

1. INTERPRETATION

1.1 Definitions. In these Conditions, the following definitions apply: Business Day: a day (other than a Saturday, Sunday or public holiday) when banks in Scotland are open for business. Charges: the charges payable by the Customer for the supply of the Services in accordance with clause 7. Commencement Date: has the meaning set out in clause 2.1. Conditions: these terms and conditions as amended from time to time in accordance with clause 13.8. Contract: the contract between the Company and the Customer for the supply of Services in accordance with these Conditions. Company: Energy Pig Limited, The Kelvin Building, SE Technology Park, G75 0RD. No.SC558150. Company Materials: has the meaning set out in clause 5.1(i). Customer: the person or firm who purchases Services from the Company. Head Office: being the head office of the Company. Intellectual Property Rights: all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or getup, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world. Order: the Customer's order for Services as set out attached to these terms and conditions. Services: the services supplied by the Company to the Customer as set out in the Specification. Specification: the description or specification of the Services provided in writing by the Company to the Customer.

1.2 Construction. In these Conditions, the following rules apply: (a) a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality); (b) a reference to a party includes its personal representatives, successors or permitted assigns; (c) a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted; (d) any phrase introduced by the terms including, include, in particular or any similar expression, shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and (e) a reference to writing or written includes emails.

2. BASIS OF CONTRACT

2.1 The Order constitutes an offer by the Customer to purchase Services in accordance with these Conditions.

2.2 The Order shall only be deemed to be accepted when the Company issues written acceptance of the Order at which point and on which date the Contract shall come into existence (Commencement Date).

2.3 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in the Contract. 2.4 Any samples, drawings, descriptive matter or advertising issued by the Company, and any descriptions or illustrations contained in the Company's catalogue(s) or brochure(s), are issued or published for the sole purpose of giving an approximate representation of the Products / Services described in them. They shall not form part of the Contract or have any contractual force. 2.5 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.6 Should any variation to the Specification; plans; time scale; Charges or any other part of the Contract become apparent, the Company will discuss the matter with the Customer with a view to either: (a) coming to an agreement on the reviewed Contract which will be presented in writing and signed by the Customer and the Company which will supersede any existing Contract; or (b) terminating the Contract if the parties cannot agree, where the Company will give written notice to the Customer and return any deposit already paid. In either event the Company will not incur any liability for any additional costs as a result of the changes that are acted by the Customer.

3. QUOTATION

3.1 Any quotation given by the Company shall not constitute an offer and is only valid for a period of (28) Days from its date of issue.

3.2 The quotation includes the cost of the making of all ways and subsequent reinstatements but does not include the lifting or relaying of fitted carpets, or other floor coverings, or for any redecoration which may be required, unless expressly written as part of the quotation. Where the quotation is based on the use of existing wiring or pipework, any remedial work found necessary at the time of installation will be highlighted, subject to an additional charge. 3.3 The cost of additional work, (scaffolding etc), is the responsibility of the Customer, unless included under the "Additional Costs" section of the Contract when it will then be included in Charges covered by the Contract. 3.4 If the Company or the Customer varies the requirements for which the quotation is prepared, and/or other materials or equipment are substituted for those specified by the Company, then a fair and reasonable adjustment to the quotation price shall accordingly be made.

additional items, therefore the Company disclaims any liability for repair or third party damages occasioned by the failure of such existing systems.

6.3 Any claim under a guarantee must be made in writing to Head Office of the Company, as soon as the Customer is aware of grounds for a claim.

6.4 All guarantees are without prejudice to the Customer's statutory or common law rights.

7. CHARGES AND PAYMENT

7.1 The Charges for the Services are set out in the Contract.

7.2 The balance of the purchase price is payable upon receipt of invoice, or on practical completion of each measure of works (whichever is sooner), unless alternative arrangements have been made in writing by the Company. Any time specified for payment shall be of the essence of the Contract. 7.3 Payments shall be made by a valid method specified in the relevant invoice. 7.4 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable for the time being (VAT). Where any taxable supply for VAT purposes is made under the Contract by the Company to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Company, pay to the Company such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.

7.5 Without limiting any other right or remedy of the Company, if the Customer fails to make any payment due to the Company under the Contract by the due date for payment (Due Date), the Company shall have the right to charge interest on the overdue amount at the rate applicable from time to time in accordance with the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the Due Date until the date of actual payment of the overdue amount, whether before or after judgment, and compounding quarterly.

7.6 The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to set-off or counterclaim against the Company in order to justify withholding payment of any such amount in whole or in part. The Company may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by the Company to the Customer.

8. INTELLECTUAL PROPERTY RIGHTS

8.1 All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by the Company.

8.2 The Customer acknowledges that, in respect of any third party Intellectual Property Rights, the Customer's use of any such Intellectual Property Rights is conditional on the Company obtaining a written license from the relevant licensor on such terms as will entitle the Company to license such rights to the Customer.

8.3 All Company Materials are the exclusive property of the Company.

9. CONFIDENTIALITY

A party (Receiving Party) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Receiving Party by the other party (Disclosing Party), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business or its products or its services which the Receiving Party may obtain. The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party. This clause 9 shall survive termination of the Contract.

10. LIMITATION OF LIABILITY

10.1 Nothing in these Conditions shall limit or exclude the Company's liability for:

(a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;

(b) fraud or fraudulent misrepresentation; or (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).

(d) breach of the terms implied by section 12 of the Sale of Goods Act 1979;

(e) defective products under the Consumer Protection Act 1987; or (f) any matter in respect of which it would be unlawful for the Supplier to exclude or restrict liability.

10.2 Subject to clause 10.1:

(a) the Company shall under no circumstances whatever be liable to the Customer, 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 the Contract. (b) any liability is restricted directly to the room where the Services were being performed only.

10.3 No liability will be accepted by the Company for any lateral defects within existing wiring or pipework. 10.4 Subject to clauses 10.1, 10.2 and 10.3, the Company's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed (3) times the Contract price.

10.5 The Company carries third party liability insurance and therefore claims are restricted to indemnity only and not new replacement. 10.6

The terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract and (if such a breach is remediable) fails to

10.7 This clause 10 shall survive termination of the Contract.

11. TERMINATION

11.1 Without limiting its other rights or remedies, each party may terminate the Contract with immediate effect by giving written notice to the other party if: (a) the other party commits a material breach of the Contract and (if such a breach is remediable) fails to remedy that breach within (30) days of that party being notified in writing of the breach; (b) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply; (c) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors (other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party); (d) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party; (e) the other party (being an individual) is the subject of a bankruptcy petition or order; (f) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days; (g) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party (being a company); (h) a floating charge holder over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver; (i) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party; (j) any event occurs or proceeding is taken with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 11.1(b) to clause 11.1(i) (inclusive); (k) the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or (l) the other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.

11.2 The Customer (if a consumer) may cancel this Contract and have its deposit returned without incurring any costs by informing the Company in writing within 7 (seven) working days of signing the Contract.

11.3 Without limiting its other rights or remedies, the Company may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Contract (14) days after the date for payment.

11.4 Without limiting its other rights or remedies, the Company shall have the right to suspend provision of the Services under the Contract or any other contract between the Customer and the Company if the Customer becomes subject to any of the events listed in clause 11.1(b) to clause 11.1(i), or the Company reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.

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direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors. (b) The Company shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.

(c) If the Force Majeure Event prevents the Company from providing any of the Services for more than 30 days, the Company shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Customer. 13.2 Assignment and subcontracting: (a) The Company shall, at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent. (b) The Customer shall not, without the prior written consent of the Company, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

13.3 Notices: (a) Any notice or other communication required to be given to a party under or in connection with this Contract shall be in writing (including email) and shall be delivered to the other party personally, by email, or sent by prepaid first-class post, recorded delivery or by commercial courier, to the Head Office (if the Company), at its registered office (if the Customer is a company) or (in any other case) its principal place of business or address as stated on the Contract. (b) This clause 13.3 shall not apply to the service of any proceedings or other documents in any legal action. For the purposes of this clause, "writing" shall not include emails and for the avoidance of doubt notice given under this Contract shall not be validly served if sent by email. 13.4 Waiver: (a) A waiver of any right under the Contract is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy. (b) Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

13.5 Severance: (a) If a court or any other competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected. (b) If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

13.6 No partnership: Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.

13.7 Third parties: A person who is not a party to the Contract shall not have any rights under or in connection with it. 13.8 Variation: Except as set out in these Conditions, any variation, including the introduction of any additional terms and conditions, to the Contract, shall only be binding when agreed in writing and signed by the Company.

13.9 Entire Agreement: These Conditions, which are to be read subject to and in conjunction with any documents supplied to the Customer or referred to within these Conditions constitutes the entire agreement between the Company and Customer.

13.10 Governing law and jurisdiction: This Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non contractual disputes or claims), shall be governed by, and construed in accordance with, Scottish law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of Scotland.

14. MAINTENANCE

The customer is solely responsible for the maintenance of all the installed products and services. This includes annual service schedules in line with manufacturers guidance and requirements to ensure the ongoing validity of any product guarantees or warranties.

Where the Customer has arranged a service plan with The Company and The Company cannot contact the Customer to make arrangements for servicing after reasonable attempts, the Customer acknowledges that they are at risk of voiding any warranties or guarantees supplied by the manufacturers. In the event a service interval is missed where The Company has attempted to make contact with the Customer, The Company assumes no liability for damage to the product(s) or services due to poor maintenance. This includes maintenance required on all products and services (specifically heating) where multiple components require annual inspection. The Company will not assume responsibility for a system after a service has been carried out at the request of the Customer by a third party not approved by the Company. Servicing/repairs/maintenance conducted by an unapproved third party on a system within the workmanship warranty period will render the workmanship warranty null and void and The Company will assume no further liability for faults relating to any part of the system.

Important - Please ensure all valuables & breakable items are safely stored away from the areas of working on the day of installation, such as items on shelves that could fall due to drilling vibration or valves located within the property where technicians will require frequent access. It is your responsibility that this is carried out prior to the installation taking place to ensure no unnecessary damage within your home. Energy Pig accepts no liability for damage caused to such items should this instruction be ignored.