

Breathing Buildings Terms & Conditions of Supply

Definitions and interpretations

- 1.1 In construing the Contract the following words and expressions shall have the following meanings hereby assigned to them.
 - 1.1a "Purchaser" means the person to whom Goods are to be supplied and the legal successors in title to the Purchaser but not (except with the consent of the Company) any assignee of the Purchaser.
 - 1.1b "Company" means Breathing Buildings Ltd and the legal successors in title to the Company but not any assignee of the Company.
 - 1.1c "Conditions" means these general conditions and such special conditions as are agreed between the parties and stated in the Contract.
 - 1.1d "Contract" means the agreement between the Purchaser and the Company (howsoever made) for the supply of the Goods including the letter of acceptance, the Conditions, the Specification and the drawings (if any) annexed thereto and such schedules as are referred to therein and the tender.
 - 1.1e "Contract Price" means the sum stated in the Contract as the price payable to the Company for the Supply of the Goods.
 - 1.1f "Contract Value" means such part of the Contract Price, adjusted to give effect to such additions or deductions as are provided for in the Contract, as is properly apportionable to the goods in question.
 - 1.1g "Date of Delivery" means the date on which the Goods are delivered to the place specified in sub-clause 5.1.
 - 1.1h "Defects Liability Period" means the period of 18 months after the Date of Delivery or 12 months from the date of issue of the Final Inspection Certificate, whichever is the first to expire.
 - 1.1i "Final Inspection" means the actions to be taken by the Company's engineer to confirm the correct operation of the Goods following the installation on site by others of the Goods, on completion of which the Company will issue to the Purchaser a Final Inspection Certificate.
 - 1.1j "Goods" means the goods to be supplied under the Contract as required by the Specification.
 - 1.1k "Letter of Acceptance" means the formal acceptance by the Purchaser of the Tender incorporating any amendments or variations to the Tender agreed by the Purchaser and the Company.
 - 1.1l "Special Conditions" means the alterations to these general conditions and such further conditions as may be specified and identified as the Special Conditions in the Contract.
 - 1.1m "Specification" means the specification of the Goods annexed to or included in the Contract including any modifications thereof made under clause 12 (Variations).
 - 1.1n "Tender" means the Company's priced offer to the Purchaser for the supply of the Goods.
- 1.2 The Conditions shall have effect subject to any express stipulation or condition at variance with these conditions that may be contained in the Specification or may otherwise be incorporated in the Contract.
- 1.3 The headings hereto shall not be deemed part of the Conditions or be taken into consideration in the interpretation or construction of the Contract.
- 1.4 The Company and the Purchaser do not intend any term of the Contract to be enforceable by a party other than themselves.
- 1.5 Unless specifically agreed otherwise in writing by the Company, the Conditions shall apply to the Contract to the exclusion of any other terms and conditions that the Purchaser may seek to impose or incorporate, or which may be implied by trade, custom, practice or course of dealing.

Information

- 2.1 The Purchaser shall within a reasonable time furnish all such further information, beyond that which is contained in the Specification or has been otherwise given to the Company, as the Company may reasonably call for to perform the Contract. The Purchaser shall pay all reasonable extra costs caused to the Company by unreasonable delay in so doing or by the supply of inaccurate information.

Drawings

- 3.1 Drawings, illustrations, descriptions, price lists and catalogues issued by the Company shall not form part of the Contract unless incorporated therein by reference or otherwise.
- 3.2 The Company shall within a reasonable time supply to the Purchaser:
 - a. The particulars and drawings (if any) called for in the Contract, and
 - b. Such drawings (other than shop drawings) and other particulars of the Goods as may be reasonably necessary for the purposes of installation and maintenance (including such dismantling and re-assembling as maintenance may involve).

Rejection and Replacement

- 4.1 The Purchaser shall be entitled, by notice in writing given within a reasonable time (and in any event no later than 3 months) after issue of the Final Inspection Certificate, to reject Goods delivered which are not in accordance with the Contract.
- 4.2 When Goods have been rejected under sub-clause 4.1, the Company shall be entitled, at the option of the Company and at the Company's cost, to repair, modify or replace the Goods so rejected. Failure of the Company to repair, modify or replace the Goods within 4 months of the rejection shall entitle the Purchaser to replace the Goods so rejected and the Contract Value of the Goods rejected shall be deducted from the Contract Price.
- 4.3 The Company shall pay to the Purchaser any sum by which the expenditure reasonably incurred by the Purchaser in replacing the rejected Goods under the terms of sub-clause 4.2 exceeds the sum deducted. All goods obtained by the Purchaser to replace rejected Goods shall comply with the Contract and shall be obtained at reasonable prices and under competitive conditions. The limit of the Company's liability under this sub-clause shall be limited to 120% of the Contract Value of the rejected Goods. Where Goods have been rejected as aforesaid the Company shall not be under any liability to the Purchaser except as provided in this clause and as may arise under clause 6 (Time for delivery).

Delivery

- 5.1 The Company shall deliver the Goods at the place (if any) named in the Contract or, if none be named, at the Company's works. Where delivery is to be made otherwise than at the Company's works the Company shall convey the Goods to the point nearest to the place of delivery to which there is suitable access and the Purchaser shall be responsible for offloading the Goods. Where delivery is to be made at the Company's works the Company shall, if required, load the Goods on the Purchaser's vehicle.
- 5.2 Upon delivery of the Goods, the Goods shall be at the risk of the Purchaser.
- 5.3 The property in the Goods shall pass to the Purchaser on payment in full of the Contract Value of the Goods delivered.

Time for delivery

- 6.1 Any time fixed by the Contract for delivery shall run from the acceptance of the Purchaser's order or from the date on which the Company is placed by the Purchaser in possession of such information and drawings as may be necessary to enable him to put the work in hand, whichever may be the later. Any time described as an estimate shall not be construed as a time fixed by the Contract.
- 6.2 If by reason of instructions or lack of instructions from the Purchaser or by reason of variations ordered under clause 12 (Variations) or by reason of any industrial dispute or any cause beyond the reasonable control of the Company delivery of the Goods shall be delayed, the above mentioned time for delivery shall be extended by such period as may be reasonable.
- 6.3 If the Purchaser shall have suffered any loss by the failure of the Company to deliver Goods in accordance with the Contract within the time fixed thereby, or any extension thereof or, if no time be fixed, within a reasonable time, the Purchaser shall be entitled to recover liquidated damages from the Company. Such damages shall be the sum equal to one half per cent of the Contract Value of such portion of the Goods as cannot in consequence of such failure be put to the use intended for each week until the Company has delivered Goods in accordance with the Contract, or goods in replacement have been provided by the Purchaser pursuant to sub-clause 4.2 (Consequences of rejection). Provided always that the amount so recoverable shall not exceed five per cent of the Contract Value.
- 6.4 When the sum recoverable by the Purchaser as liquidated damages has amounted to the maximum above provided, the Purchaser shall be entitled by notice in writing to the Company to require it to deliver the Goods within such time (not being less than 28 days) as the Purchaser may specify in the notice. If the Company shall fail to deliver the Goods within the time so specified the Purchaser shall, without prejudice to his rights under sub-clause 6.3, be entitled, after having informed the Company in writing of his intention so to do, to obtain goods in place of those which the Company has failed to deliver and there shall be deducted from the Contract Price the Contract Value of the undelivered Goods. The Company shall pay to the Purchaser any sum by which the expenditure reasonably incurred by the Purchaser in obtaining goods in place of the undelivered Goods exceeds the sum deducted. All goods obtained by the Purchaser to replace undelivered Goods shall comply with the Contract and shall be obtained at reasonable prices and under competitive conditions. The limit of the Company's liability under this sub-clause shall be limited to 120% of the Contract Value of the delayed Goods.
- 6.5 The Purchaser's remedies under sub-clauses 6.3 and 6.4 shall be in lieu of any other remedy in respect of the Company's failure to deliver Goods in accordance with the Contract within the time fixed thereby or any extension thereof or, if no time be fixed, within a reasonable time.

Storage

- 7.1 If by reason of instructions or lack of instructions from the Purchaser the delivery of Goods in accordance with the Contract is delayed for 14 days after the Company has given notice in writing to the Purchaser that the said Goods are ready for delivery, then provided they are suitably and sufficiently marked as appropriated to the Contract and the Company has given to the Purchaser an opportunity of inspecting them, the said Goods shall be deemed to have been delivered in accordance with the Contract. Subject as provided in clause 8 (Damage or loss in transit) the Goods shall at the expiration of the said 14 days be at the risk of the Purchaser, and the amount due on completion of delivery under clause 9 (Terms of payment) shall become immediately due and payable by the Purchaser. Notwithstanding the provisions of clause 5 (Delivery) the property in the Goods shall not pass to the Purchaser until the said amount shall have been paid by the Purchaser. Nevertheless the Company shall use its best endeavours to deliver the said Goods in accordance with such instructions as may be given to it by the Purchaser and in the meantime shall store, protect, preserve and, if required by the Purchaser, insure them to the extent so required. The Purchaser shall repay to the Company the reasonable cost of so storing, protecting, preserving and insuring the said Goods.

Damage or loss in transit

- 8.1 The Company shall repair or replace free of charge Goods damaged in transit to the place of delivery, and in the event of such damage delivery shall not be deemed to have taken place until repaired or replacement Goods have been delivered. Provided always that, if the Company has given to the Purchaser notice of the date of despatch and has with that notice required the Purchaser to give it within a stated period notice of any damage suffered and the Purchaser has failed to do so, the Company shall not be liable to repair or replace the damaged Goods, and delivery of the damaged Goods shall be deemed to be delivery for the purpose of the Contract. For the purpose of this sub-clause:
 - a. where the Goods are delivered by a carrier employed by the Company under a contract of carriage which frees the carrier from liability for damage in transit unless notice of damage is given to the carrier within a specified time, the stated period shall be such period (not being less than 24 hours) after receipt of the Goods as will allow the Company at least 24 hours after receiving notice from the Purchaser within which to give notice to the carrier in compliance with the terms of the carrier's said contract with the Company, and

- b. where the Goods are delivered by a carrier employed by the Company but not under such a contract as aforesaid or are delivered by the Company's own transport, the stated period shall be such as is reasonable.
- 8.2 The Company shall replace Goods lost in transit to the place of delivery provided always that, if the Company has given the Purchaser notice of the date of despatch and method of transport and has with that notice required the Purchaser to give it notice of non-delivery within a stated period and the Purchaser has failed to do so, the Goods shall notwithstanding their non-receipt within that period be deemed to have been delivered at the expiry of that period. In such last mentioned event the Company shall at the request and expense of the Purchaser pursue for the benefit of the Purchaser such rights (if any) as the Company may have against the carrier.
 - 8.3 The liability imposed on the Company in this clause shall be accepted by the Purchaser in substitution for all or any other liability on the part of the Company arising from the delivery of Goods damaged in transit or the non-delivery of Goods in consequence of loss in transit.

Terms of payment

- 9.1 The Purchaser shall pay the Company for the Goods supplied the sum agreed in the Contract.
- 9.2 Unless otherwise agreed, payment for the Goods shall become due after delivery of the Goods in accordance with sub-clause 5.1 (Delivery). The final date for payment is 30 days after delivery.
- 9.3 The Company shall be entitled to charge interest at the rate of 5% above the Bank of England base rate from time to time in force on any sum clearly and properly due to it which has not been received by the final date for payment.

Defects after delivery

- 10.1 If within the Defects Liability Period there shall appear in the Goods any defect which shall arise under proper use from faulty materials, workmanship or design (other than a design made, furnished, or specified by the Purchaser for which the Company has in writing disclaimed responsibility), and the Purchaser shall have given notice thereof in writing to the Company, the Company shall, provided that the defective Goods or defective parts thereof have been returned to the Company if it shall have so required, make good the defects either by repair or, at the option of the Company, by the supply of a replacement. The Company shall refund the cost of carriage on the return of the defective Goods or parts and shall deliver any repaired or replacement Goods or parts as if clause 5 (Delivery) applied.
- 10.2 The Company's liability under this clause or under clause 4 (Rejection and replacement) shall be accepted by the Purchaser in lieu of any warranty or condition implied by law as to the quality or fitness for any particular purpose of the Goods and save as provided in this clause the Company shall not be under any liability to the Purchaser (whether in contract, tort, breach of statutory duty or otherwise) for any defects in the Goods or for any damage, loss, death or injury (other than death or personal injury caused by the negligence of the Company as defined in Section 1 of the Unfair Contract Terms Act, 1977 or claims in respect of death or personal injury arising under Part 1 of the Consumer Protection Act, 1987) resulting from such defects or from any work done in connection therewith.
- 10.3 If any defect of the kind referred to in sub-clause 10.1 shall appear in any part of the Goods within a period of three years after the date of delivery of such Goods, the same shall be made good by the Company by repair or replacement at the Company's option provided that the defect was caused by the Gross Misconduct of the Company as defined below and would not have been disclosed by reasonable examination prior to the expiry of the Defects Liability Period. "Gross Misconduct" does not comprise each and every lack of care or skill but means any act or omission of the Company which directly leads to a mechanical or electrical failure of any part of the Goods, where such failure would be reasonably foreseeable to a competent and experienced supplier of goods of a similar nature to the Goods.

Patents and design

- 11.1 The Company shall fully indemnify the Purchaser against all actions, claims, demands, and all reasonable costs, charges and expenses arising from or incurred by reason of any infringement or alleged infringement of patent, registered design, unregistered design right, copyright, trade mark or trade name protected in the United Kingdom by use of any Goods supplied by the Company, but such indemnity shall not cover any use of the Goods otherwise than for the purpose indicated by or reasonably to be inferred from the Specification or to any infringement which is due to the use of any Goods in association or combination with any other goods not supplied by the Company.
- 11.2 In the event of any claim being made or any action brought against the Purchaser arising out of the matters referred to in sub-clause 11.1, the Company shall be promptly notified thereof and may at its own expense conduct all negotiations for the settlement of the same, and any litigation that may arise therefrom. The Purchaser shall not, unless and until the Company shall have failed to take over the conduct of the negotiations or litigation within 2 months of the Purchaser's notification to it, make any admission which might be prejudicial thereto, or any offer to settle of any kind. The conduct by the Company of such negotiations or litigation shall be conditional upon the Company having first given to the Purchaser such reasonable security as shall from time to time be required by the Purchaser to cover the amount ascertained or agreed or estimated, as the case may be, of any compensation, damages, expenses, and costs for which the Purchaser may become liable. The Purchaser shall, at the request of the Company, afford all available assistance for the purpose of contesting any such claim or action, and shall be repaid all reasonable expenses incurred in so doing.

Variations

- 12.1 The Company shall not alter any of the Goods, except as directed in writing by the Purchaser; but the Purchaser shall have full power, subject to the proviso hereinafter contained, from time to time during the execution of the Contract by notice in writing, to direct the Company to alter, amend, omit, add to or otherwise vary any of the Goods and the Company shall carry out such variations, and be bound by the same conditions, so far as applicable, as though the said variations were stated in the Specification. No such variation shall together with any variations already ordered, involve a net addition to or deduction from the Contract Price of more than 15% unless the Company and the Purchaser so agree in writing.
- 12.2 In any case in which the Company has received any such direction from the Purchaser which either then or later will, in the opinion of the Company, involve an addition to or deduction from the Contract Price, the Company shall, as soon as is reasonably possible, advise the Purchaser in writing to that effect. The amount to be added or deducted from the Contract Price shall be ascertained and determined in accordance with the rates specified in the schedules of prices, so far as the same may be applicable, and where rates are not contained in the said schedules, or are not applicable, such amount shall be such sum as is reasonable in the circumstances. Due account shall be taken of any partial execution of the Contract which is rendered useless by such variation.
- 12.3 If the Purchaser shall direct that any such variation be made, such reasonable notice in writing shall be given to the Company as will enable it to make its arrangements accordingly. If in the opinion of the Company any such variation is likely to prevent or prejudice the Company from fulfilling any of its obligations under the Contract, it shall notify the Purchaser thereof in writing, and the Purchaser shall decide forthwith whether or not the same shall be carried out. If the Purchaser confirms his instructions in writing, the said obligation shall be modified to such an extent as may be justified. Until the Purchaser so confirms his instructions they shall be deemed not to have been given.

Liability

- 13.1 The Company's liability under this Contract shall be limited to a maximum sum of £1 million.
- 13.2 Without prejudice to any other exclusion or limitation of liability any such liability of the Company shall be limited to such sum or sums as it would be just and equitable for the Company to pay having regard to the Company's responsibility for the same and on the basis that all other parties appointed or to be appointed by the Purchaser to perform related services in connection with the development for which the Goods are required shall be deemed to have provided undertakings on terms no less onerous than this Contract and shall be deemed to have paid to the Purchaser such contribution as it would be just and equitable for them to pay having regard to their responsibility for any loss or damage and providing that it shall be deemed that such parties have not limited or excluded their liability to the Purchaser for such loss or damage in any way which may be prejudicial to the Company's liability under this clause.

Completion

- 14.1 Upon expiry of the Defects Liability Period specified in clause 10 (Defects after delivery) the Contract shall be deemed to have been completed and the Company shall be under no further obligation or liability whatsoever to the Purchaser whether in contract or in tort (including but not limited to negligence), breach of statutory duty or otherwise unless within 14 days thereafter the Purchaser shall have given the Company written notice of any matter in respect of which the Company remains obligated or liable to the Purchaser in which event the obligations or liability of the Company shall cease immediately upon the Company having dealt with the matters specified in the notice. Nothing in this clause shall affect any matter which is the subject of proceedings commenced, whether by way of arbitration under clause 17 or otherwise, and which have not been finally determined, prior to the expiry of the said period of 14 days.

Statutory and other regulations

- 15.1 If the cost to the Company of performing its obligations under the Contract shall be increased or reduced by reason of the making or amendment after the date of the Company's tender of any law or any order, regulation, or by-law having the force of law in the United Kingdom that shall affect the Company in the performance of its obligations under the Contract, the amount of such increase or reduction (to the extent that it arises directly on or in respect of the Goods) shall be added to or deducted from the Contract Price as the case may be.

Value Added Tax

- 16.1 Unless otherwise stated in the tender the Contract Price is deemed to exclude Value Added Tax. To the extent that the tax is properly chargeable on the supply to the Purchaser of any Goods or services provided by the Company under the Contract, the Purchaser shall pay such tax as an addition to payments otherwise due to the Company under the Contract.

Arbitration

- 17.1 If at any time any question, dispute, or difference whatsoever shall arise between the Company and the Purchaser upon, in relation to, or in connection with the Contract, which cannot be settled amicably, either of them shall give to the other notice in writing of the existence of such question, dispute, or difference, and the same shall be referred to the arbitration of a person to be agreed upon or failing agreement within 14 days after the date of such notice, of some person to be appointed, on the application of either party, by the President for the time being of the Institution of Mechanical Engineers (or his deputy appointed by such President for the purpose).
- 17.2 Performance of the Contract shall continue during the arbitration proceedings. No payment due or payable by the Purchaser shall be withheld on account of a pending reference to arbitration.

Applicable law

- 18.1 The Contract shall in all respects be governed by and interpreted in accordance with the laws of England and Wales and such law shall govern the procedure of any arbitration under clause