

# Preheat Engineering Terms and Conditions of Sale

- 1 Definitions and interpretation**

In these Conditions the following definitions apply:  
**Business Day:** means a day other than a Saturday, Sunday or bank or public holiday when banks generally are open for non-automated business in England;  
**Conditions:** means the Supplier's terms and conditions of sale set out in this document;  
**Contract:** means the agreement between the Supplier and the Customer for the sale and purchase of the Goods incorporating these Conditions and the Order, and including all its schedules, attachments, annexures and statements of work;  
**Customer:** means the named party in the Order which has agreed to purchase the Goods from the Supplier and whose details are set out in the Order;  
**Force Majeure:** means an event or sequence of events beyond the Supplier's reasonable control preventing or delaying it from performing its obligations under the Contract;  
**Goods:** means the goods and other physical material set out in the Order and to be supplied by the Supplier to the Customer in accordance with the Contract;  
**Location:** means the address or addresses for delivery of the Goods as set out in the Order;  
**Order:** means an order for the Goods from the Supplier placed by the Customer in substantially the same form set out in the Supplier's sales order form;  
**Supplier:** means Preheat Engineering Limited incorporated in England with registered number 09430590 with its registered office address at Unit A2 Deseronto Trading Estate, St. Mary's Road, Langley, Berkshire SL3 7EW; and  
**VAT:** means value added tax under the Value Added Taxes Act 1994 or any other similar sale or fiscal tax applying to the sale of the Goods.
- 2 Application of these conditions**
  - 2.1 These Conditions apply to and form part of the Contract between the Supplier and the Customer in respect of the sale and supply of the Goods. They supersede any previously issued terms and conditions of purchase or supply.
  - 2.2 No terms or conditions endorsed on, delivered with, or contained in the Customer's purchase conditions, order, confirmation of order, specification or other document shall form part of the Contract except to the extent that the Supplier otherwise agrees in writing.
  - 2.3 The Supplier shall be entitled to vary these Conditions from time to time and shall inform the Customer of any variations which may apply.
  - 2.4 Each Order by the Customer to the Supplier shall be an offer to purchase the Goods subject to the Contract including these Conditions.
  - 2.5 If the Supplier is unable to accept an Order, it shall notify the Customer in writing as soon as reasonably practicable.
  - 2.6 The Supplier may accept or reject an Order at its discretion. An Order shall not be accepted, and no binding obligation to supply any Goods shall arise, until the earlier of:
    - 2.6.1 the Supplier's written acceptance of the Order; or
    - 2.6.2 the Supplier dispatching the Goods or notifying the Customer that they are available for collection (as the case may be).
  - 2.7 Rejection by the Supplier of an Order, including any communication that may accompany such rejection, shall not constitute a counter-offer capable of acceptance by the Customer.
  - 2.8 The Supplier may issue quotations to the Customer from time to time. Quotations are invitations to treat only. They are not an offer to supply the Goods and are incapable of being accepted by the Customer.
  - 2.9 Marketing and other promotional material relating to the Goods are illustrative only and do not form part of the Contract.
- 3 Price**
  - 3.1 The price for the Goods shall be as set out in the Order or, where no such provision is set out, shall be as advised by the Supplier from time to time before the date the Order is placed (the **Price**).
  - 3.2 The Prices are exclusive of:
    - 3.2.1 delivery costs, which shall be charged in addition at the Supplier's standard rates; and
    - 3.2.2 VAT (or equivalent sales tax).
  - 3.3 The Customer shall pay any applicable VAT to the Supplier on receipt of a valid VAT invoice.
- 4 Payment**
  - 4.1 The Supplier shall invoice the Customer for the Goods, partially or in full, at any time following acceptance of the Order.
  - 4.2 The Customer shall pay all invoices in full without deduction or set-off, in cleared funds within 30 days from the invoice date to the bank account nominated by the Supplier.
  - 4.3 Time of payment is of the essence. Where sums due under these Conditions are not paid in full by the due date:
    - 4.3.1 the Supplier may, without limiting its other rights, charge interest on such sums at 8% a year above the base rate of the Bank of England from time to time in force; and
    - 4.3.2 interest shall accrue on a daily basis, and apply from the due date for payment until actual payment in full, whether before or after judgment.
- 5 Credit limit**

The Supplier may set and vary credit limits from time to time and withhold all further supplies if the Customer exceeds such credit limit.
- 6 Delivery**
  - 6.1 The Goods shall be delivered by the Supplier, or its nominated carrier, to the Location on the date(s) specified in the Order.
  - 6.2 The Goods shall be deemed delivered on completion of unloading only of the Goods at the Location by the Supplier or its nominated carrier (as the case may be).
  - 6.3 The Supplier may deliver the Goods in instalments. Any delay or defect in an instalment shall not entitle the Customer to cancel any other instalment.
  - 6.4 Delivery of the Goods shall be accompanied by a delivery note stating:
    - 6.4.1 the date of the Order;
    - 6.4.2 the product numbers, type and quantity of the Goods in the consignment; and
    - 6.4.3 any special handling instructions.
  - 6.5 Time of delivery is not of the essence. The Supplier shall use its reasonable endeavours to meet delivery dates but such dates are indicative only.
  - 6.6 The Supplier shall not be liable for any delay in or failure of delivery caused by:
    - 6.6.1 the Customer's failure to make the Location available;
    - 6.6.2 the Customer's failure to prepare the Location as required for delivery of the Goods;
    - 6.6.3 the Customer's failure to provide the Supplier with adequate instructions for delivery; or
    - 6.6.4 Force Majeure.
  - 6.7 If the Customer fails to accept delivery of the Goods the Supplier shall store and insure the Goods pending delivery, and the Customer shall pay all costs and expenses reasonably incurred by the Supplier in doing so. If the Customer fails to take delivery of or collect the Goods within 14 days the Supplier may resell or otherwise dispose of the Goods without any obligation or liability to the Customer.
- 7 Risk and title**
  - 7.1 Risk in the Goods shall pass to the Customer on delivery.
  - 7.2 Title to the Goods shall pass to the Customer once the Supplier has received payment in full and cleared funds for the Goods.
  - 7.3 Until title to the Goods has passed to the Customer, the Customer shall:
    - 7.3.1 hold the Goods as bailee for the Supplier;
    - 7.3.2 store the Goods separately from all other material in the Customer's possession;
    - 7.3.3 take all reasonable care of the Goods and keep them in the condition in which they were delivered;
    - 7.3.4 insure the Goods from the date of delivery: (i) with a reputable insurer (ii) against all risks (iii) for an amount at least equal to their Price (iv) noting the Supplier's interest on the policy;
    - 7.3.5 ensure that the Goods are clearly identifiable as belonging to the Supplier;
    - 7.3.6 not remove or alter any mark on or packaging of the Goods;
    - 7.3.7 inform the Supplier immediately if it becomes subject to any of the events or circumstances set out in clauses 11.2.1 to 11.2.10; and
    - 7.3.8 on reasonable notice permit the Supplier to inspect the Goods during the Customer's normal business hours and provide the Supplier with such information concerning the Goods as the Supplier may request from time to time.
  - 7.4 If, at any time before title to the Goods has passed to the Customer, the Customer informs the Supplier, or the Supplier reasonably believes, that the Customer has or is likely to become subject to any of the events specified in *clauses 11.2.1 to 11.2.10*, the Supplier may:
    - 7.4.1 require the Customer to re-deliver the Goods to the Supplier; and
    - 7.4.2 if the Customer fails to do so promptly, enter any premises where the Goods are stored and repossess them.
- 8 Warranty**
  - 8.1 The Supplier warrants that the Goods shall, for a period of 12 months from delivery (the **Warranty Period**):
    - 8.1.1 conform in all material respects to the Order;
    - 8.1.2 be free from material defects in design, material and workmanship; and
    - 8.1.3 be of satisfactory quality within the meaning of the Sale of Goods Act 1979.
  - 8.2 As the Customer's sole and exclusive remedy, the Supplier shall, at its option, repair, replace, or refund the Price of any of the Goods that do not comply with clause 8.1, provided that the Customer:
    - 8.2.1 serves a written notice on Supplier during the Warranty Period;
    - 8.2.2 provides the Supplier with sufficient information as to the nature and extent of the defects and the uses to which the Goods had been put prior to the defect arising;
    - 8.2.3 gives the Supplier a reasonable opportunity to examine the defective Goods; and
    - 8.2.4 returns the defective Goods to the Supplier at the Customer's expense.
  - 8.3 The Supplier shall not be liable for any failure of the Goods to comply with clause 8.1:
    - 8.3.1 where such failure arises by reason of wear and tear, wilful damage or negligence;
    - 8.3.2 to the extent caused by the Customer's failure to comply with the Supplier's instructions in relation to the Goods, including any instructions on installation, operation, storage or maintenance;
    - 8.3.3 to the extent caused by the Supplier following any specification, instruction or requirement of or given by the Customer in relation to the Goods;
    - 8.3.4 where the Customer modifies any Goods without the Supplier's prior written consent or, having received such consent, not in accordance with the Supplier's instructions; or
    - 8.3.5 where the Customer uses any of the Goods after notifying the Supplier that they do not comply with clause 8.1.
  - 8.4 Except as set out in this clause 8:
    - 8.4.1 the Supplier gives no warranties and makes no representations in relation to the Goods; and
    - 8.4.2 shall have no liability for their failure to comply with the warranty in clause 8.1, and all warranties and conditions (including the conditions implied by ss 13–15 of the Sale of Goods Act 1979), whether express or implied by statute, common law or otherwise are excluded to the extent permitted by law.
- 9 Limitation of liability**
  - 9.1 The extent of the parties' liability under or in connection with the Contract (regardless of whether such liability arises in tort, contract or in any other way and whether or not caused by negligence or misrepresentation) shall be as set out in this clause 9.
  - 9.2 Subject to clause 9.4, the Supplier's total liability shall not exceed the sum of £1million.
  - 9.3 Subject to clause 9.4, the Supplier shall not be liable for consequential, indirect or special losses.
  - 9.4 Notwithstanding any other provision of the Contract, the liability of the parties shall not be limited in any way in respect of the following:
    - 9.4.1 death or personal injury caused by negligence;
    - 9.4.2 fraud or fraudulent misrepresentation; or
    - 9.4.3 any other losses which cannot be excluded or limited by law.
- 10 Force majeure**

The Supplier shall not be liable under or be deemed to be in breach of the Contract for any delays or failures in performance of the Contract which result from Force Majeure. The Supplier shall promptly notify the Customer in writing when a Force Majeure event causes a delay or failure in performance and when it ceases to do so. If the Force Majeure event continues for a continuous period of more than 30 days, the Supplier may terminate the Contract by written notice to the Customer.
- 11 Termination**
  - 11.1 The Supplier may terminate the Contract at any time by giving notice in writing to the Customer if:
    - 11.1.1 the Customer commits a material breach of the Contract and such breach is not remediable;
    - 11.1.2 the Customer commits a material breach of the Contract which is not remedied within 14 days of receiving written notice of such breach; or
    - 11.1.3 the Customer has failed to pay any amount due under the Contract on the due date and such amount remains unpaid 30 days after the date that the Supplier has given notification to the Customer that the payment is overdue.
  - 11.2 The Supplier may terminate the Contract at any time by giving notice in writing to the Customer if the Customer:
    - 11.2.1 stops carrying on all or a significant part of its business, or indicates in any way that it intends to do so;
    - 11.2.2 is unable to pay its debts either within the meaning of section 123 of the Insolvency Act 1986 or if the Supplier reasonably believes that to be the case;
    - 11.2.3 becomes the subject of a company voluntary arrangement under the Insolvency Act 1986;
    - 11.2.4 becomes subject to a moratorium under Part A1 of the Insolvency Act 1986;
    - 11.2.5 becomes subject to a restructuring plan under Part 26A of the Companies Act 2006;
    - 11.2.6 has a receiver, manager, administrator or administrative receiver appointed over all or any part of its undertaking, assets or income;
    - 11.2.7 has a resolution passed for its winding up;
    - 11.2.8 has a petition presented to any court for its winding up or an application is made for an administration order, or any winding-up or administration order is made against it;
    - 11.2.9 has a freezing order made against it;
    - 11.2.10 is subject to any events or circumstances analogous to those in clauses 11.2.1 to 11.2.9 in any jurisdiction.
  - 11.3 The right of the Supplier to terminate the Contract pursuant to clause 11.2 shall not apply to the extent that the relevant procedure is entered into for the purpose of amalgamation, reconstruction or merger (where applicable) of the Customer where the amalgamated, reconstructed or merged entity agrees to adhere to the Contract.
  - 11.4 If the Customer becomes aware that any event has occurred, or circumstances exist, which may entitle the Supplier to terminate the Contract under this clause 11, it shall immediately notify the Supplier in writing.
  - 11.5 Termination or expiry of the Contract shall not affect any accrued rights and liabilities of the Supplier at any time up to the date of termination.
- 12 Notices**
  - 12.1 Any notice given by a party under these Conditions shall:
    - 12.1.1 be in writing and in English;
    - 12.1.2 be signed by, or on behalf of, the party giving it (except for notices sent by email); and
    - 12.1.3 be sent to the relevant party at the address set out in the Order.
  - 12.2 Notices may be given, and are deemed received:
    - 12.2.1 by hand: on receipt of a signature at the time of delivery;
    - 12.2.2 by post: at 9:00 am on the *second* Business Day after posting;
    - 12.2.3 by international post: at 9:00 am on the fifth Business Day after posting;
    - 12.2.4 by fax: on receipt of a transmission report from the correct number confirming uninterrupted and error-free transmission; and
    - 12.2.5 by email: on receipt of a delivery email from the correct address.
  - 12.3 Any change to the contact details of a party as set out in the Contract shall be notified to the other party in accordance with clause 12.1 and shall be effective:
    - 12.3.1 on the date specified in the notice as being the date of such change; or
    - 12.3.2 if no date is so specified, 10 days after the notice is deemed to be received.
  - 12.4 This clause 12 does not apply to notices given in legal proceedings or arbitration.
- 13 Time**

Unless stated otherwise, time is of the essence of any date or period specified in the Contract in relation to the Customer's obligations only.
- 14 Entire agreement**
  - 14.1 The parties agree that the Contract and any documents entered into pursuant to it constitutes the entire agreement between them and supersedes all previous agreements, understandings and arrangements between them, whether in writing or oral in respect of its subject matter.
  - 14.2 Each party acknowledges that it has not entered into the Contract or any documents entered into pursuant to it in reliance on, and shall have no remedies in respect of, any representation or warranty that is not expressly set out in the Contract or any documents entered into pursuant to it. No party shall have any claim for innocent or negligent misrepresentation on the basis of any statement in the Contract.
  - 14.3 Nothing in these Conditions purports to limit or exclude any liability for fraud.
- 15 Set-off**

The Customer shall pay all sums that it owes to the Supplier under the Contract without any set-off, counterclaim, deduction or withholding of any kind, save as may be required by law.
- 16 No partnership or agency**

The parties are independent persons and are not partners, principal and agent or employer and employee and the Contract does not establish any joint venture, trust, fiduciary or other relationship between them, other than the contractual relationship expressly provided for in it. None of the parties shall have, nor shall represent that they have, any authority to make any commitments on the other party's behalf.
- 17 Severance**
  - 17.1 If any provision of the Contract (or part of any provision) is or becomes illegal, invalid or unenforceable, the legality, validity and enforceability of any other provision of the Contract shall not be affected.
  - 17.2 If any provision of the Contract (or part of any provision) is or becomes illegal, invalid or unenforceable but would be legal, valid and enforceable if some part of it was deleted or modified, the provision or part-provision in question shall apply with the minimum such deletions or modifications as may be necessary to make the provision legal, valid and enforceable. In the event of such deletion or modification, the parties shall negotiate in good faith in order to agree the terms of a mutually acceptable alternative provision.
- 18 Waiver**
  - 18.1 No failure, delay or omission by the Supplier in exercising any right, power or remedy provided by law or under the Contract shall operate as a waiver of that right, power or remedy, nor shall it preclude or restrict any future exercise of that or any other right, power or remedy.
  - 18.2 No single or partial exercise of any right, power or remedy provided by law or under the Contract by the Supplier shall prevent any future exercise of it or the exercise of any other right, power or remedy by the Supplier.
- 19 Third party rights**

A person who is not a party to the Contract shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the provisions of the Contract.
- 20 Governing law and jurisdiction**
  - 20.1 The Contract and any dispute or claim arising out of, or in connection with, it, its subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, the laws of England and Wales.
  - 20.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of, or in connection with, the Contract, its subject matter or formation (including non-contractual disputes or claims).