

Experts in Daikin air conditioning equipment

Intelligent Air Conditioning Ltd - Terms and Conditions of Sale

The following information is provided to give you particulars of your Terms and Conditions of Sale.

1. General

These Conditions shall be incorporated into all contracts between Intelligent Air Conditioning Limited ("Intelligent Air Conditioning") and any customer ("Customer") for the supply to the Customer of goods and/or services. References to "Goods" means the products manufactured or dealt in by Intelligent Air Conditioning and "Services" means the services or works carried out by Intelligent Air Conditioning and which are the goods and/or services or works which are the subject of the Contract. "Contract" means the contract made between Intelligent Air Conditioning and the Customer for the supply of the Goods and/or Services and which shall be governed by these Conditions, and which includes any terms and conditions and related documents or information set out in, or otherwise identified in, the quotation upon which the Contract is based or in any Intelligent Air Conditioning acknowledgement. These Conditions supersede any earlier conditions appearing in Intelligent Air Conditioning's literature or elsewhere. The placing of any order by the Customer for Goods or Services shall be deemed to be an acceptance of these Conditions. Any terms and conditions stipulated, incorporated or referred to by the Customer whether in its order or in any negotiations or otherwise, are hereby excluded and in any event these Conditions shall prevail over the Customer's terms and conditions.

2. Formation of Contract

Any quotation submitted by Intelligent Air Conditioning does not constitute an offer capable of binding Intelligent Air Conditioning. No contract shall come into effect until Intelligent Air Conditioning has received satisfactory credit references in respect of the Customer for the Contract and until Intelligent Air Conditioning has issued its formal acknowledgement of the Customer's order or other acceptance of Intelligent Air Conditioning's quotation/s.

3. Manufacturers' Catalogues etc.

Particulars of dimensions, capacities, performance ratings, specifications, drawings and other data included in manufacturers' catalogues, price lists or other documents supplied by Intelligent Air Conditioning constitute only an approximate guide and shall not be binding upon Intelligent Air Conditioning.

4. Variations

Intelligent Air Conditioning shall not be bound by any variations, waiver or additions to the Contract unless such are agreed in writing.

5. Delivery

Intelligent Air Conditioning will deliver or arrange delivery of the Goods to the Customer or to the Customer's agent at the place specified in the Contract for deliveries or, if no place has been specified, at such place as may be agreed in writing. Intelligent Air Conditioning shall use its reasonable endeavours to deliver or arrange delivery of the Goods on the dates specified by the Customer or within a reasonable time thereof provided always that the time for delivery shall not be of the essence of the Contract and Intelligent Air Conditioning shall not be liable for any loss or damage whatsoever arising directly or indirectly from any failure to effect delivery within such periods. The Customer shall accept deliveries of Goods by instalments.

6. Services or work on site

- (a) The Customer shall provide adequate access to the relevant premises or site and ensure at all times that the working environment is conducive to the health and safety of Intelligent Air Conditioning's employees, agents and subcontractors. The Customer shall indemnify Intelligent Air Conditioning against all costs, claims, liabilities and expenses incurred by Intelligent Air Conditioning arising from or in connection with any personal injury to or death of any of its employees, agents or subcontractors which is occasioned directly or indirectly by any act or omission (whether negligent or not) on the part of the Customer, its agents or employees.
- (b) Intelligent Air Conditioning shall have the right to refuse to perform any Services which would bring Intelligent Air Conditioning's employees, agents or sub-contractors into contact with any hazardous substance where Intelligent Air Conditioning was not previously informed of such hazardous substance by the Customer or where such hazardous substance was not reasonably apparent from any inspection that Intelligent Air Conditioning may have made of the relevant site prior to the giving by Intelligent Air Conditioning of any quotation for the supply of the Goods and/or Services.

7. Payment

- (a) The price of the Goods and/or Services shall be as set out in the Contract. All prices are exclusive of VAT and all other applicable taxes and duties, which will be payable in addition to the Contract price at the rate in force at the date of any invoice submitted by Intelligent Air Conditioning. Intelligent Air Conditioning may require payments to be made by instalments on the basis of a percentage of the total Contract price or as otherwise agreed in writing with the Customer.
- (b) Payments shall become due to Intelligent Air Conditioning on the date of receipt by the Customer of Intelligent Air Conditioning's invoice. Each invoice shall set out the amount that Intelligent Air Conditioning considers to be due and the basis upon which that amount has been calculated.
- (c) No later than 5 days after each amount becomes due, the Customer shall notify Intelligent Air Conditioning of the sum that the Customer considers to have been due at the payment due date in respect of the amount of the relevant invoice and the basis upon which that amount has been calculated.
- (d) The final date for payment by the Customer shall be 30 days after the relevant amount becomes due.
- (e) Unless the Customer has served a notice under clause 7(f), it shall pay Intelligent Air Conditioning the sum referred to in the Customer's notice under clause 7(c) (or if the Customer has not served such a notice, then the sum referred to in Intelligent Air Conditioning's invoice and in either case, payment shall be made without deductions) (together referred to as "the notified sum") on or before the final date for payment of the relevant amount.
- (f) Not less than 7 days before the final date for payment, the Customer may give Intelligent Air Conditioning notice that it intends to pay less than the notified sum and any such notice shall specify the sum that the Customer considers to be due on the date the notice is served and the basis upon which that sum is calculated. The Customer must pay at least the sum so notified and without deduction.
- (g) Intelligent Air Conditioning reserves the right to charge interest and compensation under the Late Payment of Commercial Debts (Interest) Act 1998 and it is agreed that the rights provided under the said Act shall apply after any judgement or binding determination as well as before.
- (h) If for any reason any payment of an amount due is not made by the final date for payment, Intelligent Air Conditioning shall be entitled to: (i) be paid on an indemnity basis for any costs it incurs in recovering money due under the Contract (and the costs of recovering such costs) including its administrative costs and any costs incurred with lawyers or debt collection agencies - In calculating administrative costs credit will be given for compensation payable in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 – and/or; (ii) notwithstanding any previously agreed credit periods, be paid on all invoices already delivered to the Customer whether or not the final date for payment in each case has been reached and/or; (iii) be paid a reasonable proportion in respect of Works and/or Services undertaken but not yet due and as if such amounts were already due.
- (i) In the event of the Customer being in default of payment of any amount due to Intelligent Air Conditioning under the Contract then on giving the Customer 7 days' notice in writing specifying the grounds for so doing, Intelligent

Air Conditioning may suspend performance of any or all of its obligations under the Contract. Intelligent Air Conditioning shall resume its obligations under the Contract within a reasonable time after receipt of any outstanding payment. Any suspension arising under this clause shall entitle Intelligent Air Conditioning to payment of its reasonable costs and expenses incurred as a result and the period of suspension shall be disregarded in computing any agreed date for completion of the Works and/or Service and Intelligent Air Conditioning shall not otherwise be liable to the Customer in regard to such suspension.

8. Passing of Property

- (a) Until Intelligent Air Conditioning has been paid in full for any Goods supplied under the Contract, the Customer holds the Goods in a fiduciary capacity as bailee of Intelligent Air Conditioning and:
- (i) title to the Goods shall remain with Intelligent Air Conditioning and the Customer shall store the Goods in such a manner that they are clearly identifiable as the property of Intelligent Air Conditioning; and
 - (ii) Intelligent Air Conditioning reserves the right to dispose of the Goods and may retake possession thereof at any time for that purpose and may by its servants or agents enter upon any land or premises owned or occupied by the Customer or any subsequent purchaser of the Goods from the Customer and in addition the Customer shall include in any contract with a sub-purchaser a licence in favour of Intelligent Air Conditioning covering the right of entering covered in this sub-clause; and
 - (iii) if the Customer incorporates or allows the incorporation of the Goods into other goods or products in any way, legal and beneficial title to those other goods, both during the process of incorporation and thereafter shall vest forthwith in Intelligent Air Conditioning, and the Customer shall hold them in a fiduciary capacity as bailee for Intelligent Air Conditioning; if Intelligent Air Conditioning so requires the Customer shall observe the conditions regarding storage in sub clause (i) hereof as if such other goods were the Goods originally supplied; and
 - (iv) the parties agree that incorporation of the Goods into other goods or products in any way is not intended to extinguish Intelligent Air Conditioning's title to the Goods as provided for under these Conditions; and
 - (v) without prejudice to the above sub-clauses the Customer shall (subject to notice from Intelligent Air Conditioning to the contrary or in case of the events referred to in (c) below) have the power to sell the Goods in the normal course of its business on behalf of Intelligent Air Conditioning; and
 - (vi) The Customer shall include within its contract with a sub-purchaser provisions which cover Intelligent Air Conditioning's rights under this clause 8; and
 - (vii) The Customer shall notify any subsequent purchaser of the Goods that title to the Goods remains with Intelligent Air Conditioning until the Customer has made payment in full to Intelligent Air Conditioning for the Goods; and
 - (viii) Any monies received by the Customer from any subsequent purchaser shall be held separately from any monies of the Customer or any other party on behalf of Intelligent Air Conditioning and the Customer has a fiduciary duty to account for such monies to the extent of its indebtedness and to this extent is to pay Intelligent Air Conditioning any sums received in respect of the Goods.

Notwithstanding the foregoing, risk in the Goods shall pass to the Customer upon the terms of clause 9 below.

- (b) On receipt of notice from Intelligent Air Conditioning or on the happening of any of the events set out under (c) below, all Goods shall be immediately delivered to Intelligent Air Conditioning and/or Intelligent Air Conditioning acting by its servants or agents shall have the right without notice during normal business hours to enter upon the land or buildings of the Customer or any subsequent purchaser of the Customer to take possession of the Goods.
- (c) The events hereinbefore referred to are:
- (i) Any notice to the Customer that a receiver or manager of all or any part of the Customer's assets is to be or has been appointed.
 - (ii) Any notice to the Customer that a petition to wind up the Customer is to be or has been presented or any notice of a resolution to wind up the Customer (save for the purposes of reconstruction or amalgamation) has been given or such a resolution has been passed.
 - (iii) A decision by the Customer that the Customer intends to make an arrangement with its creditors.
 - (iv) The Customer is unable to pay its debts as defined in Section 123 of the Insolvency Act 1986.
 - (v) The Customer ceases to or threatens to cease to carry on its business.

9. Risk

The Goods shall be at the Customer's risk from the time that they are delivered to the Customer in accordance with the Contract. The Customer shall insure the Goods for the full Contract price against loss or damage arising from any cause whatsoever. If requested by Intelligent Air Conditioning the Customer shall execute an assignment in favour of Intelligent Air Conditioning of all rights of the Customer to claim against the insurers in respect of the Goods covered by such insurance and shall join Intelligent Air Conditioning in notifying such insurers of Intelligent Air Conditioning's interest in any policy effected hereunder. Such insurance (with insurers to be approved by Intelligent Air Conditioning) shall be effected by the Customer to cover the period from the time when the risk in the Goods passes to the Customer as provided above to the time when the property in the Goods passes to the Customer and Intelligent Air Conditioning's interest as a vendor of the Goods shall be notified by the Customer to the insurers.

10. Claims in Transit

- (a) Intelligent Air Conditioning will not accept any responsibility whatsoever for loss, damage, discrepancy or shortfall to the Goods in transit if carried by a carrier nominated or requested by the Customer or by a carrier who is the servant or agent of the Customer. Claims shall be made immediately by the Customer to the carrier.
- (b) Save as provided above, Intelligent Air Conditioning will repair, or at its option, replace free of charge, any part of the Goods lost or damaged in transit provided that Intelligent Air Conditioning and the carrier are given notice of such loss or damage within the time required by the carrier's conditions of carriage or, where deliveries are made by Intelligent Air Conditioning's own transport, within three days of the receipt of the Goods or of the day upon which the Goods should have arrived had they not been lost and provided that any damaged Goods or part thereof are returned carriage paid by the Customer to Intelligent Air Conditioning.

11. Acceptance Procedure

- (a) Goods shall be deemed to have been accepted by the Customer on delivery unless the Customer shall notify Intelligent Air Conditioning in writing of non-acceptance of the Goods within three days of delivery.
- (b) Where the Contract is for the sale and installation of a complete system incorporating Goods, Intelligent Air Conditioning shall, unless otherwise agreed, be responsible for the installation, testing and commissioning of the system.
- (c) Completion of installation, testing and commissioning and acceptance of a system by the Customer (which the Customer shall not be entitled unreasonably to refuse) shall be evidenced by the signature of a certificate of hand-over by an authorised representative of Intelligent Air Conditioning and by the Customer or its representative.

12. Force Majeure

Intelligent Air Conditioning shall not be liable in any manner whatsoever for any breach of contract or delay in performance of its obligations insofar as such breach or delay arises by reason of circumstances beyond its reasonable control including, without limitation, governmental actions, war or national emergency, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to Intelligent Air Conditioning's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials. Provided that, if the event in question continues for a continuous period in excess of 60 days, the Customer shall be entitled to give notice in writing to Intelligent Air Conditioning to terminate the Contract.

13. Suspension and Termination

If the Customer fails to comply with any of the terms of the Contract whether a condition or warranty express or implied or if any of the events set out in sub-clause 8 (c) occurs or if Intelligent Air Conditioning reasonably believes that they might occur and notifies the Customer accordingly, then, without limiting any other right or remedy, Intelligent Air Conditioning may suspend or terminate all further obligations under the Contract or under any other contract between the Customer and Intelligent Air Conditioning without incurring any liability to the Customer, and all outstanding sums shall become immediately due and Intelligent Air Conditioning may apply the rights under clause 7(h). In such an event Intelligent Air Conditioning will be discharged from further performance of the Contract (subject to the end of any period of suspension as applicable following the rectification of the terms of the Contract to Intelligent Air Conditioning's reasonable satisfaction) and the Customer shall forthwith upon demand pay to Intelligent Air Conditioning all costs and expenses and overheads incurred in connection with the Contract together with any loss or profit and all sums due to Intelligent Air Conditioning hereunder.

14. Warranties and Liability

- (a) Intelligent Air Conditioning warrants that the Goods supplied by it to the Customer under the Contract will be of satisfactory quality and reasonably fit for any purpose made known to Intelligent Air Conditioning in writing at the time of Customer's order or agreement and that it will carry out the Services with reasonable skill and care. Subject as aforesaid, all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- (b) Nothing in these Conditions shall limit or exclude Intelligent Air Conditioning's liability for:
 - (i) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
 - (ii) fraud or fraudulent misrepresentation;
 - (iii) breach of the terms implied by section 12 of the Sale of Goods Act 1979;
 - (iv) defective products under the Consumer Protection Act 1987; or
 - (v) any matter in respect of which it would be unlawful for the Supplier to exclude or restrict liability; subject to which:
 - (vi) if Intelligent Air Conditioning is found to be in breach of the Contract its liability shall be limited to the cost of repair or replacement of the Goods provided or the re-performance of the Services provided;
 - (vii) Intelligent Air Conditioning 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; and
 - (viii) Intelligent Air Conditioning'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 the price of the Goods or Services under the Contract.

15. General

- (a) The Customer shall not without the prior written consent of Intelligent Air Conditioning assign, transfer or sub-let the benefit or burden of the Contract or any part thereof.
- (b) If any provision of these Conditions is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid or unenforceable it shall to the extent of such illegality, invalidity or unenforceability be deemed severable and the remaining provisions of these Conditions shall continue in full force and effect.
- (c) The Contract is not intended to confer a benefit on any third party, whether pursuant to the Contracts (Rights of Third Parties) Act 1999 or otherwise, and no third party shall have any right to enforce any of the provisions of the Contract.
- (d) No delay by either party in enforcing any of the provisions of the Contract shall be deemed a waiver of that party's right subsequently to enforce such provision.

16. Dispute Resolution

- (a) English law shall apply to the Contract.
- (b) Subject to either party's right to adjudicate at any time, the parties shall use their reasonable endeavours to resolve any dispute or difference between them through negotiation or mediation. Either party may refer a dispute arising under the Contract to adjudication at any time under Part I of the Scheme for Construction Contracts (England and Wales) Regulations, which Part shall take effect as if it was incorporated into this clause. The adjudicator shall be nominated by the Royal Institution of Chartered Surveyors.
- (c) The parties irrevocably agree that the courts of England shall have non-exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with the Contract or its subject matter or formation (including non-contractual disputes or claims).