

## STANDARD DEFINITIONS

- I. "We", "us", "Company", "our" and "ATAG Commercial" means ATAG Commercial, a division of Elco Heating Solutions Limited. 3 Juniper West, Fenton Way, Southfields Business Park. Basildon. Essex. SS15 6SJ.  
VAT Registration Number 917 7110 31
- II. "Buyer"/ "Claimant"/ "you"/ means any entity engaging in a Contract, Order, or Agreement, for any goods or services arranged or provided by ATAG Commercial
- III. Contract, Order, Or Agreement, means any Contract, Order, or Agreement between the "buyer" and ATAG Commercial with regard to the sale of goods or the provision of service subject to these terms and conditions. Any Contract, Order, or Agreement requires ATAG Commercial acceptance.
- IV. "Conditions" means the terms and conditions of contract set out in this document and any special terms and conditions additional to those set out herein agreed in writing by ATAG Commercial.
- V. "Goods" means the articles (finished goods/products/accessories/spare parts) which the buyer has agreed to purchase from ATAG Commercial. Services means the services specified in the service order/contract/agreement (e.g. commissioning, maintenance, inspection, breakdown repair) agreed in writing between the buyer and ATAG Commercial.
- VI. "Price" means the price for the provision of services or the goods excluding carriage and VAT.

## CONTRACT

1. Unless otherwise agreed in writing by us, these conditions shall form part of any contract based on an acceptance of this offer and no conditions inconsistent therewith shall, unless expressly agreed in writing by us, be deemed to override or vary these conditions notwithstanding their being proffered by you at a date later than this offer. These conditions shall apply not only to the present transaction but also to all future business between us except in such cases as the contrary is expressly agreed in writing between us.
2. All technical data, physical dimensions, capacities and other properties and particulars including drawings are made in good faith as being approximately correct but deviation there from shall not vitiate the contract nor be made the basis of any claim against us.

### LEGAL INTERPRETATION

3. The contract between ourselves and the buyer which is subject to these conditions is to be construed and to take effect as a contract made in England and in accordance with English law and any disputes arising there from shall be determined in the Courts of England or, at our discretion, shall be referred to a single mutually acceptable arbitrator in accordance with the provisions of the Arbitration Act currently in force.

### QUOTATIONS

4. All price quotations given by us are for the buyer's information only. All prices quoted are exclusive of VAT and carriage and any other duties which may become payable.
- All Quotations are to be regarded as "invitations to treat" only.  
Rates of VAT charged and other duties, which may become payable and rates for carriage will be those current on the date of despatch to the buyer irrespective of when the contract may have been formed.

## PRICES

5. All prices and terms quoted in our price list or catalogues etc may be changed by us without notice. All orders are accepted for delivery at the price and on the terms ruling at the date of despatch and orders for commissioning and repair at prices and on terms ruling at the date of service. Prices for goods quoted are for goods delivered to a buyer in England and Wales. For all deliveries elsewhere in the UK extra delivery and packaging charges may apply. For all other areas, and for all exports, delivery charges are subject to quotation.

### PAYMENT

6. Unless expressly agreed between us in writing otherwise, all sales are payable net cash with order.
7. For agreed credit accounts our invoices are to be paid within 30 days from the date of the invoice and this time condition is of the essence of the contract. In the event that payment is not made in accordance with the agreed terms, either in full or otherwise, then the whole of the account whether due or not shall become payable and become overdue and be payable forthwith. Furthermore in the event of late or non-payment in accordance with these terms and conditions (or any other terms so agreed in writing), we reserve the right to rely on the Late Payment of Commercial Debts (Interest) Act 1998, as amended by the Late Payment of Commercial Debts Regulations 2002, and charge, at a daily rate, until payment, interest upon the debt then due at the rate prevailing at the date of default (currently 8% above the prevailing Bank of England base rate) together with the late payment charges set out in the Act, until payment or sooner settlement.

## PERFORMANCE

8. We will accept no liability for failure of our product to attain any performance figure unless we have specifically guaranteed that figure or unless that figure is quoted in our official catalogue or brochure in force at the date of delivery.

## TITLE

9. All goods sold by us whether delivered or installed or not shall remain our sole property until all payments due for the sale or supply of such goods have been paid to us. Until property in goods sold or supplied passes to the buyer the buyer shall be responsible for any damage suffered by the goods and shall take all steps necessary to keep the goods in good condition and repair and shall keep the same in safe custody and shall not improperly use the same and shall not do anything which may lead to the goods being seized by way of distress or any legal process and shall keep the goods comprehensively insured against all risks in their full price and that our interest as unpaid seller is properly recorded in the policy. Further, at all times whilst goods are in the buyer's possession but whilst the title remains vested in us, the buyer shall notify us immediately any defect arises in the condition of the goods and shall at all times allow us access to the goods for purposes of inspection and/or work to the goods and we shall be entitled (but not obliged) to carry out such work and render to the buyer such charges for such work as may be appropriate.

## **DELIVERY**

10. Any date or period named by us for delivery is given in good faith as an estimate only. Whilst we will endeavour to despatch within the period stated, such date or period is not to be of the essence of the contract, and the buyer shall be bound to accept the goods ordered when available. Unless we have specifically given an undertaking in writing with an agreed sum as liquidated damages for late delivery and the buyer has suffered loss due to our delay, we shall not be liable in any way in respect of late delivery however caused, and in any event any liability shall be strictly limited to the liquidated sum so specified.

11. If, having given to the buyer notice that the goods or any part of them are ready for despatch, and a delivery date has been agreed between the buyer and the company, we reserve the right to charge for storage in the event of this delivery date being cancelled by the buyer. Furthermore, if we do not receive forwarding instructions to enable us to despatch within 14 days from the date thereof, the buyer shall take delivery or arrange for storage of the goods, failing which we shall be entitled to store the goods at the buyer's risk and expense, and our invoice for the goods will become immediately due for payment.

12. Where the price includes delivery, we shall repair or replace free of charge goods damaged in transit, or any shortages, provided the buyer sends written notification within 3 days. Where the price does not include delivery – and carriage is provided by the buyer – the buyer shall be responsible for any loss or damage in transit.

13. Carriage or postage on spare parts will be prepaid and charged in full to the buyer. Where express delivery is requested by the buyer all additional costs will be charged in full to the buyer.

14. The buyer shall inspect the goods immediately on delivery thereof and within 3 days after delivery give notice to us in writing, of any matter or reason whereof, the buyer may allege that the goods are not in accordance with the contract. If the buyer fails to give such notice the goods shall be deemed to be in all respects in accordance with the contract and the buyer shall accept and pay for the same accordingly. Any claims made by the buyer against us under the terms and conditions of our warranty (below) must be substantiated to our satisfaction and we may refuse to replace repair or credit in respect of any alleged faulty part until sufficient evidence of the validity of the claim has been presented.

15. Where delivery is fixed by instalments, such instalments deliverable under the contract shall be deemed to be sold under separate contracts. Defective deliveries of one or more instalments shall not entitle the buyer to repudiate the contract with regard to any instalments remaining to be delivered.

16. It is our responsibility to load vehicles with goods at our works. Subject to the size and weight of the goods supplied, we will deliver to the nearest hard standing provided safe access is available.

Where specification of the goods prevents us from carrying out delivery as outlined above, the buyer is responsible for all necessary material handling arrangements and carrying out the safe offloading of the goods. Any damage sustained during this offloading is the responsibility of the buyer. Transportation from the hard standing unloading area to the plant room is wholly the responsibility of the buyer.

## **WARRANTY**

17. Warranty is subject to the following conditions being complied with:

The warranty registration form is fully completed and returned to ATAG Commercial within 30 days from the date of delivery.

You can also register your warranty online.

The benefit of this warranty is given to the original buyer of the goods. It is only assignable to a third party at the discretion of ATAG Commercial. (e.g. where the products have been sold on to contractor/end-user via a wholesaler/merchant. In such cases ATAG Commercial would require a written undertaking confirming that the third party agrees to be bound by our general terms and conditions).

The statutory rights of the buyer are not affected by the warranty.

Goods (Finished products and accessories)

Warranty is limited to twelve months parts and labour only from date of delivery – unless otherwise stated.

Commissioned goods

\*Where the buyer purchases a commissioning service from ATAG Commercial the warranty is enhanced to cover parts and labour for a period of eighteen months from the date of delivery.

Goods (Spare Parts)

The warranty period for any new replacement parts is limited to twelve months from the date of dispatch. Where the installation of a spare part, is carried out by ATAG Commercial service personnel the warranty period is limited to twelve months from the date of installation of said spare part.

## **FAULTY GOODS**

Where faulty goods are agreed to be returned to ATAG Commercial as a warranty claim (in accordance with ATAG Commercial returns procedure) the claimant must provide proof of purchase (e.g. copy invoice/receipt) for said goods. Details of serial number, model, output, and fault, must also be supplied. Faulty goods shall not form the subject of any claim for labour costs or other expenditure incurred by the buyer and we shall not be responsible for any loss or damage arising out of any such fault.

## **GENERAL**

The period of warranty offered by ATAG Commercial varies by product and/or related integrated components and accessories (e.g. heat exchangers). and Services (e.g. "Peace of Mind" Maintenance and Service Solutions extended warranty contracts – see separate Service terms and conditions).

Our liability in respect of any defect in or failure of the goods or for any loss injury or damage attributed thereto is limited to the cost of replacement of the goods or the repairing of such defects which under proper use have appeared therein and arise solely from faulty design, materials or workmanship.

To maintain warranty all products supplied by ATAG Commercial must be installed in accordance with manufacturer's instructions and thereafter be serviced by ATAG Commercial (or a competent engineer) twelve months after the date of installation and thereafter at twelve month intervals. Proof of service will be required on all warranty claims beyond twelve months.

ATAG Commercial will accept no liability for the cost of repairs resulting from incorrect installation, failure to commission, inadequate commissioning, lack of regular maintenance, misuse, tampering or repair by unqualified persons.

ATAG Commercial reserves the right to repair or replace components within the guarantee period at a time and location that is most convenient to the company.

Faults and any associated costs occurring due to lack of fuel, power, water supply or scale formation are not covered by these guarantees.

18. Only in exceptional circumstances, and by previous written agreement will we accept back for credit, items which have been supplied against orders or which have been manufactured in accordance with your specifications but have not yet been delivered, provided that the goods to be returned are new in original packaging and unused. Restocking charges will be applied by us.

19. We specifically do not accept liability for financial or consequential losses, expenses or damage occasioned by defects in manufacturing or arising from any other cause.

20. Any goods supplied by us must be installed in accordance with the law and proof thereof shall be a pre-condition of our liability under our warranty of the goods.

### **BUYERS LIABILITY**

21. Equipment is supplied only for the purpose for which it is specifically designed and which is clearly defined in the appropriate brochure or manual. We do not accept liability for damage or injury caused as a result of the equipment being used for any other purpose.

22. In view of the many factors outside our control in respect of performance of equipment, the buyer is entirely responsible for the type of equipment purchased and for the capacity of the equipment to deal with the proposed application. We do not accept any liability for incorrect calculations, incompatible designs or advice which may result in the equipment supplied not being suitable for the purpose for which it was purchased.

## **INTERPRETATION**

23. All headings in this document are inserted for convenience and each of reference only and shall not affect the construction or interpretation of this contract.

Any provision of this contract which is or may be void or unenforceable shall to the extent of such invalidity or unenforceability be deemed severable and shall not affect any other provision in this contract.

No waiver or forbearance by us whether express or implied in enforcing any of our rights under the contract shall prejudice our right to do so in the future.

Save as otherwise provided in these Conditions nothing in these Conditions shall create any partnership joint venture or relationship of principal and agent between the parties.

Except where expressly provided for in these Conditions time shall not be of the essence of the contract.

### **NOTICES**

24. Any Notice required to be given by either party or any account rendered by the Company to the buyer shall be deemed to have been given or rendered if dispatched by first class post and addressed to the buyer at the delivery address or to their respective last known business address or registered office and any such Notice or Account rendered shall be deemed to have been received 2 days after posting as aforesaid.

In the alternative to the matters above any Notice required to be given by either party or any account rendered by the Company to the buyer shall be deemed to have been given or rendered if sent by facsimile transmission machine during business hours to the buyer at the facsimile number of the buyer or to the facsimile number at their respective last known business address or registered office and any such Notice or Account rendered shall be deemed to have been received if a facsimile transmission confirmation produced by such machine shows due and proper transmission.

### **FORCE MAJEURE**

25. The performance of all contracts is subject to variation or cancellation by us without notice owing to any Act of God, war, strikes, lock-outs, fire, flood, drought, tempest or any other cause beyond the control of our Company or owing to any inability of the Company to procure materials or articles required for the performance of the contract and we shall not be held responsible for any inability to deliver caused by any such contingency