivery and storage charges in accordance with Condition 7) incurred by the Company arising out of any delay by the Buyer to accept delivery of the Goods.
- The Company reserves the right to invoice the minimum charge of £25 in the event of an Order being received for less than this value to cover the cost of administration.
- All amounts stated in these Terms and Conditions are exclusive of Value Added Tax or any similar tax properly chargeable in respect of supplies under these Terms and Conditions and any other tax or duty and the Buyer will pay all such Value Added Tax and other applicable taxes together with those amounts.

### 7. DELIVERY

- The place and date of delivery are agreed between the Company and the Buyer.
- The Buyer shall examine the Goods upon delivery. If the Goods or any part thereof are received in a damaged condition or not received, the Company will accept no responsibility for such damage or loss unless the Buyer notifies the Company of this within 3 days of receipt, and provides to the Company a written claim in writing within 7 days of receipt (save where the damage is a latent defect in the Goods in which case clause 18 shall apply). The Buyer must then afford the Company a reasonable opportunity to inspect any damage or verify any loss and shall immediately return the Goods to the Company. The Company's sole responsibility upon any damage or loss notified to the Buyer in accordance with this clause 7(a) is to repair or replace the Goods which prove to be lost or defective as soon as reasonably practicable, provided that they are returned by the Buyer to the Company. Whether the remedy is repair or replacement shall be at the option of the Company and such repair or replacement shall be free of charge. Subject to the provisions of clause 18 the Company shall have no further liability to the Buyer.

- Any time or date specified for despatch or delivery of the Goods given by the Company is an estimate only and shall not form part of the Contract unless expressly made a term of the Contract in writing.
- Carriage will be charged extra unless otherwise agreed in writing. Where the quoted price includes freight the Company shall determine the route in its absolute discretion. Special routing requested by the Buyer will be subject to a separate charge.
- The Company reserves the right to charge for any delays or extraordinary charges incurred during the course of the delivery to the Buyer's site or premises.
- If the Contract provides for the Company to deliver the Goods, delivery shall be deemed to take place when the Goods arrive at the agreed place of delivery or are ready for despatch by the Company to the order of the Buyer and such despatch shall have been delayed by the Buyer, whichever is sooner.
- If for any reason the Buyer is unable to accept delivery of the Goods at the time of deemed delivery under clause 7(f) or clause 7(k) of these Terms and Conditions, the Company shall be entitled to arrange storage at its own premises or elsewhere at the Buyer's risk and cost.
- If the Company fails to deliver the Goods, its liability shall be limited to costs and expenses incurred by the Buyer in obtaining Goods of similar description and quality in the cheapest market available, less the price of the Goods.
- The Company shall not be liable in any way where delivery is delayed because of a Force Majeure Event or where the Buyer has not given proper delivery instructions.
- The Buyer undertakes that the place of delivery will at all times be safe for the Company and any of its agents, employees, sub-contractors and vehicles carrying out the delivery. The Buyer is responsible, at its own cost, for the provision of such labour and apparatus as is necessary for the offloading and positioning of the Goods at the place of delivery and shall give the Company every assistance in effecting delivery.
- If the Contract provides for the Goods to be collected by or on behalf of the Buyer, the Company shall give the Buyer reasonable notice in writing and/or orally of when and where the Goods will be ready for collection. Delivery shall be deemed to take place upon the date and at the place so notified whether or not the Goods are collected.
- The Company may deliver the Goods in instalments, and each such instalment shall be deemed to be the subject of a separate contract and no damage, non-delivery or shortage in relation to any such instalment shall entitle the Buyer to any remedies in relation to any other instalment or contract. If payment of any instalment is not made in accordance with these Terms and Conditions, the Buyer shall be liable to the Company for any costs incurred in connection with manufactured or partly manufactured Goods acquired by the Company for the Buyer, in addition to the other rights and remedies available to the Company.

### 8. RISK

- In the case of Goods collected or delivered by third party carriers, risk in the Goods shall pass to the Buyer at the moment when the Goods leave the Company's premises for delivery to the Buyer pursuant in the Contract.
- In the case of Goods delivered by the Company's vehicles, risk in the Goods shall pass to the Buyer at the moment when the Goods are delivered by being unloaded from the Company's vehicle at the place of delivery specified by the Buyer.
- In the case of Goods not normally offered for sale by the Company and ordered expressly on behalf of the Buyer, the risk in the Goods shall pass to the Buyer at the moment when the Company notifies the Buyer that they are ready for collection or delivery.
- If delivery does not take place as a result of any act or omission of the Buyer, or if the Buyer fails to collect the goods in accordance with clause 7(k) of these Terms and Conditions, then delivery shall be deemed to have taken place in accordance with clause 7(f) or 7(k) as appropriate, and risk shall pass to the Buyer who shall indemnify the Company in full against any expense, cost or loss incurred by the Company including, without limitation, storage and transport costs.

### 9. CANCELLATIONS AND RETURNED GOODS

- Orders/part Orders cannot be cancelled without the prior agreement and written consent of the Company.
- The Company does not accept the return of Goods for credit unless the Buyer has prior written permission from any authorised officer of the Company. Only new Goods with undamaged packaging and regarded by the Company as suitable for resale will be accepted for credit.
- Credit for returned Goods will be subject to a minimum rehandling charge of 25% at the discretion of the Company.

### 10. PAYMENT

- The Company may invoice the Buyer for the Goods on or at any time after completion of the delivery.
- Payment for all Goods delivered shall be made in full without deductions by the end of the month following the month in which the invoice was issued, unless otherwise agreed in writing by the Company. Any queries must be notified to the Company, in writing, within 7 days of the invoice date. Time of payment of any invoice is of the essence.
- In the event that any sum due is not paid in full by the due date the Company reserves the right to charge interest and claim compensation for debt recovery costs under the Late Payment of Commercial Debts (Interest) Act 1998.
- The Buyer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). The Company may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Buyer against any amount payable by the Company to the Buyer.

### 11. PROPERTY

- Property in the Goods shall not pass to the Buyer until the Buyer has paid in cash or cleared funds the whole of the price of the Goods and all other sums due and payable by the Buyer to the Company.
- The Buyer shall, until property passes, hold the goods as fiduciary agent and bailee of the Company and shall keep and retain the Goods free from any charge, lien or other encumbrance, and shall insure them for their full replacement value against any loss or damage and shall keep them properly stored and protected.
- Notwithstanding the provisions of clause 11(b) (and provided that none of the circumstances in clause 12 apply) the Buyer shall be authorised to resell the goods provided that he shall hold the proceeds of sale (or insurance monies, if the Goods are damaged or lost) as trustee for the Company in a separate designated bank account.
- At any time after the purchase price has become due and remains unpaid or in the event of termination under sub-clause 12(a) or 12(b), the Buyer shall cease to have any interest in or right to possession of the Goods and the Company for the purpose of exercising its rights as the unpaid Company and otherwise under this contract shall be entitled to enter any premises where the Goods are situated and to remove them at the Buyer's expense. The Company's rights as aforesaid shall apply whether or not Goods have been mixed.
- The Buyer shall keep the Goods identified as the Company's and separate from those of the Buyer or third parties until property passes. However, in the event of the Goods having been mixed the Company shall have the right to sell the product in which the Goods have been mixed to deduct from the proceeds of sale the purchase price and the cost of sale and any other monies due hereunder and shall account to the Buyer for remainder of the proceeds of the sale if any.
- Save as otherwise stated therein, the provisions of clauses 11(a) to 11(e) inclusive shall survive the termination of the Contract and in particular, but without limitation, termination by the Company by acceptance of repudiation of this Contract by the Buyer.

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**12. TERMINATION OF THE CONTRACT**

(a) The Contract shall automatically terminate if the Buyer (being an individual or, in the case of a firm, any member thereof) commits any act of bankruptcy or has a receiving Order made against him or has any process of distress of execution levied upon his goods or makes any arrangement with his creditors, before the property in the Goods has passed to the Buyer hereunder.

(b) If the Buyer (being a limited Company) has a Receiver or Administrator or other like officer appointed of its assets or goes into liquidation whether compulsory or voluntary or ceases to carry on business, or if the Company reasonably considers that any of the said events is about to occur, before the property in the Goods has been passed to the Buyer, then the Company may terminate the contract forthwith by notice in writing.

(c) Termination under this clause shall be without prejudice to the Company's right to pursue its rights or remedies (including without limitation the right to recover damages) for any breach of contract by the Buyer.

(d) On termination of the Contract for any reason, the Buyer shall immediately pay to the Company all of the Buyer's outstanding unpaid invoices and interest.

**13. SUITABILITY FOR PURPOSE**

It is entirely the Buyers responsibility to ensure that the Goods ordered by him are suitable for his purpose. The Company shall not be under any liability for any loss or damage however arising from or attributable to any advice statements or representations given by the Company, its employees or agents to the Buyer in respect of the Goods whether regarding performance capability or suitability for any purpose. Such liability is hereby expressly excluded to the extent permitted by law.

**14. FORCE MAJEURE**

(a) Notwithstanding any other provision of the Contract, the Company shall not be liable in any way for loss or damage resulting from the failure to supply any of the Goods or for any delay or defect in the supply of any Goods caused by a force majeure event including without limitation strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors (**Force Majeure Event**).

(b) Where the Company is prevented from performing the Contract by virtue of any Force Majeure Event for more than 14 days then without limiting its other rights or remedies the Company may by written notice to the Buyer determine the Contract.

**15. SPECIFICATION**

(a) Any part of the Goods not so specified within an Order shall be in accordance with the Company's printed catalogue or the catalogue of the Company's suppliers (subject to any modifications made since publication). Any adaptation of the standard specification of the Goods as detailed in the printed catalogues referred to in this clause 15(a) shall be made upon the full and sole liability of the Buyer, and the Buyer agrees to indemnify the Company in full against any claim resulting from any such variation (whether or not arising out of the negligence of the Company, its servants or sub-contractors).

(b) The Company shall not be under any liability in respect of descriptions, specifications or other matters in relation to the Goods contained in any material such as price lists, catalogues, trade publications and advertising matter other than in the Contract itself.

(c) If the Company adopts any changes in construction or design of the Goods or the specification thereof the Buyer shall accept the Goods so changed in fulfilment of the Order unless the Buyer states otherwise in the Buyer's written Order.

(d) Where the Buyer supplies any drawings or specifications, the Buyer warrants that they are accurate.

(e) The Company reserves the right to amend any specification for the Goods (whether a specification provided by the Buyer or otherwise) if required by any applicable statutory or regulatory requirements.

**16. INDEMNITY**

(a) The Buyer will indemnify the Company against any loss or damage suffered by the Company as a result of any failure by the Buyer to perform any of the covenants and conditions of the Contract including the payment of reasonable storage charges while any of the Goods remain on the Company's premises after risk has passed to the Buyer.

(b) The Buyer will indemnify and pay the Company against all claims against the Company by a third party arising directly or indirectly out of the Contract including, where Goods are made to the Buyers specification, any claim that the Goods infringe a third party patent, registered design, trade mark or other right. This clause 16(b) shall survive the termination of the Contract.

**17. COMPLIANCE WITH INSTRUCTION, SAFETY AND ENVIRONMENTAL**

(a) The Buyer must ensure that all Goods are installed, maintained and used strictly in accordance with the appropriate instructions and recommendations provided by the Company or the manufacturer both for the safety of users and third parties and also to prevent damage to the Goods.

(b) The Buyer shall be responsible for all costs, charges, and expenses arising from or in connection with the decommissioning, recovery, recycling and disposal of all or part of the Goods and shall not seek to recover such expenses or contribution from the Company.

(c) The Buyer is responsible for obtaining and complying with all relevant licences, permissions, permits and consents from appropriate regulatory bodies and for complying with any other lawful authority in connection with the storage, installation, operation, use, maintenance, repair, transportation, decommissioning, recovery and eventual disposal of the Goods.

(d) Where the Buyer sells all or part of the Goods to another party, the Buyer shall enter into a similar covenant with that party.

**18. WARRANTY**

In the case of Goods sold by the Company where the manufacturer's and/or other recommended installation and maintenance procedures have been correctly followed, the Company warrants that:

(a) If any Goods sold by the Company are found not to be merchantable quality within one year from the date of sale or within such longer time within the warranty period given to the Company by the manufacturer of the Goods and the Buyer complies with the Company's warranty claim procedure (copies available on request), then the Company shall, at its option, repair or replace the defective Goods or issue a credit note for the defective Goods provided always that:

i. Where the Goods or any part of them are found not to be of merchantable quality this warranty applies only to that part and not the entire Goods.

ii. Items supplied under this warranty are only warranted for the remainder of the period of warranty on the Goods originally sold under the Contract.

iii. The Company does not accept claims for any carriage costs of an item under this warranty.

iv. The Company will not accept any warranty liability where the defect of the Goods arises as a result of the Company following any drawing, design or specification supplied by the Buyer.

v. The Company reserves the right to make site visits in order to inspect installations in the case of any warranty claim.

vi. All Goods returned under warranty must have gas and liquid connections sealed.

vii. The Company does not accept any labour charges or any other charges, whatsoever, for the replacement of warranty items unless expressly offered by the manufacturer.

viii. The Company does not accept claims where the Buyer has failed to comply with clause 17(a).

(b) The Company will not accept any warranty liability where the Goods fail to meet the specification if the failure results from the operation of other goods not supplied by the Company with which the Company's Goods are set to work.

(c) The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.

(d) There shall be no Warranty on any Goods installed outside Great Britain, Isle of Man, Northern Ireland and the Channel Islands.

**19. SEVERABILITY**

The invalidity or unenforceability for any reason of any clause or sub-clause of this Contract shall not prejudice or affect the validity or enforceability of the remainder.

**20. SEVERANCE OF ANY WAIVER BY THE COMPANY**

No waiver by the Company of any of the requirements hereof or of any rights hereunder shall release the Buyer from full performance of its remaining obligations.

**21. MISCELLANEOUS**

(a) The Buyer shall not be entitled, without the prior written consent of the Company, to assign its rights under the Contract.

(b) Any notice required or permitted to be given under these Terms and Conditions shall be in writing and shall be sent by recorded delivery 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 notice. In proving service it shall be sufficient that the notice was properly addressed and posted.

(c) If any Order is made by two or more Buyers jointly, the obligations of those Buyers under the Contract shall be joint and several.

(d) The Company and the Buyer do not intend that any provision of these Conditions shall be enforceable by virtue of the Contract (Rights of Third Parties) Act 1999 by any person who is not a party to the contract.

**22. VARIATION AND MODIFICATION OF TERMS AND CONDITIONS**

The Company reserves the right, at its sole discretion, to change, modify or otherwise alter these Terms and Conditions at any time. Such modifications shall become effective immediately.

**23. JURISDICTION**

The law governing the Contract shall be English law and the parties submit to the jurisdiction of the English Courts.