



Standard Terms and Conditions of Service

Registered address: Units 1 & 2, Shipston Close, Worcester, WR4 9XN
ThermaBead Ltd is a limited company registered in England and Wales.
Company registration No: 8072262

1. Order

The Customer's order for Services as set out in these terms and conditions.

2. 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.

3. Construction

In these Conditions, the following rules apply:

- 3.1 a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- 3.2 a reference to a party includes its personal representatives, successors or permitted assigns;
- 3.3 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;
- 3.4 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
- 3.5 a reference to writing or written including emails.

4. Basis of Contract

- 4.1 The Order constitutes an offer by the Customer to purchase Services in accordance with these Conditions.
- 4.2 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).
- 4.3 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.
- 4.4 Any samples, drawings, descriptive matter or advertising issued by the Company, and any descriptions or illustrations contained in the Company's catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.
- 4.5 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.
- 4.6 Should any variation to the Specification; plans; time scale; Charges or any other part of the Contract becomes 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. The Company will give written notice to the Customer and return any deposit already paid.

4.7 In either event the Company will not incur any liability for any additional costs as a result of the changes that are incurred by the Customer.

5. Quotation

- 5.1 Any quotation given by the Company shall not constitute an offer, and is only valid for a period of [20] Business Days from its date of issue.
- 5.2 The quotation includes the cost of the making of all ways and subsequent reinstatements but does not include the lifting or re-laying of fitted carpets, or other floor coverings, or for any redecoration which may be required, although every care will be taken during the progress of the work. 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 subject to an additional charge.
- 5.3 The cost of additional work, such as scaffolding to provide access for working, is the responsibility of the Customer, unless included under the "Other Measures" section of the Contract when it will then be included in Charges covered by the Contract.
- 5.4 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.

6. Supply of Services

- 6.1 The Company shall supply the Services to the Customer in accordance with the Specification in all material respects.
- 6.2 The Company shall use reasonable endeavour's to maintain or improve upon the notified date for installation. If the Company is unable to meet any specified installation date, owing to circumstances beyond its control, it will seek to come to an agreement with the Customer on a mutually convenient alternative date for such installation. In all circumstances, any such dates shall be estimates only and time shall not be of the essence for performance of the Services.
- 6.3 The Company shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and the Company shall notify the Customer in any such event.
- 6.4 The Services shall be provided in accordance with the current edition of the Regulations for the Electrical Equipment of Buildings as issued by the Institute of Electrical Engineers. The Company's membership of specific trade bodies, National Insulation Association, Gas Safe Register, Cavity Insulation Guarantee Agency (CIGA) ensures that workmanship is of a consistently high standard and the Health and Safety implications are regularly reviewed and the Company warrants to the Customer that the Services will be provided using reasonable care and skill.
- 6.5 The Company accepts no liability for pre-existing building or appliance faults, which directly or indirectly are established as a result of the Company undertaking any works. Technical advice; within the knowledge base of the company, will be offered without charge to the Customer. This technical advice is purely guidance from the Company and the Company offers no representation, guarantee or warranty in relation to such advice.
- 6.6 The finish and/or making good of drilled holes will be done to a good quality standard using materials currently available. No guarantee can be given of an exact match to existing finish.

7. Customers Obligations

- 7.1 The Customer shall:
 - 7.1.1 ensure that the terms of the Order and any information it provides in the Specification are complete and accurate;
 - 7.1.2 co-operate with the Company in all matters relating to the Services;
 - 7.1.3 provide the Company, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Company;
 - 7.1.4 ensure that a responsible person shall be present when the installation crew arrives and on completion of the work;
 - 7.1.5 guarantees that the responsible person as referred to in condition 7.1.4 above has the requisite authority;
 - 7.1.6 provide the Company with such information and materials as the Company may reasonably require in order to supply the Services, and ensure that such information is accurate in all material respects;
 - 7.1.7 prepare the Customer's premises for the supply of the Services, including (without limitation) clearing access areas, removing delicate items from internal walls and removing obstructions from lofts and external walls;
 - 7.1.8 obtain and maintain all necessary licences, permissions and consents which may be required before the date on which the Services are to start

- 7.1.9 where any damage has occurred during installation or a complaint is to be made, will report to incident to the Company, in writing, where practicable, within 7 (seven) working days;
- 7.1.10 keep and maintain all materials, equipment, documents and other property of the Company (Company Materials) at the Customer's premises in safe custody at its own risk, maintain the Company Materials in good condition until returned to the Company, and not dispose of or use the Company Materials other than in accordance with the Company's written instructions or authorisation; and
- 7.2 If the Company's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (Customer Default):
 - 7.2.1 (a) the Company shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays the Company's performance of any of its obligations;
 - 7.2.2 (b) the Company shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Company's failure or delay to perform any of its obligations as set out in this condition 7.2; and
 - 7.2.3 (c) the Customer shall reimburse the Company on written demand for any costs or losses sustained or incurred by the Company arising directly or indirectly from the Customer Default.

8. Guarantee

- 8.1 All materials supplied/installed by the Company carry a minimum manufacture's guarantee [as specified in the documents sent to you]. Specific products such as cavity wall insulation carry an additional "Cavity Insulation Guarantee Agency" guarantee which lasts for a period of 25 years, which will be sent to the householder.
- 8.2 Guarantees cannot be given to existing systems where the Company have installed additional items; therefore the Company disclaims any liability for repair or third party damages occasioned by the failure of such existing systems.
- 8.3 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.
- 8.4 All guarantees are without prejudice to the Customer's statutory or common law rights.

9. Charges and Payment

- 9.1 The Charges for the Services are set out in the Contract.
- 9.2 The balance of the purchases 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.
- 9.3 Payments shall be made [by a method specified in the relevant invoice.]
- 9.4 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.
- 9.5 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.
- 9.6 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 assert any credit, 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.
- 9.7 Once an invoice has become overdue we reserve the right to all remaining invoices becoming payable immediately both for lease and bead.

10. Intellectual Property Rights

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

- 10.2 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 licence from the relevant licensor on such terms as will entitle the Company to license such rights to the Customer.
- 10.3 All Company Materials are the exclusive property of the Company.

11. Confidentiality

- 11.1 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.
- 11.2 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 condition 11 shall survive termination of the Contract.

12. Limitation of Liability

- 12.1 Nothing in these Conditions shall limit or exclude the Company's liability for:
- 12.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
 - 12.1.2 fraud or fraudulent misrepresentation; or
 - 12.1.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);
 - 12.1.4 breach of the terms implied by section 12 of the Sale of Goods Act 1979;
 - 12.1.5 defective products under the Consumer Protection Act 1987; or
 - 12.1.6 any matter in respect of which it would be unlawful for the Supplier to exclude or restrict liability.
- 12.2 Subject to condition 12.1:
- 12.2.1 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; and
 - 12.2.2 any liability is restricted directly to the room where the Services were being performed only.
 - 12.2.3 no liability will be accepted by The Company for any lateral defects within existing wiring or pipework.
- 12.3 Subject to conditions 12.1, 12.2 and 12.3, 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 [10 times the Contract price].
- 12.4 The Company carries third party liability insurance and therefore claims are restricted to indemnity only and not new replacement.
- 12.5 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.
- 12.6 This clause 12 shall survive termination of the Contract.

13. Termination

- 13.1 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:
- 13.1.1 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;
 - 13.1.2 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 either 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;

- 13.1.3 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];
- 13.1.4 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;
- 13.1.5 the other party (being an individual) is the subject of a bankruptcy petition or order;
- 13.1.6 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;
- 13.1.7 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);
- 13.1.8 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;
- 13.1.9 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;
- 13.1.10 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 condition 13.1.1 to condition 13.1.5 (inclusive);
- 13.1.11 the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or
- 13.1.12 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.
- 13.2 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.
- 13.3 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 [30] days after the date for payment.
- 13.4 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 condition 13.1.2 to clause 13.1.12, 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.

14. Consequences of Termination

- 14.1 On termination of the Contract for any reason:
 - 14.1.1 the Customer shall immediately pay to the Company all of the Company's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Company shall submit an invoice, which shall be payable by the Customer immediately on receipt;
 - 14.1.2 the Customer shall return all of the Company Materials which have not been fully paid for. If the Customer fails to do so, then the Company may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;
 - 14.1.3 the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
 - 14.1.4 clauses which expressly or by implication have effect after termination shall continue in full force and effect.

15. Force Majeure

- 15.1 For the purposes of this Contract, Force Majeure Event means an event beyond the reasonable control of the Company including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the Company or any other party), failure of a utility service or transport network, act of God, war,

riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.

15.2 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.

15.3 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.

16. Assignment and Sub-contracting

16.1 The Company may 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.

16.2 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.

17. Notices

17.1 Any notice or other communication required to be given to a party under or in connection with this Contract shall be in writing and shall be delivered to the other party personally 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.

17.2 This condition 17 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 e-mails and for the avoidance of doubt notice given under this Contract shall not be validly served if sent by e-mail.

18. Waiver

18.1 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.

18.2 Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

19. Severance

19.1 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.

19.2 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.

20. General

20.1 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.

20.2 Third parties: A person who is not a party to the Contract shall not have any rights under or in connection with it.

20.3 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.

20.4 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.

20.5 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, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

