



## ZERO POINT EIGHT (Dudley) LIMITED

### CONDITIONS OF SALE

#### 1. Generally

1.1 These Conditions apply to the sale and purchase of the goods specified (including any instalment of the goods or any parts for them) which we are to supply to you ("Goods") and to the installation of the Goods by us or our sub contractors in accordance with the corresponding drawings ("Services").

1.2 In these Conditions the following words have the following meanings:-

"Agreement" means the contract for the purchase and sale of the Goods and the supply of Services subject always to these Conditions, which shall govern the Agreement "Price" means the total price for the Goods and Services (where the context permits).

1.3 The headings in these Conditions are for convenience only and shall not affect their interpretation.

1.4 Any provision of a statute or the reference to any statute, statutory instruments, other rules or requirements shall be construed to the same as amended, re-enacted or extended at the relevant time.

#### 2. No cancellation

All of the Goods are made or supplied to your specific order. No order which has been accepted by us may be cancelled by you except with our agreement in writing and on terms that you shall indemnify us in full against all loss (including loss of profit), costs (including tooling costs and the costs of all labour and materials used), damages, charges and expenses incurred by us as a result of cancellation.

#### 3. Price and payment

3.1 Subject to any special terms agreed in writing between you and us, we shall be entitled to invoice you for the Price on or at any time after delivery of the Goods unless the Goods are to be collected by you or you wrongly fail to take delivery of the Goods in which event we shall be entitled to invoice you for the Price for the Goods at any time after we have notified you that the Goods are ready for collection or delivery.

3.2 Subject to any special terms agreed in writing between you and us, we shall be entitled to invoice you for the Price of the Services on or at any time after completion of the same or in the event that we are unable to complete the Services because of any event or circumstance referred to in clause 11 below, or by reason of a breach by you of your obligations under the Agreement, then on or at any time following the date of such event, circumstances or breach.

3.3 Please note that we reserve the right to increase the Price to reflect increases in the cost of parts, materials, components, appliances, hardware or other goods not manufactured by us.

3.4 If you are late in paying the Price or any part or instalment of the Price then we may charge you interest (both before and after any judgement) on any outstanding amounts at the rate of 3% above the base rate from time to time of Barclays Bank plc from the date on which payment was due until the date on which we receive actual payment.

3.5 You may not make any retention from any payment in respect of the Goods or Services without our prior written agreement (which we may withhold in our absolute discretion and without giving any reason) and you shall not have any right of set off from such payment whether at common law or in equity or under any statute.

#### 4. Delivery

4.1 Any dates or times stated for delivery of Goods or carrying out Services are given in good faith but are **only estimates**, and time will not be of the essence. Accordingly we will not accept any liability for loss or damage, whether direct or indirect, caused by delay and in no case shall delay be a ground for rejecting Goods or Services or otherwise rescinding the Agreement. **If we fail to deliver the Goods (or any instalment) or to provide the Services for any reason other than any cause beyond our reasonable control or your fault, and we are accordingly liable to you, our liability shall be limited to the excess (if any) of the cost to you (in the cheapest available market) of similar goods and/or services to replace those not delivered over the price of the Goods and Services.**

4.2 Where Goods are supplied for collection from our factory then they shall be deemed to have been delivered when they are ready for collection and written notification has been given to you.

4.3 If you refuse to accept delivery and/or installation when tendered in accordance with the terms of the Agreement, then in addition to our other rights and remedies, we shall be entitled to place the Goods in storage at your risk and charge you a commercial rent for storage or charge you the cost incurred by us in obtaining storage.

4.4 Where we agree to deliver goods and you claim they are damaged or that there are shortages, then providing you give notice of a claim on the delivery document or within one working day of delivery, return all damaged Goods immediately and further providing we are satisfied that the Goods were damaged in transit or have not been delivered in full, they will be replaced or repaired free of charge or at our option you will be allowed for credit up to the invoice value of the damaged or missing Goods.

#### 5. Risk in and ownership of the Goods

5.1 Risk of damage to or loss of the Goods shall pass to you:

5.1.1 in the case of Goods to be delivered at our premises, at the time when we notify you that the Goods are available for collection; or

5.1.2 in the case of the Goods to be delivered otherwise than at our premises, at the time of delivery or, if you wrongfully fail to take delivery of the Goods, the time when we have tendered delivery of the Goods;

5.2 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 you until we have received in cash or cleared funds payment in full of the Price of the Goods and payment for all other goods agreed to be sold by us to you for which payment is then due.

5.3 Until such time as property in the Goods passes to you, you shall hold the Goods as our fiduciary agent and bailee, and shall keep the Goods separate from your own goods and those of third parties and you shall keep them properly stored, protected and insured and identified as our property.

5.4 Until such time as property in the Goods passes to you, we shall be entitled at any time to require you to deliver up the Goods to us and, if you fail to do so forthwith, to enter upon any premises of yours or any third party where the Goods are stored and re-possess the Goods.

5.5 You shall also procure compliance with all statutes, regulations, laws, rules and other obligations relating to Health and Safety at the delivery address where Services are to be undertaken.

#### 6. Access and installation

6.1 Subject to clause 4.1, installation of the Goods will commence on the date agreed with our Sales Team.

6.2 You will procure for us, our sub contractors, employees, agents and carriers unrestricted access to the delivery address so to allow us to fulfil our obligations under the Agreement. You will also procure for us reasonable access during the period of the Guarantee (as referred to in Condition 8 below) for the purposes of enabling us to carry out any remedial or replacement work that may be required under that Guarantee.

6.3 It is your responsibility to ensure that the delivery address is secure, accessible, protected against the elements, adequately heated and free from damp. You must also ensure that the delivery address is properly serviced with electric power and light.

6.4 All personal items of value must be removed from the area of installation and all access routes.

6.5 Unless otherwise agreed between you and us in writing we will not be responsible for any plumbing, electrical, building, stripping out or decoration work which may be required by you in connection with the installation of the Goods.

6.6 You will procure compliance with the Construction (Design & Management) Regulation 1994.

**6.7 You shall indemnify us against any expense, liability, loss, claim or proceedings whatsoever arising under any statute at or at common law in respect of personal injury to or the death of any person whomsoever arising out of or in the course of or caused by the carrying out of the services, except to the extent that the same is due to any act or neglect of us or of any person for whom**

**we are responsible. Without prejudice to the foregoing, you must take out and maintain insurance in respect of claims for personal injury to or the death of any person under a contract of service or apprenticeship with us or a sub contractor of ours as the case may be and arising out of and in the course of such person's employment or sub contract and shall have a minimum insurance cover of five million pounds who shall upon request from us deposit a copy of the policy or policies together with receipts in respect of premiums paid.**

#### 7. Sub contracting

We may sub contract the performance of the whole or any part or parts of our obligations under the Agreement. We shall not be obliged to seek your consent for this.

#### 8. Guarantee and Limitations on our liability

8.1 The Goods and Services shall have the benefit of our 5 year guarantee, subject to the terms and conditions set out in that guarantee ("the Guarantee"). **The Guarantee sets out our entire liability to you in respect of defects in the Goods or the provision of the Services.** You shall not have the benefit of the Guarantee unless the Price and any other sums payable by you under the Agreement are paid. **We shall not be liable to you for:**

(a) any statement made (unless fraudulent); or  
(b) any implied warranty, condition or other term or duty at common law; or

(c) any indirect, special or consequential loss, costs or expenses arising out of or in connection with the supply or installation of the Goods or the provision of the Services save in respect of death or personal injury caused by our negligence, our entire liability under or in connection with this Agreement and/or the Guarantee shall not in any event exceed the Price. Nothing in this condition 8 shall limit our liability under part 1 of the Consumer Protection Act 1987, our liability for death or personal injury caused by our negligence or your statutory rights as a consumer if you are a consumer.

#### 9. Termination

If: (i) you fail to pay any part of the Price by the dates set out in Condition 2; or (ii) you become bankrupt or fail to satisfy any judgement against you or are unable to pay your debts we may terminate the Contract immediately at any time. In addition we may bring a claim against you for any loss which we may have suffered as a result of any breach of these Conditions by you.

#### 10. Copyright

Copyright in any designs, drawings or plans prepared by us in connection with the Contract are and shall remain our exclusive property. Such drawings, designs and plans may not be reproduced by you or used by you in any way without our prior written consent.

#### 11. Events beyond our control

We shall not be liable to you or deem to be in breach of the Agreement by reason of any delay in performing, or failure to perform, any of our obligations in relation to the Goods or Services if the delay or failure was due to any cause beyond our reasonable control, act of God, explosion, flood, tempest, fire or accident, war or threat of war, sabotage, insurrection, civil disturbance or requisition Act, restrictions, by laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority import or export regulations or embargoes or strikes, lock outs or other industrial actions or trade disputes (whether involving employees of ours or of a third party) difficulties in obtaining raw materials, labour, fuel, parts or machinery, power failure or break down in machinery.

#### 12. Third Parties

Nothing in this Agreement shall or shall purport to confer on any third party a right to enforce any term of this Agreement for the purposes of the Contract (Rights of Third Parties) Act 1999.

#### 13. The Law

The Contract and these Conditions shall be governed by and construed in accordance with the laws of England and Wales.

#### 14. Amendments

The Contract and these Conditions can only be amended or varied by written agreement between us.