



## TERMS AND CONDITIONS OF SALE

### 1 INTERPRETATION

#### 1.1 In these conditions

“Buyer” Means the person or Company who accepts a quotation given by the “Seller” for the sale of the “Goods” or whose order for the “Goods” is accepted by the “Seller”

“Goods” Means the “Goods” which the “Seller” is to supply in accordance with these  
“Conditions”

“Seller” Means Engineered Air Treatment Ltd.

“Conditions” Means the standard terms and condition of the sale set out in this document

and (unless the context otherwise requires) includes any special terms and conditions agreed in “Writing” between the “Buyer” and the “Seller”

“Contract” Means the contract for the purchase and sale of the Goods.

“Writing” Includes facsimile transmission, e-mail, cable and comparable means of  
communication.

1.2 The headings in these “conditions” are for convenience only and shall not affect their interpretation.

### 2 BASIS OF SALE

2.1 The Seller shall sell and the Buyer shall purchase the Goods in accordance with any written or verbal quotation of the Seller which is accepted by the Buyer or any written order or verbal order of the Buyer which is accepted by the seller.

2.2 No variation to these Conditions shall be binding unless agreed in Writing between the authorised representative of the Buyer and the Seller.

2.3 The Seller’s employees or agents are not authorised to make any representations concerning the Goods unless confirmed in Writing .In entering into the Contract the Buyer acknowledges that it does not rely on, and waives any claim for breach of, and such representations which are not so confirmed.

2.4 Any advice or recommendation given by the Seller or its employees or agents to the Buyer or its employees or agents as to storage, application or use of the Goods which is not confirmed in Writing by the Seller is followed or acted upon entirely at the Buyers own risk, and accordingly the Seller shall not be liable for any such advice or recommendation which is not so confirmed.

2.5 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, drawing, acceptance of offer, invoice or any other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.

### 3 ORDERS AND SPECIFICATIONS

3.1 The Buyer shall be responsible to the Seller for ensuring the accuracy of the term of any order (including any applicable specification) submitted to the Buyer and for giving the Seller any necessary information

Relating to the Goods within a sufficient time to enable the Seller to perform the Contract in accordance with its terms.

3.2 The quantity, quality and description of and any specification for the Goods shall be those set out in the Sellers written or verbal quotation (if accepted by the Buyer) or the Buyer's written or verbal order (if accepted by the Seller)

3.3 If the Goods are to be manufactured or any process is to be applied to the Goods by the Seller or on behalf of the Seller in accordance with a specification submitted by the Buyer, the Buyer shall indemnify the Seller against all loss ,damages, costs and expenses awarded against or incurred by the Seller in connection with or paid or agreed to be paid by the Seller in settlement of any claim for infringement of any patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person which results from the Seller's use of the Buyer's specification.

3.4 The Seller reserves the right to make any changes in the specification of the goods which are required to conform with any applicable safety or other statutory requirements or, where the Goods are to be

Supplied to the Seller's specification, which do not materially affect their quality or performance.

3.5 No order which has been accepted by the Seller may be cancelled by the Buyer except with the agreement in writing of the Seller and on terms that the Buyer shall indemnify the Seller in full against all loss (including

loss of profit) costs (including the cost of cancellation of any orders placed by the Seller in order to fulfil the contract, transportation and warehousing costs, damages, charges and expenses incurred by the Seller as a

Result of cancellation.

#### 4 PRICE OF GOODS

4.1 The price of the Goods shall be the Sellers quoted price or, where no price has been quoted (or a quoted price is no longer valid) the price stated on the Sellers acceptance and confirmation or order document.

4.2 The Seller reserves the right, by giving notice in writing to the Buyer at any time prior to delivery of the goods, to increase the price of the goods to reflect any price increase over which the Seller has no control (such as, without limitation, any foreign exchange fluctuation, currency regulation, change in

Delivery dates, change of specification etc. or any delay caused by the instructions of the Buyer or failure of the Buyer to give the Seller adequate information or time.

4.3 Except as otherwise stated in the quotation accepted by the Buyer all prices shall be deemed to be ex. works prices and where the Buyer requests the Seller to deliver the Goods to the Buyer's premises or other location the Buyer shall be liable for the Seller's charges for packing, transportation

and insurance costs.

4.4 The price is exclusive of Value Added Tax, which the Buyer shall be additionally liable to pay as applicable to the Seller.

#### 5 TERM OF PAYMENT

5.1 Subject to any special terms agreed in Writing between the Buyer and the Seller for the price of the Goods on or at any time after delivery of the goods, unless the Goods are to be collected

by the Buyer wrongfully fails to take delivery of the goods, in which event the Seller shall be entitled to invoice the Buyer for the price at any time after the Seller has notified the Buyer that the goods are ready for

collection or (as the case may be) the Seller has tendered delivery of the Goods.

5.2 The Buyer shall pay the price of the Goods (less any discount to which the Buyer is entitled as notified to him in Writing by the Seller) within 30 days of the date of the Sellers invoice, notwithstanding that delivery may not have taken place and the property in the Goods has not passed to the Buyer. The time of payment of the price shall be of the essence of the Contract. Receipts for payment will be issued upon request.

5.3 No payment shall be deemed to have been received until the Seller has received cleared funds.

5.4 If the Buyer fails to make payment on the due date then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to:-

5.4.1 Cancel the Contract or suspend any further deliveries to the Buyer.

5.4.2 Charge the Buyer interest ( at the rate of 5% above Lloyds Bank rate from time to time) until payment is made in full (a part of a month shall be treated as a full month for the purpose of calculating the interest).

5.5 The Seller may appropriate any payment made by the Buyer to the Seller to such Goods as the Seller thinks fit despite any purported appropriation by the Buyer.

6

#### DELIVERY

6.1 Delivery of the Goods shall be made by the Buyer collecting the Goods at the Seller's premises at any time after the Seller has notified the Buyer that the Goods are ready for collection or, if some other place of delivery is agreed by the Seller, be the Seller delivering the Goods to that place.

6.2 If the place of delivery is not the Seller's premises Goods shall be delivered by such means as the Seller thinks fit, unless the Buyer has specified in its order the details of the contract with the carrier which it reasonably requires having regard to the nature of the goods and the other circumstances of the case. In such circumstances the Seller shall arrange for the carriage of the Goods and the carrier shall be deemed to be the Buyer's agent.

6.3 Any dates quoted for delivery of the Goods are approximate only and the Seller shall not be liable for any delay in delivery of the Goods however caused. Time for delivery shall not be of the essence unless previously agreed by the Seller in Writing. The Goods may be delivered in advance of the quoted delivery date upon giving reasonable notice to the Buyer.

6.4 Where the Goods are delivered in instalments, each delivery shall constitute a separate Contract and failure by the Seller to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.

6.4 If the Seller fails to deliver the Goods for any reason other than any cause beyond the Seller's reasonable control or the Buyer's fault and the Seller is accordingly liable to the Buyer, the Seller's liability shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest available market) of similar Goods to replace those not delivered over the price of the Goods.

6.5 If the Buyer fails to take delivery of the Goods after 10 days or fails to give the Seller adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of the Seller's fault) then, without prejudice to any other right or remedy available to the Seller, the Seller may:-

6.5.1 Store the Goods until actual delivery and charge the buyer for the reasonable costs (including insurance) of storage or

6.5.2 Sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the price under the Contract or charge the Buyer for any shortfall below the price under the Contract.

## 7 RISK AND PROPERTY

7.1 Risk of damage to or loss of the Goods shall pass to the Buyer:-

7.1.1 In the case of Goods to be delivered at the Seller's premises, at the time when the Seller notifies the Buyer that the Goods are available for collection:- or

7.1.2 In the case of Goods to be delivered otherwise than at the Seller's premises, at the time of delivery or, if the Buyer wrongfully fails to take delivery of the Goods, the time when the Seller has tendered delivery of the Goods.

7.2 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 the Buyer until the Seller has received in cash or cleared funds payment in full of the price of the Goods and all other sums which are, or which become, due to the Seller on any account.

7.3 Until such time as the property in the Goods passes to the Buyer, the Buyer shall hold the Goods as the Seller's fiduciary agent and bailiff, and shall keep the Goods separate from those of the Buyer and the third parties and properly stored, protected and insured and identified as the Seller's property. Until

that time the Buyer shall be entitled to resell or use the Goods in the ordinary course of its business, but shall account to the Seller for the proceeds of sale or otherwise of the Goods, whether tangible or intangible, including insurance proceeds, and shall keep all such proceeds separate from monies or

Property of the Buyer and third parties and, in the case of tangible proceeds, properly stored, protected and insured.

7.4 Until such time as the property in the Goods passes to the Buyer (and provided the Goods are still in existence and not been resold), the Seller shall be entitled at any time to require the Buyer to deliver up the Goods to the Seller and, if the Buyer fails to do so forthwith, to enter upon any premises of the Buyer or third party where the Goods are stored and repossess the Goods.

## 8 WARRANTIES AND LIABILITY

8.1 Subject to the conditions set out below the Seller warrants that the Goods will correspond with their specification at the time of delivery and will be free from defects in material and workmanship as defined by the original manufacturer. Details of item warranties on request.

8.2 The above warranty is given by the Seller subject to the following conditions:-

8.2.1 The Seller shall be under no liability in respect of any defect in the Goods arising from any drawing, design or specification supplied by the Buyer.

8.2.2 The Seller shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Seller's and/or original manufacturer's instructions (whether oral or in Writing), misuse or alteration or repair of the Goods without the Seller's approval.

8.2.3 The Seller shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total price of the Goods has not been paid for and the due date for payment has passed.

8.2.4 The above warranty does not extend to parts, materials or equipment not supplied by the Seller, in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the seller.

8.3 All and any claim by the Buyer which is based on any defect in quality or condition of the Goods or their failure to correspond with specification (whether or not delivery is refused by the Buyer) be notified in Writing to the Seller within 7 days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure. If delivery is not refused, and the Buyer does not notify the Seller accordingly, the Buyer shall not be entitled to reject the Goods and the Seller shall have no liability for such defect or failure and the Buyer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.

8.4 Where any valid claim in respect to a breach of warranty given under clause 8.1 of any of the Goods which is based on any defect or condition of the Goods or their failure to meet specification is notified to the Seller in accordance with these conditions, the Seller shall be entitled to replace the Goods (or the part in question) free of charge or, at the Seller's sole discretion, refund to the Buyer the price of the Goods (or proportionate part of the price) but the Seller shall have no further liability to the Buyer.

8.5 Except in the respect of death, or personal injury caused by the Seller's negligence, the Seller shall not be liable to the Buyer by reason of any representation, or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for any consequential loss or damage (whether for loss of profit or otherwise), costs, expenses or other claims for consequential compensation whatsoever (and whether caused by the negligence of the Seller, its employees or agents or otherwise) which arise out of or in connection with the supply of Goods or their use or resale by the Buyer, except as expressly provided in these Conditions.

8.6 The Seller shall not be liable to the Buyer or deemed to be in breach of contract by reason of any delay in Performing or any failure to perform, any of the Sellers obligations in relation to the Goods, if delay or

failure was due to any cause beyond the Sellers reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Sellers reasonable control.

8.6.1 Act of God, explosion, flood, tempest, fire, accident, war or threat of war, sabotage, insurrection, civil disturbance, requisition.

8.6.2 Acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any Governmental, parliamentary or local authority.

8.6.3 Import or export regulations or embargoes.

8.6.4 Strikes, lockouts or other industrial actions or trade disputes (whether involving employees of the Seller or of a third party).

8.6.5 Difficulties in obtaining raw materials, labour, fuel, parts of machinery either by the Seller or third party manufacturer, power failure or breakdown of machinery.

## 9 INDEMNITIES

9.1 If the Seller is found liable in respect of any claim made against them for infringement of any letters patent, copyright, registered design, trade mark or other industrial or intellectual rights of any other person, which

may arise as a result of the Seller carrying out instructions given by the Buyer, the Buyer hereby agrees to indemnify and keep indemnified the Seller from and against all or any such claim and against all costs (including legal costs), damages, losses (including losses of profit) and demands arising in respect of any such claim.

9.2 The Buyer shall indemnify the Seller in respect of any liability incurred by the Seller as a result of any damage or injury whatsoever to any person or to any property and against all actions, suits, claims, costs (including legal costs) charges or expenses arising in connection with the Goods whether caused by the negligence of the Seller, its servants or agents or not except to the extent that the Seller is liable under these Conditions.

9.3 In the event of any breach in the terms of any Contract for the Sale of Goods, the Buyer shall indemnify and keep indemnified the Seller against all losses (including losses of profit) costs, (including legal costs), claims,

Damages or other injury or the like which the Seller incurs as a result of the Buyers breach.

## 10 INSOLVENCY OF BUYER

10.1 This clause applies if:-

10.1.1 The Buyer makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (other than the purposes of amalgamation or reconstruction); or

10.2 An encumbrance takes possession, or a receiver is appointed, of any of the property or assets of The Buyer or;

10.2.1 The Buyer ceases, or threatens to cease, to carry on business or;

10.2.2 The Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.

10.3 If this clause applies then without prejudice to any other rights or remedy available to the Seller, the Seller shall be entitled to cancel the contract or suspend and further deliveries under the contract without any liability to the Buyer and if Goods have been delivered but not paid for, the price shall become immediately due and payable notwithstanding any previous agreement to the contrary or;

10.3.1 If property in the Goods has not passed to the Buyer then Clause 7 shall apply in its entirety.

## 11 GENERAL

11.1 Any notice required or permitted to be given by either party to the other under these Conditions shall be in Writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.

11.2 No waiver by the Seller of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.

11.3 The Contract shall be governed by the laws of England and the parties hereby agree to submit any dispute to the non-exclusive jurisdiction of the English courts.

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Engineered Air Treatment (EAT) Ltd