

Nu-Heat UK Ltd.
Terms and Conditions of Sale of Goods to the Trade

NU-HEAT UK LIMITED
Company No. 3131852 VAT No. GB156722794

IMPORTANT NOTICE: These terms and conditions of sale apply to all purchases of Products by business customers of Nu-Heat UK Limited. If you are a consumer (i.e. you are not purchasing Products in the course of your business, craft, trade or profession), these terms and conditions do not apply to you and we refer you to our terms and conditions of sale for consumers, which will apply to your order for Products.

1. DEFINITIONS

"Balance" the Price of the Products (as determined in accordance with the terms of the Contract), less the Deposit paid (if any).

"Chosen Date" means a date, as chosen by the Company, between the first day of the Validity Window and Delivery;

"Company" means Nu-Heat UK Limited of Heathpark House, Devonshire Road, Heathpark Industrial Estate, Honiton, Devon EX14 1SD company number 3131852.

"Conditions" means the standard terms and conditions of sale set out in this document.

"Contract" means the legally binding contract for the sale by the Company and purchase by the Customer of the Products.

"Customer" means the person, entity or firm who submits an order for Products to the Company and whose order for Products is accepted by the Company in accordance with these Conditions.

"Delivery" has the meaning in clause 8(a).

"Delivery Address" means the address within the UK to which the Products are to be delivered, as agreed between the Customer and the Company.

"Delivery Date" has the meaning given to it in clause 8(a).

"Deposit" means the advance payment, payable by the Customer to the Company in advance of the Company's supply of the Products.

"Design Room Temperature" has the meaning given in clause 6(b).

"Force Majeure Event" has the meaning in clause 15(a).

"Indexation Factor" means: (a) the value of the Consumer Prices Index ("CPI") as most recently published by the Office of National Statistics ("ONS") on the Chosen Date divided by (b) the most recently published value of CPI at the first day of the Validity Window.

"Order Confirmation" has the meaning in clause 3(a).

"Price" means the price of the Products set out in the Quotation and confirmed in the Order Confirmation (as such value may be varied in accordance with the terms of the Contract, including clause 3(e), clause 5(a) and clause 6).

"Products" means the products (or any parts for them) set out in the Order Confirmation which the Company is to supply in accordance with these Conditions and/or which are added to/substituted into the Customer's order pursuant to clauses 3(d), (e), (f) and/or 6(d).

"Quotation" means the estimate or quotation document produced by the Company detailing, inter alia, the specification of the Products, quoted price for the Products, the Validity Window and further notes relevant to the Customer's enquiry.

"Renewables" means Heat Pump Products and/or and Solar Thermal Products.

"System" has the meaning given in clause 6(a).

"Validity Window" has the meaning in clause 2(b).

2. APPLICATION

(a) THESE Conditions apply to all orders and the Contract to the exclusion of all other terms or conditions that the Customer may seek to impose or incorporate (whether orally, via conduct, under any purchase order, confirmation of order, specification or other document), or which may be implied by trade, custom, practice or course of dealing. Accordingly, no terms or conditions endorsed on, delivered with or contained in the Customer's purchase order, confirmation of order, specification or other document shall form part of any contract between the Company and the Customer for the supply by the Company to the Customer of any products. No addition to, or variation of these Conditions, nor any representation concerning any products will bind the Company, unless specifically agreed in writing and signed by a Director of the Company. No agent or person employed by, or under contract with the Company has any authority to alter or vary in any way these Conditions and/or to make any representation about any products, except as stated above. IF these Conditions are so varied then, subject to the express terms of that variation, these Conditions shall continue to apply as if that variation were incorporated in the Contract.

(b) ANY Quotation given by the Company to the Customer shall constitute an invitation to the Customer to make an offer to purchase the products listed on that Quotation, subject to these Conditions. Any quotation is not a binding offer and is not capable of acceptance. Any Quotation shall (unless it is withdrawn by the Company) only be valid for a period of 90 days from the date of its issue ("**Validity Window**").

(c) ANY samples, drawings, descriptive matter or advertising produced by the Company and any descriptions contained in the Company's catalogues, websites or brochures are produced for the sole purpose of giving an approximate idea of the products described therein and they are for illustrative purposes only. They shall not form part of the Contract or have any contractual force. Products may vary from those samples, drawings, descriptive matter, advertising, descriptions and/or illustrations.

(d) ANY typographical, clerical or other error or omission in any sales literature, product catalogue, quotation, price list, acceptance of offer, invoice or other document or information issued by the Company shall be subject to correction without any liability on the part of the Company, provided that such will not apply after a Contract has been formed.

3. ACCEPTANCE OF ORDERS

(a) IF the Customer does not place an order with the Company during the Validity Window the Company shall be entitled to issue a revised Quotation on such terms as it may determine. NO Contract shall come into existence until the Company acknowledges and accepts the Customer's order in writing ("Order Confirmation") and (where applicable) when the Company has received payment (in full and in cleared funds) of the Deposit (see clause 4).

(b) THE Customer shall be responsible to the Company for ensuring the completeness, accuracy and sufficiency of the terms of any order submitted by the Customer to the Company and/or any applicable specification, and for giving the Company any necessary information relating to the Products and/or the provision of them to the Customer within a sufficient time to enable the Company to perform the Contract in accordance with these Conditions ("**Customer Information**"). The Customer's order constitutes an offer by the Customer to purchase products from the Company in accordance with these Conditions. The Company accepts no: (i) responsibility for the accuracy, completeness, sufficiency or otherwise of the Customer Information; (ii) obligation to undertake any check or carry out any due diligence on the Customer Information; and/or (iii) obligation to notify the Customer of any actual, apparent or suspected inaccuracy, deficiency in the Customer Information.

(c) IF the Company is unable or unwilling to supply the Customer with any goods included in the Customer's order, the Company shall inform the Customer and the Customer's order shall not be processed in respect of those products. If the Customer has already paid for those products, the Company shall refund the full amount for those products as soon as reasonably practicable.

(d) AFTER the Contract is formed, the Customer shall not be entitled to amend or cancel the Contract (or any parts thereof) without the written agreement of the Company and the Customer undertakes to pay the fair and reasonable wasted costs and expenses incurred by the Company in respect of the fulfilment of the Customer's order, whether in whole or in part, which were incurred at any time up to (and including) the date on which the Company agrees in writing that the Contract may be cancelled or amended. Such costs and excesses may: (i) include costs and expenses related to the design of the System, the purchase of parts and/or the Products and the storing of the same; and (ii) be in excess of the Deposit paid (if any). The Company shall promptly respond to any request to amend or cancel the Contract.

(e) THE Company may consider any request made by the Customer (after the Contract has been entered into) to change the Products and/or their specification and/or Delivery Date, but the Company is not obliged to agree to any such changes. If the Company does agree in principle to change the Products or their specification and/or the Delivery Date, it will do so at its sole and absolute discretion and the Company will inform the Customer of any resulting change to the Price and/or the Earliest Delivery Date and clause 3(g) shall apply.

(f) THE Company reserves the right to: (i) make any changes in the Products and/or their specification, which are required to conform with any applicable statutory or regulatory requirement; and (ii) substitute the Products for other products of an identical/equivalent function and performance, provided that the Price for any substitute product shall be the same as the original Product.

(g) WHERE clause 3(f) applies, the Customer may choose to: (i) accept the change to the Products and/or their specification and/or the Delivery Date (in substitution to any earlier agreed Price, specification and/or Delivery Date (as applicable)) in which case the revised Price, specification and/or Delivery Date (as applicable) shall be deemed to be agreed and varied accordingly; or (ii) retain the originally agreed Products, specification and Delivery Date.

(h) The Company may, at its sole discretion, offer the Customer a refund of the Products if a Customer requests a refund. The Company reserves the right to charge a restocking fee in respect of any Products which are being refunded by the Company and such restocking fee shall be the higher amount of (a) £25 or (b) 10% of the value of the Products in respect of a which a refund is being made. Any refund made by the Company shall also be subject to clause 10(i) below.

(i) If the Company provides a refund, in accordance with clause 10(h) above, then the Customer will be responsible for the cost of returning the Products, in respect of which a refund is being made, to the Company and for ensuring that the Products returned to the Company are not damaged while they are in the Customer's possession and/or in transit. If the Customer chooses to return any Products to the Company, the Company will not be responsible for loss or damage to them in transit. If Products are damaged or lost while they are in the Customer's control or in delivery, the Company reserves the right to charge the Customer, or not to refund any amounts that both the Company and Customer have agreed are due to the Customer, that are attributable to the loss or damage.

4. DEPOSIT

(a) THE Company may (at its discretion) require the Customer to pay a Deposit (as set out in the Quotation). The Deposit (if any) shall be payable by the Customer in accordance with clause 7.

(b) THE Customer acknowledges that it is reasonable for the Deposit to be non-refundable on the basis that, once the Contract is formed, the Company will incur cost and expenditure in fulfilling the Customer's order (e.g. labour costs in carrying out design work on the System and/or ordering goods from third party suppliers).

5. PRICES AND CHARGES

(a) WHERE the Delivery Date falls on or after the date which is 90 days following the date on which the Customer places a valid order in accordance with clause 3, the Company may (but is not obliged to) vary the Price by multiplying the Price by the Indexation Factor.

(b) PRICES indicated in each Quotation and the Price are exclusive of VAT (unless otherwise stated), which shall be payable in addition to the Price by the Customer. The Price is inclusive of the costs and charges of packaging, insurance and transport of the Products to the Delivery Address, but does not include any additional delivery and storage charges which we may charge in accordance with clause 8(f).

(c) THE Company reserves the right to increase the Price at any time up to 5 business days before the Delivery Date (by giving notice to the Customer) to reflect any increase in the cost of the Products that is due to: (i) increases in acquisition costs of the Products or materials, labour and/or transport; (ii) foreign exchange fluctuations, increases in any tax, duty, fee or other charge imposed or levied by the Government or other authority; (iii) or any delay in delivery of the Products caused by any instructions of the Customer or failure of the Customer to give the Company adequate, accurate or complete information and/or instructions; (iv) any additional delivery and storage charges which we may charge in accordance with clause 8(f) or (v) any delay caused by a Force Majeure Event.

6. SYSTEM DESIGN AND DESIGN ROOM TEMPERATURE - **THE CUSTOMER'S ATTENTION IS DRAWN TO THIS CLAUSE**

(a) AFTER the Customer has submitted its order, the parties shall work together on the design of the heating system into which the Products are to be incorporated ("System"). The Customer shall promptly provide the Company with such instructions and information as it may reasonably require in order to carry out the said design work.

(b) AS part of the said design work, the parties shall agree a target internal room temperature value, being the target room air temperature that the System needs to attain relative to a given outside air temperature ("Design Room Temperature"). If the parties do not discuss or are unable to agree the Design Room Temperature, the Design Room Temperature shall be deemed to be in-line with NHBC technical guidance entitled <http://www.nhbc.co.uk/Builders/Productsand Services/Standardsplus2019/#337> (as in force on the date of the Contract), relative to an outside air temperature of -3 degrees Celsius.

(c) IF during the design work it becomes apparent that, due to the nature and structure of the property in which the System is to be installed, it will not be possible for the System to generate sufficient heat to achieve the Design Room Temperature the Customer may: (i) accept that the System will not achieve the Design Room Temperature and proceed with the Contract on that basis; or (ii) terminate the Contract by giving written notice to the Company within a reasonable time and in any event before we provide any Products to you).

(d) IF as a result of the design work changes to the Products and/or their specification and/or Delivery Date are necessary (e.g. in order to attain the Design Room Temperature), the Company will inform the Customer of any resulting change in the Price and/or specification and/or Delivery Date and clause 3(g) shall apply.

7. INVOICES AND PAYMENT

(a) The Company may issue requests for payment for the Products to the Customer in the following manner: (i) the Company may issue a request for payment of the Deposit (if applicable) at the same time as (or at any time after) it issues the Order Confirmation; (ii) the Company may issue its request for payment of the Balance at any time after it issues the Order Confirmation and following any agreement to revise the Price pursuant to clause 3(g). The Company will issue an invoice for the price of the Products (i.e. showing the amount paid by the Customer) following delivery of the Products to the Delivery Address.

(b) UNLESS otherwise agreed in writing by the Company, the Customer shall pay the Company's requests for: (i) payment of the Deposit (in full and in cleared funds) by the earlier of 30 days of the date of the request and Delivery; and (ii) payment of the Balance (in full and cleared funds) by the before **Delivery**. Time for payment shall be of the essence of the Contract. The Company's invoices may be paid by credit or debit card or by bank transfer using the details provided by the Company.

(c) The Customer shall pay all amounts due under the Contract in full without any deduction and shall not be entitled to set-off any amount due in whole or in part.

(d) IF the Customer defaults in making any payment due to the Company (in full and in cleared funds) on or before the due date for payment then, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to (i) cancel the Contract and cancel any other orders received from the Customer; and (ii) charge interest on the overdue amount at the rate of 5% per annum above the base rate of Lloyds Bank Plc from time to time. Such interest shall accrue on a daily basis from the due date for payment until and including the date of actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with any amount overdue. If any invoice is not paid on the due date for payment all other invoices rendered by the Company shall thereupon be deemed due and immediately become payable in full and in cleared funds.

8. DELIVERY OF PRODUCTS AND SERVICES

(a) DELIVERY of the Products shall be made by the Company to the Delivery Address, during the Company's normal business hours. Delivery shall be complete on the Products' arrival at the Delivery Address ("**Delivery**"). The Customer shall state the date on which it would prefer the Products to be delivered to the Delivery Address in its order (the "**Delivery Date**"). The Company shall endeavour to notify the Customer of the time and date on which delivery will take place.

(b) ANY time or date specified by the Company as the time at which or date on which the Products will be delivered or installation or commissioning services provided is given and intended as an estimate only and the time for delivery is not of the essence and the Company shall not be obliged to effect Delivery on the Delivery Date. The Company shall not be liable for any delay in delivery that is caused by a Force Majeure Event or the Customer's failure to provide the Company with adequate, accurate or complete delivery instructions.

(c) The Products may be delivered by the Company in advance of the Delivery Date upon giving reasonable notice to the Customer.

(d) THE Company reserves the right to make delivery by instalments, and these Conditions shall apply to each instalment delivery and any claim by the Customer in respect of any one or more instalments shall not entitle the Customer to terminate the whole Contract and/or to treat the Contract as a whole as repudiated.

(e) IF the Company fails to deliver the Products (or any instalment) within a reasonable time, to the fullest extent permitted by law, the Company's liability shall be limited to (and the Customer's sole remedy shall be) a reimbursement of the costs and reasonable out of pocket expenses incurred by the Customer in obtaining replacement products of the same or (where not possible) similar description and non-defective quality in the cheapest market available, less the price of the Products that were not delivered.

(f) If the Customer fails to take delivery of the Products or fails to give the Company adequate, accurate or complete delivery instructions at the time stated for delivery, then, without limiting any other right or remedy available to the Company, the Company may: (i) store the Products at its premises (or at the premises of a third party) until actual delivery and charge the Customer for the reasonable costs (including insurance) of storage; or (ii) sell the Products at the best price readily obtainable and (after deducting all reasonable storage delivery, administrative and selling expenses) account to the Customer for the excess over the price under the Contract or charge the Customer for any shortfall below the price under the Contract.

(g) The quantity of any consignment of Products, as recorded on dispatch of the Products to the Delivery Address shall be conclusive evidence of the quantity received by the Customer on Delivery, unless the Customer can provide conclusive evidence to the contrary.

9. INSPECTION OF PRODUCTS DELIVERED

Products must be carefully examined within 14 days of Delivery and in any event before the Products are put into use, after which the Customer will be deemed to have accepted the Products in good condition and conformity in all respects with the Customer's order.

10. DEFECTIVE PRODUCTS

(a) SUBJECT to the exclusions set out in (c) below, the Company warrants that the Products will, at the time of delivery, correspond with their specification and be free from defects in material and workmanship.

(b) In addition to the warranty in 10(a), the Company may provide additional warranties or guarantees on certain Products, details of which will be included in the Quotation.

(c) Subject to clause 10(d), if (i) the Customer gives notice in writing to the Company within 14 days of delivery that some or all of the Products (or part of them) do not comply with the warranty set out in clause 10(a) or referred to in clause 10(b); and (ii) the Customer returns the allegedly defective Product (or part Product) to the Company, so that the Company may examine such Products, then the Customer's sole and exclusive remedy shall be that the Company shall provide a replacement for the defective Products (free of charge).

(d) Subject to clause 13(b), the Company shall not be liable for the Products failure to comply with the warranties given in 10(a) and referred to in 10(b) in any of the following events: (i) the defect in the Products arises from any drawing, design or specification supplied by the Customer; (ii) the defect arises from fair wear or tear, wilful damage, negligence, abnormal working conditions, failure to follow the Company's instructions (whether oral or in writing), misuse or alteration or repair of the Products (or any part thereof) without the Company's approval; (iii) if the total price for the Products has not been paid (in full and in cleared funds) by the due date for payment; (iv) the Customer makes any further use of the Products after having notified the Company that the Products allegedly do not comply with the warranties given in clause 10(a) or referred to in clause 10(b); (v) the Customer (or someone on its behalf) alters or repairs the Products without the consent (in writing) of the Company. THE warranties given in clause 10(a) and referred to in clause 10(b) do not extend to parts, materials or other equipment not manufactured by the Company, 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 Company or any warranty or guarantee the Company has provided in relation to the same, details of which will be included in the Quotation. Further information on the warranties for products not manufactured by the Company is also available on the Company's website at the following URL: <https://www.nu-heat.co.uk/products/product-warranties/>.

(g) EXCEPT as expressly provided in these Conditions, and subject to clause 13(b), the Company shall have no liability to the Customer in respect of the Products' failure to comply with the warranty set out in clause 10(a) and referred to in clause 10(b) and all other warranties, representations conditions or other terms/conditions, whether oral written or implied by statute or common law (including terms and conditions for fitness for purpose or satisfactory quality) are, to the fullest extent permitted by law excluded and do not apply.

11. RISK AND PROPERTY

(a) RISK of damage to or loss of the Products shall pass to the Customer at the time of Delivery or, if the Customer fails to take delivery of the Products, the time when the Company has tendered delivery of the Products at the Delivery Address.

(b) NOTWITHSTANDING Delivery and the passing of risk in the Products, or any other provision of these Conditions, the property in the Products shall not pass to the Customer until (whichever is the sooner of): (i) the Company has received payment (in full and in cleared funds) for the Products and all other products agreed to be sold by the Company to the Customer for which payment is then due, in which case property in the Products shall pass to the Customer at the time of payment of all such sums; (ii) the Customer resells the Products to a purchaser at arm's length in the normal course of its business, in which case property in the Products shall pass to the Customer immediately before the time at which resale by the Customer occurs; (iii) the Customer uses the Products in the normal course of its business, in which case property in the Products shall pass to the Customer immediately before the time at which the such use by the Customer occurs; (iv) the issue of legal proceedings by the Company against the Customer for recovery of payment for the Products in question, in which case property in the Products shall pass to the Customer immediately before such proceedings are issued.

(c) UNTIL such time as the property in the Products passes to the Customer, the Customer shall hold the Products as the Company's fiduciary agent and bailee, and shall keep the Products separate from those of the Customer and third parties and properly stored, protected and insured and identified as the Company's property, but the Customer shall be entitled to re-sell or use the Products in the ordinary course of its business.

(d) UNTIL such time as the property in the Products passes to the Customer (and provided the Products are still in existence and have not been resold), the Company shall be entitled at any time to require the Customer to deliver up the Products to the Company and, if the Customer fails to do so forthwith, to enter upon any premises (including locked and steadfast premises) of the Customer or any third party where the Products are stored and repossess the Products.

(e) THE Customer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Products which remain the property of the Company, but if the Customer does so all moneys owing by the Customer to the Company shall (without prejudice to any other right or remedy of the Company) forthwith become due and payable.

12. INSTALLATION AND OTHER WORKS

(a) WHERE the Company provides installation work through its subcontractor, or advice to the Customer, such work shall be done or such advice given with reasonable skill and care.

(b) UNLESS the Order Confirmation states that the Company shall be providing installation work, the Customer shall be responsible for procuring the carrying out of all and any installation work required and the Company does not accept liability for any action or omission on the part of any installer or contractor with whom the Customer contracts directly.

(c) IT is the responsibility of the Customer to obtain any planning permission and/or building regulations consent that is necessary or required in respect of the installation and/or commissioning of the Products.

(d) IT is the responsibility of the Customer to ensure suitable site access and parking at the Delivery Address for any installation or commissioning work and to provide a safe area as required as an owner or occupier of the site.

(e) THE Company shall not be liable in respect of any waste or damage to or interference with any water supply whether public or private whether under the Environmental Protection Act 1990, the Water Industries Act 1991, the Water Resources Act 1991 or otherwise in connection with the supply or installation of Products and it shall be the Customer's responsibility to ensure that any reasonable requirements in respect of water supplies and the presence on land of waste are complied with fully. If a claim is made against the Company under any of the foregoing legislation

then, the Customer hereby indemnifies the Company against all loss, damages, costs and expenses awarded against or incurred by the Company in connection with the claim.

(f) THE Customer acknowledges and accepts that it is responsible for (and that the Company shall have no liability in respect of) obtaining any government grants and/or other funding in respect of the Products and/or their installation. Nothing in the Contract shall be construed as an assurance, warranty or guarantee that the Products are eligible for and/or that the Customer will receive government grants and/or any other funding in respect of them or their installation.

13. LIMITATION OF LIABILITY - **THE CUSTOMER'S ATTENTION IS DRAWN TO THIS CLAUSE**

(a) THIS clause 13 sets out the liability of each party (including the liability for the acts or omissions of its employees, agents, consultants and/or sub-contractors) to the other party in respect of: (i) any breach of any Contract, howsoever arising; (ii) the Products, or any part thereof (including any use made of them); (iii) any representation, statement or tortious act or omission (including negligence) arising under or in connection with any Contract; (iv) any liability (including non-contractual) howsoever arising under any legal theory whatsoever arising out of or in connection with any Contract.

(b) Nothing in these Conditions limits or excludes the liability of either party for: (i) death or personal injury caused by negligence; (ii) fraud or fraudulent misrepresentation; or (iii) any other matter for which it would be unlawful for a party to exclude or limit or attempt to exclude or limit its liability.

(c) Subject to clause 13 (b), neither party shall under any circumstances whatsoever be liable to the other party, whether in contract, tort (including negligence), breach of statutory duty, misrepresentation, restitution and/or otherwise howsoever under any legal theory whatsoever, for any of the following losses (whether direct or indirect): (i) loss of profits or revenue (save for the price to be paid for any Products and/or pursuant to clause 7); (ii) depletion of goodwill and/or loss of reputation; (iii) loss of other contracts or loss of business opportunity; (iv) loss or corruption of data or information; (v) payments (e.g. penalties) due to be paid/paid to any third party under any contract or arrangement (for example, the cost of a third party installing the Products on the Customer's behalf in the event of late delivery of the Products and/or delivery of incorrect products); (vi) wasted management and/or staff time; (vii) loss and/or costs arising from and/or connected with the defective installation, commissioning and/or maintenance of the Products by any third party; (viii) loss of anticipated savings, nor any other special, indirect or consequential loss, costs, damages, charges or expenses suffered by the other party that arises under or in connection with any Contract.

(d) Subject to clause 13(b), each party's total liability to the other party whether in contract, tort (including negligence), breach of statutory duty, misrepresentation, restitution and/or otherwise howsoever under any legal theory whatsoever, shall in all circumstances be limited to and shall not exceed a total sum equal to 150% of the Purchase Price.

14. TERMINATION

IF the Customer becomes subject to any of the following events, the Company may terminate the Contract with immediate effect by giving written notice to the Customer:

(a) the Customer 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 or limited liability partnership) 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;

(b) the Customer 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;

- (c) (being a company) 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 the Customer, other than for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;
- (d) (being a company) 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 the Customer;
- (e) (being a company) the holder of a qualifying floating charge over the Customer's assets has become entitled to appoint or has appointed an administrative receiver;
- (f) a person becomes entitled to appoint a receiver over the Customer's assets or a receiver is appointed over the Customer's assets;
- (g) (being an individual) the Customer is the subject of a bankruptcy petition or order;
- (h) a creditor or encumbrancer of the Customer 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;
- (i) any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 14(a) to clause 14(h) (inclusive);
- (j) the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business;
- (k) the Customer's financial position deteriorates to such an extent that in the Company's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or
- (l) (being an individual) the Customer dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.

15. EVENTS BEYOND THE COMPANY'S CONTROL

- (a) A "Force Majeure Event" means any event beyond a party's reasonable control, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure or interruption of energy sources or transport network or utility service, any law or any action taken by a government or public authority, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, and/or any failure or service outage or shortage of raw materials that falls outside of the Company's control including default, non-performance and/or failure of the Company's suppliers or sub-contractors. .
- (b) If a party is prevented, hindered or delayed in or from performing any of its obligations under a Contract by a Force Majeure Event ("Affected Party"), the Affected Party shall not be in breach of any Contract or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.
- (c) If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than one (1) month, the party not affected by the Force Majeure Event may terminate the Contract by giving one (1) week's written notice to the Affected Party.

16. INTELLECTUAL PROPERTY

Where a Customer provides drawings, designs, models or specifications for the purpose of enabling the Company to fulfil the Contract, the Customer shall indemnify the Company against all actions,

claims, costs, damages or losses arising out of or in connection with any claim that the use by the Company of the said drawings, designs, models and/or specifications in connection with the Contract infringes of any patent, design, trade mark or copyright or any other intellectual property right of any third party.

17. MISCELLANEOUS

(a) A person who is not a party to the Contract has no right to enforce any term of the Contract.

(b) Any phrase introduced by the terms "including", "include", "in particular", "for example" or any similar expression shall be construed as illustrative and shall not limit the sense of the words proceeding those terms. A reference to "writing" or "written" includes emails and faxes.

(c) ANY notice relating to these Conditions shall be in writing and may be served or delivered to the party to be served in the case of a Company at its registered office and in the case of the Customer at the address notified in writing to the other party from time to time and notices sent by first class delivery mail shall be deemed to have been delivered seventy-two hours after posting and proof of due posting shall be sufficient evidence of delivery.

(d) THE headings of these Conditions are for ease of reference only and do not affect their construction and nor do they limit their scope. References to clauses are to the clauses of these Conditions.

(e) WORDS in the singular include the plural and vice versa.

(f) IF any provision of these Conditions is held by any court or competent authority to be invalid, illegal or unenforceable in whole or in part, that provision or part provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby.

(g) NO waiver by a party of any right or remedy under any Contract or in law shall only be effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under any Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the future exercise of that right or remedy.

(h) The Company may at any time assign, transfer, mortgage, charge subcontract or deal in any other manner with all or any of its rights under any Contract.

(i) The Contract constitutes the entire agreement between the parties and supersedes all previous agreements between the parties relating to the subject matter of the Contract. Each party acknowledges that it has not relied on (and shall have no right or remedy in respect of) any statement, promise, representation, assurance or warranty made or given by or on behalf of the other party (whether innocently or negligently) which is not set out in the Contract.

(j) These Conditions and all Contracts and any dispute arising out of or in connection with them or their subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with the laws of England and Wales. Each party irrevocably agrees that the Courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with these Conditions and/or any Contract or their subject matter or formation (including non-contractual disputes or claims).

18. BOILER UPGRADE SCHEME

(a) The validity of the vouchers issued under the Boiler Upgrade Scheme ("**BUS**") is not at the Company's risk or control. The Company has no control over whether a voucher is issued and/or redeemed or not.

(b) The Customer should be aware of the time periods to redeem any voucher issued under the BUS. At the date of these Terms and Conditions any voucher that has been issued under the BUS should be redeemed within 12 weeks of approval.

(c) The Company will not issue an invoice to the Customer before the voucher has been issued by OFGEM, but when an invoice is issued, it will be for the full value of the goods in respect of which a

voucher has been issued under the BUS. The Customer shall pay the invoice in full, as per the invoice issued, and the Company will release the value of the voucher to the Customer once the grant under the BUS has been issued (i.e. when the voucher is issued).

(d) If a voucher cannot be redeemed by or Ofgem seeks to recover funds from the Company due to incorrect information that has been provided by the Customer, then the Company has the right to reclaim those funds from the Customer.