



## COMMERCIAL CUSTOMER TERMS & CONDITIONS

The Customer's attention is drawn to clause 10 of these Terms and Conditions.

**1 a.** This Contract for the supply of goods and services by Chalmor Limited ("Chalmor") to Chalmor's Customer ("the Customer") shall consist of these Terms and Conditions of Contract to the exclusion of any other terms. These Terms and Conditions may not be amended, modified or rescinded except by a written instrument signed by a duly authorised officer of Chalmor and the Customer.

b. By accepting these Terms and Conditions, the Customer acknowledges that it does not rely on any prior representations made by Chalmor's employees or agents, unless so confirmed in writing and appended to these Terms and Conditions and signed by a duly authorised officer of Chalmor. Nothing in these Terms and Conditions shall affect the liability of either party for fraudulent misrepresentation.

**2 a.** Unless otherwise stated the price of the goods ("the Price") shall be the current retail price of the goods at the date of the quotation to the Client and shall be ex-works and shall be exclusive of VAT, United Kingdom export and overseas duties, packaging, carriage, insurance, installation and other ancillary costs in respect of all of which Chalmor shall be entitled to make additional charges.

b. Unless otherwise agreed in writing all payments to Chalmor shall be made within 28 days of the date of the invoice or within 28 days of the date of dispatch of the date of dispatch of the goods, whichever is sooner. Time for payment of Chalmor's invoice shall be of the essence.

c. All sums payable by the Customer to Chalmor shall be paid without any deductions or withholdings and without any right of set off and counterclaim.

d. If the Customer fails to pay any sums when due, interest shall be payable calculated at a rate equal to 3% above [insert name of bank] Bank base rate from the due date until actual payment.

e. Payment shall be made direct to Chalmor whose official receipt shall be the only acknowledged discharge of any debt.

f. Chalmor reserves the right by giving the Customer written notice, to increase the price of any goods supplied by Chalmor at any time prior to delivery to reflect the increased cost to Chalmor which is due to any factor beyond the control of Chalmor (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture).

**3 a.** Although Chalmor will endeavour to complete the Contract within any specified delivery time, because of the possibility of delays on the part of their suppliers and production difficulties delivery of installation time is an estimate and not a term of the Contract.

b. Any delivery or installation time specified shall be extended by any period or periods during which the manufacturer or delivery of the goods or other work by Chalmor in connection with the Contract is delayed due to any force majeure causes outside the control of Chalmor. For the purposes of this clause the following is a non exhaustive list of force majeure events outside the control of Chalmor: (i) acts of God, explosion, flood, tempest, fire or accident; (ii) war or threat of war, sabotage, insurrection, civil disturbance or requisition;

(iii) acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;



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(iv) import or export regulations or embargoes; strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Seller or of a third party);

(v) difficulties in obtaining raw materials, labour, fuel, parts or machinery;

(vi) power failure or breakdown in machinery.

c. Where goods consist of separate units, Chalmor shall be entitled to deliver the units by instalments and to invoice each instalment separately.

d. Any claim in respect of error in quantity or type of goods or in respect to the condition of goods delivered must be made in writing to Chalmor within 7 days of receipt of the goods by the customer.

e. Any damage to the units during transit must be reported to Chalmor within 7 days of receipt of the goods by the Customer. The Customer must notify Chalmor immediately if any goods are not received by the Customer within 14 days of the date of invoice or in respect thereof.

f. If Chalmor agrees to arrange carriage or insurance on behalf of the Customer, all charges and expenses in connection therewith shall be invoiced to the Customer and paid within the period specified in Condition 2.

g. Unless otherwise stated delivery shall be ex-works.

**4** Chalmor shall be entitled to supply goods, which depart from any specification contained in any advertisement provided that any modifications or substitutions made do not materially affect the performance, appearance or suitability of the goods.

**5 a.** The legal and beneficial ownership of the goods shall remain with Chalmor until full payment of all sums owing to Chalmor under any Contract with the Customer (including any interest charged) has been received from the Customer provided that if the goods or part thereof are re-sold by the Customer before he has made full payment to Chalmor as aforesaid then the Customer shall hold up on trust for Chalmor such proceeds of sale insofar as they are required to discharge the Customer's indebtedness.

b. Chalmor reserves the right by notice in writing to require the Customer to store separately any goods in which it retains legal and the beneficial ownership pursuant to sub clause a above in such a manner that they remain clearly distinguishable from the Customer's general stock and other property.

c. Failure to pay any sums owing under this Contract on the date they fall due shall entitle Chalmor to recover possession of the goods at any time thereafter and the Customer grants a licence to Chalmor to enter the Customer's property for that purpose.

**6** When goods are manufactured to the Customer's design, no responsibility can be accepted for the performance of components or equipment if articles are made in compliance with this design.

**7** In the case of goods manufactured by or on behalf of Chalmor in accordance with the Customer's specification and requirements, the Customer warrants that such goods do not infringe any patents, registered designs or other rights belonging to third parties and agrees to indemnify Chalmor against all costs claims and expenses incurred by Chalmor in respect of any such infringement or alleged infringement.



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d. Subject to the provisions of sub-clause b above, Chalmor hereby expressly excludes all liability in respect of incorrect or defective goods and there shall be excluded from the Contract any warranty or condition implied by statute or otherwise as to the satisfactory quality of the goods or their fitness for any particular purpose.

e. Chalmor shall be under no liability in contract or tort or howsoever for any consequential loss or damage or personal injury arising directly or indirectly out of the supply or use of the goods or any delay in their delivery.

**8** The risk in the goods contracted to be sold by Chalmor shall pass to the Customer upon delivery of the goods or any part thereof in accordance with the Contract. Where goods are delivered ex-works (as shall be the case in the absence of written agreement to the contrary) delivery to the Customer shall occur upon notification by Chalmor that the goods are available for collection and the Customer shall thereupon effect insurance against all loss and damage including personal injury and death in respect of the goods whilst they remain on the premises of Chalmor.

**9 a.** Installation and storing of the goods, if provided for by the Contract, shall be subject to the supply by the Customer of suitable accommodation of the goods and of any necessary labour parts and equipment.

b. If the Contract involves the provision by Chalmor of any labour at the Customer's premises or if Chalmor by arrangement with the Customer shall provide labour for the assistance of the Customer in the installation, starting up or testing or running of any units at the Customer's premises then it shall be the Customer's responsibility to ensure the safety of the place of work, that any equipment provided to Chalmor is free of defects and suitable for the purpose for which it is provided and that all laws and regulations applicable to the work carried on at the Customer's premises are duly complied with.

c. If installation is prevented, delayed or impeded by any act or omission of the Customer including failure to advise Chalmor of special local conditions, the Customer shall pay such extra charge as Chalmor shall reasonably require.

**10 a.** Any claim that the goods do not comply with their contractual description or are in any way defective must be notified to Chalmor in writing immediately and in any event no later than 30 days after delivery and Chalmor shall have no liability in respect of any claim if notice is not given in compliance with this clause.

b. In the event of:

(i) the delivery of the goods not complying with their contractual description; or

(ii) goods developing a defect within a period of 25 days after delivery (subject to the Customer having used them properly and for their proper purpose) due to defective materials used; or work undertaken by Chalmor within a period of 25 days after delivery is defective (excluding any materials ordered, provided, specified or worked carried out to the Customer's specification), then subject to the Customer giving the requisite notice to Chalmor and provided the Customer is not in breach of any of his obligations to Chalmor, Chalmor shall replace such parts as are incorrect or defective so as to remedy the defects except where such defects are attributable to accident, fair wear and tear or any act of omission or neglect of the Customer.





c. The Customer shall retain any allegedly defective goods at its premises for inspection by Chalmor and give Chalmor adequate facilities to investigate the complaint at the Customer's premises. If Chalmor so requests, the Customer shall at its own expense return the defective parts to Chalmor provided that if Chalmor is liable to replace such defective parts pursuant hereto then Chalmor shall reimburse the Customer's reasonable carriage expenses in connection therewith.

d. Subject to the provisions of sub-clause b above, Chalmor hereby expressly excludes all liability in respect of incorrect or defective goods and there shall be excluded from the Contract any warranty or condition implied by statute or otherwise as to the satisfactory quality of the goods or their fitness for any particular purpose. e. Chalmor shall be under no liability in contract or tort or howsoever for any consequential loss or damage or personal injury arising directly or indirectly out of the supply or use of the goods or any delay in their delivery.

**11** The Customer agrees not to do or omit to do anything:

- a. Whereby any intellectual property rights in relation to the goods are in any way prejudiced whether such rights belong to Chalmor or any third party.
- b. Which would constitute a breach of Chalmor's or any third party's rights in design of the goods whether by way of copyright or registered design or otherwise.

**12** If any of the following events take place:

- a. the Customer fails to properly honour any obligations to Chalmor whether under this contract or otherwise (including the prompt payment of any sums to Chalmor).
- b. any distress execution sequestration or other process is levied against the property of the Customer and the amount of the judgement is not paid out or discharged within 7 days.
- c. the Customer being a company: -
  - (i). an Order is made or Resolution passed for its winding up other than for the purposes of reconstruction or amalgamation;
  - (ii). ceases or threatens to cease to carry on business or to dispose of the whole of its undertaking other than in the normal course of business or is unable to pay its debts;
  - (iii). a receiver is appointed or an Encumbrance takes possession of the whole or a substantial part of the undertaking or assets of the Customer;
  - (iv). the Customer convenes a meeting of or enters or proposes to enter into any arrangement or composition with its creditors;
  - (v). the Customer becomes insolvent;
- d. the Customer consisting of one or more individuals shall, or any of them shall, become bankrupt or make any assignment for the benefit of his creditors or enter into an agreement or make any arrangement with his creditors for the liquidation of his debts by composition or otherwise; then Chalmor shall without prejudice to any other rights it may have automatically become entitled to treat its obligations hereunder as discharged and to enter the Customer's premises and repossess any goods delivered to the Customer but not yet paid for in full. The cost of such re- possession including legal costs shall be borne by the Customer.

**13** This Contract shall in all respects be governed and interpreted in accordance with English law and the Customer agrees to submit to the exclusive jurisdiction of the English courts.





**14** The Contract may be terminated by the Customer only with Chalmor's written consent. In the event of such termination, the Customer shall pay to Chalmor a cancellation charge commensurate with Chalmor's costs incurred up to the date of cancellation plus its loss of profit.

**15** The Contracts (Rights of Third Parties) Act 1999 does not apply so as to give to a person who is not a party to this agreement a right under it.

**16** If a provision of these Terms and Conditions is or becomes illegal or unenforceable, the remaining provisions and procedures shall not be affected.