

MUNTERS DEHUMIDIFICATION DIVISION

Terms and Conditions of Sale

1. Terms of Agreement

1.1 These terms and conditions, and the proposal setting out the specification and pricing ("the Proposal") constitute the entire agreement (together 'the Agreement') between Munters Limited ('the Company') and the person to whom the Proposal is addressed or who otherwise agrees to buy goods detailed in the Proposal ("the Goods") and (if applicable) engage Munters Aftersales Service ('the Customer') and accordingly such terms and conditions supersede, and neither party places any reliance upon, all and any prior representations (not limited to but including all drawings, specifications, descriptive material, sales literature, price lists and all other documents issued by the Company) and the Customer acknowledges that save as expressly stated hereunder, the Customer has not been induced to enter into this Agreement by any representation whether oral or in writing by the Company, its employees, servants or agents.

1.2 This Agreement will come into force upon the Customer's acceptance of the Proposal. No variation of any of the terms of this Agreement shall be effective unless agreed in writing by duly authorised signatories of the Company and the Customer.

2. Headings

2.1 Headings in this Agreement are for reference purposes only and shall not affect the construction or interpretation of this Agreement.

3. Prices

3.1 The price payable for the Goods shall be as set out in the Proposal ('the Price'). The Price is based upon the market rates for the materials, labour and transport as at the date of the Proposal.

3.2 If there shall be any increase howsoever arising in the cost of labour, materials, transport or any other direct cost (not limited to but including taxes duties and foreign exchange fluctuations) incurred in the performance of this agreement by the Company, the Company reserves the right to make such adjustment to the Price to take account of such increase at any time between the date of the Proposal and the delivery and installation of the Goods.

3.3 Only those items expressly included in the Proposal are included in the Price and all and any other items required by the Customer shall be paid for by the Customer in addition thereto.

3.4 The Price is based on the work being carried out during normal working hours.

4. Validity

4.1 The Price will be valid for forty-five (45) days only.

5. Disruption/and/or uneconomic working

5.1 Individual activities which are delayed by the Customer and alter or impinge upon the regular progress of works will be subject to additional payments to the Company where these activities although not effecting overall completion dates, impact on the number of activities requiring carrying out in parallel, causing disruption costs due to congested working or non standard working hours.

5.2 Where Service Engineers have been booked to attend site by the Customer and site access is delayed on arrival, due to other Customers or plant shutdowns not being ready, the Company will charge £150 + VAT per engineer for each 2 hour period of delay, to account for the Company's losses as a result of the delay. Where the delay is in excess of 4 hours then the day rate will apply.

6. Payment Terms

6.1 All invoices submitted to monthly account holder Customers by the Company are payable within 30 days of the invoice date.

6.2 Non account holders must provide a cheque before delivery. If non account holders wish to open an account with the Company, this will be subject to successful approval of credit worthiness via the Company's recognised Credit Reference Agency (Experian).

6.3 All projects in excess of £5000 whereby credit worthiness stated in 6.2 is insufficient in respect to the specific project for which these terms apply, then 30% of the amount stated in the Proposal will become payable upon acceptance and is not subject to credit terms. If commissioning required, the balance of 67% of the amount stated in the Proposal will become payable upon delivery of the Goods and 3% of the amount stated in the Proposal will become payable upon commissioning or within 60 days from delivery whichever is the sooner. If commissioning is not required then the balance of 70% of the amount stated in the Proposal will become payable upon delivery of the Goods. These terms may change and if so, please see the investment section of the proposal.

6.4 Where more than one item of equipment is to be supplied, invoicing will be staged upon the agreed delivery date of each item

6.5 Non-payment of any part or installment of the Price upon the date it falls due, shall result in all monies due from the Customer to the Company becoming immediately payable *[and the Company shall be entitled to] suspend performance of all or any of its obligations to the Customer howsoever arising, and the value of the Goods so recovered (as at the date of recovery) less the cost of repairing the Goods as a result of damage or alteration by the Customer, shall be deducted from the sums recoverable by the Company pursuant to this Condition 6.]*

6.6 If the Company has granted credit facilities to the Customer and the Customer defaults in any payment there under, the Company shall be entitled to withdraw or vary such credit facility at any time by written notice without either giving any reason for so doing or incurring any liability to the Customer.

6.7 Under the late payment of Commercial Debts (interest) Act 1998, the Company reserves the right to charge for accrued interest on all outstanding invoices from the date upon which payment falls due using the Bank of England base rate + 8% per annum applied to the number of days outstanding on each invoice.

6.8 In the event of legal action being taken by the Company against the Customer for breach of any payment obligations hereunder, the Customer shall be responsible for all costs and disbursements incurred by the Company on an indemnity basis

7. Deferred Payments

7.1 The Company will not accept deferred payments where the Customer requests delays in acknowledged delivery, or project completion from original agreed delivery date and the Company is unable to store Goods, delivery of which has been delayed by the Customer. Full payment is required within 30 days of original acknowledged date of delivery.

8. Cancellation of Contract

8.1 If the Customer's order is placed and accepted it cannot be cancelled except with Company's consent and on terms which will indemnify the Company against loss by payment of reasonable cancellation or variation charges which will be a genuine estimate of such loss. Such charges shall take into account expenses incurred and commitments made by the Company and all other losses due to such cancellation or variation. Goods returned without the Company's previous consent in writing will not be accepted for credit.

9. Commissioning

9.1 Please refer to the "Investment" section of the proposal as to whether commissioning is included. Generally this service is provided at an extra cost, charged on a daily, plus hotel/travel expenses if incurred. 21 days notice is required for the commissioning service. *If it is stipulated in the "investment" section of the proposal that commissioning is required then it is a condition of warranty commissioning is undertaken by (or in the presence of) a Munters engineer, or competent Engineer in accordance with Munters guidelines. Commissioning is not included outside of the UK and Republic Ireland unless specifically agreed. If after a risk assessment the site is deemed unsafe for commissioning or no risk assessment carried out by customer then Munters reserve the right to abort the commissioning and to charge the customer for a re-visit when the site is safe.

10. Title

10.1 Risk in the Goods delivered shall pass to the Customer upon delivery but property and title in the Goods shall not pass from the Company to the Customer until payment in full of the Price together with VAT and all other sums due from the Customer to the Company howsoever incurred.

11. Delivery

11.1 Delivery shall be effected by the arrival of the Goods at the site requested by the Customer or the safe loading of the Goods into vehicles of the Customer at the premises of the Company where delivery is to be effected by collection by the Customer.

11.2 Delivery dates and/or times are estimates only and the Company shall not be responsible for any losses caused to the Customer as a result of late delivery.

11.3 Delivery and special arrangements necessary for loading the delivery vehicle will be charged in addition to the Price. The Company will not be responsible for off loading from the delivery vehicle or positioning.

11.4 When the Company is required to deliver the Goods within the United Kingdom and Republic Ireland and subject to relevant Incoterms, unless otherwise instructed insurance will be effected and charged to the Customer at cost in addition to the Price. Copies of the Insurance certificate will be forwarded separately at the time of dispatch when it is necessary to effect insurance and specifically requested by the customer.

12. Acceptance of Goods

12.1 The Customer shall inspect the Goods immediately upon delivery hereof and shall within 14 days of such delivery give notice to the Company of any matter or reason by which the Customer alleges that the Goods are not in accordance with the Agreement. If the Customer fails to give such notice the Goods shall be deemed to be in accordance with the terms of the Agreement (and free from any defect apparent upon reasonable inspection) and the Customer shall be deemed to have accepted the Goods. If the Customer properly rejects the Goods (to the reasonable satisfaction of the Company) the Company shall replace the Goods or refund the Price.

13. Quality

13.1 The Company's Group Manufacturing have BS5750/ISO9002 accreditation. The majority of its products are manufactured under this accreditation and all carry the CE mark. Should the Customer require a Certificate of Conformity, there will be an additional charge of £75.00 per dehumidifier.

14. Electrical Build

14.1 The entire range of Munters dehumidifiers is manufactured to meet European Electrical Standards, in accordance with all relevant Standards and Codes of Practice. Control gear in the machines (Particularly the ML, MX, MCD and MDU series) consists typically of the following: Overloads, Contactors and MCB's. Changes to the above specifications to meet individual site wiring requirements are possible if advised, but may incur additional charges in cost and delivery.

15. Compliance with Regulations

15.1 The Customer warrants that it will comply with the provisions of all relevant statutes, regulations and by-laws and has obtained every necessary license that may be required in connection with the work detailed in the Proposal.

16. Intellectual Property

16.1 The Customer acknowledges that notwithstanding the fact that each consignment of Goods may vary in measurement and in other respects at the request of the Customer, all such consignments of Goods shall be constructed to the Company's specification and that all patents, copyrights, registered design or unregistered design rights and any applications for any of the foregoing, any rights in respect of confidential information and any other intellectual property rights ("Intellectual Property Rights") relating to the Goods or to their design, manufacturing process, packaging or presentation will be the property of the Company.

16.2 The Customer is in no manner granted assignment of or license to any such Intellectual Property Rights. The Customer acknowledges that its rights concerning the Goods shall only extend to physical ownership of the Goods as contemplated by the Agreement.

16.3 The Customer undertakes not to infringe and to procure that none of its customers, employees or contractors shall infringe the Company's Intellectual Property Rights.

16.4 The Customer undertakes to give the Company all such assistance (including but not limited to the provision of material information and documents) and to do all such things as the Company or its legal advisors may require in establishing, protecting, maintaining and enforcing its Intellectual Property Rights anywhere in the world.

16.5 The Customer undertakes not to copy, or to procure any services to copy or to make any changes or adjustments to the appearance or construction of Goods without the Company's prior written consent.

16.6 The Customer undertakes to notify the Company promptly in the event that it becomes aware of any infringement or alleged infringement by any third party of the Company's Intellectual Property Rights contained in the Goods or any allegation by any third party that the use and exploitation of the Intellectual Property Rights contained in the Goods infringes the Intellectual Property Rights of such party and subsequently to supply to the Company such detailed information concerning such infringement, alleged infringement or any third party allegation as may be available to it and extend such co-operation as the Company shall reasonably request in countering such infringement or alleged infringement or third party allegations.

16.7 The Company shall have no liability to the Customer if any successful claims for infringement and third party rights are based upon alterations of the Goods by the Customer or failure by the Customer to use modifications to or replacements of the Goods provided.

16.8 In the event that the Customer infringes the Company's Intellectual Property Rights or alters the Goods in any such way so as to infringe a third party's Intellectual Property Rights, the Customer shall indemnify the Company for any losses incurred as a result of such infringement.

17. Documentation

17.1 The Price includes for a nominal quantity of documentation for the dehumidifier, normally restricted to a maximum of 1 each of the Technical Manual (O & M instructions), and General Installation Instructions. Should additional drawings or documentation be required an additional cost may be incurred.

18. Warranty

18.1 The Company warrants that all Goods manufactured by it shall be free from defects in workmanship and materials for a period of twelve months from the date of delivery. This warranty applies to parts only, where as an order is required for labour. Where upon it is evident that the defect is the responsibility of Munters scope of supply within the agreement, then the order will not be charged for labour. Where the product is classified as a single phase product, then the customer is required to return the product to the company for repair. Warranty is only applicable to goods or services installed within the UK and Republic of Ireland. Any goods or service that is outside of the UK and Republic of Ireland requires separate negotiation and agreement.

18.2 The Company's standard warranty term is 12 months from delivery to site. Additional components integrated in to systems carry a 12 months warranty from date of supply. It is a condition of the Company's warranty that the dehumidifier is serviced and maintained during its first year of operation, by a suitably qualified Munters Engineer or Munters approved competent engineer who has access to all the necessary calibrated test equipment.

18.3 The obligation of the Company under this warranty is limited to the repair or, at the sole option of the Company the replacement of the defective Goods which the Customer shall at its own expense deliver to the Company and which shall upon examination by the Company prove to be defective.

18.4 This warranty shall only apply to Goods which have been properly maintained and operated under normal conditions with competent supervision and in accordance with the equipment instruction manual and the recommendations of the Company (if any).

18.5 The Customer acknowledges that the performance of the Goods is dependant upon their chemical constituents and that such constituents are subject to damage by chemicals, elements and other substances to which the Goods may become exposed (whether by airborne attack or otherwise) at any time following delivery ("the Contaminants") and the Customer warrants that it has notified the Company in writing of all such Contaminants other than those notified to the Customer pursuant to this Agreement. This warranty does not apply to defects in the Goods caused by any Contaminants other than those notified to the Company pursuant to this Condition.

18.6 No warranty is given by the Company in respect of all ancillary components and equipment forming part of or supplied in addition to the Goods which are not manufactured by the Company and the Customer must rely on the warranty given by the manufacturer thereof.

19. Extended Warranty

19.1 The Company offers an extended warranty to the standard terms when the Customer takes out a service contract with the Company. Details are available on request.

20. Facilities at the Site

20.1 The Customer shall provide at his own expense suitable access to and possession of the site, proper foundations to receive the Goods, adequate crane and lifting tackle, scaffolding, **for Goods and technicians working at heights**, a means of unloading, suitable protection for the Goods from the time of delivery, power for the use of small tools and all other amenities to facilitate the progress of work, including commissioning. The Customer shall be liable to the Company to compensate the Company for any loss or damage however caused as result of failure to provide the above mentioned facilities at site.

21. After Sales Service

21.1 The Company's own fully trained network of Service Engineers, have special equipment and rapid spares access to handle ultra low humidity systems. All test equipment used by our personnel to ensure proper system balancing is certified for accuracy.

22. Spares

22.1 We can offer a recommended list of spares.

23. References

23.1 The Proposal shall be conditional upon the receipt by the Company of such references as to the financial status of the Customer as the Company shall in its sole discretion deem satisfactory.

24. Specific Exclusion

24.1 Where installation work is necessary the Price in the Proposal does not include the cost of such building work including cutting away and making good, painting, electrical work, pipe-work and fittings, lagging and insulation, scaffolding, heavy lifts and plant positioning and any other work not specified in the Proposal.

25. Liability

25.1 The Company shall have no obligation, duty or liability in tort, breach of statutory duty or otherwise to the Customer or any third party in respect of the supply and delivery of the Goods other than that detailed below and all other conditions and warranties express or implied are hereby excluded

25.2 The Company shall be under no liability whatsoever to the Customer or any third party in contract, tort (including negligence or breach of statutory duty) or otherwise for indirect loss and/or expense (including loss of profit, business or anticipated saving) or for any indirect or consequential loss whatsoever suffered by the Customer arising from any breach of this Agreement by the Company.

25.3 The maximum aggregate liability of the Company in respect of any one or series of claims brought against the Company hereunder shall be limited to the Price.

25.4 Nothing contained in this Agreement shall exclude or restrict any liability of the Company for breach of its implied undertakings as to:- (i) Title, and (ii) Conformity of the Goods with a description or sample or as to their quality or fitness for purpose in situations where the Customer deals as a consumer within the meaning of the Unfair Contract terms Act 1977.

25.5 Nothing in this Agreement shall be construed as restricting or excluding the liability of either party for death or personal injury resulting from its negligence.

25.6 The Customer shall indemnify the Company for all loss or damage howsoever caused to all Goods delivered to or materials at the site of the Customer which remain or are the property of the Company.

25.7 Please note that Munters cannot accept any liability for performance issues of any kind that are related to incorrect information provided to Munters by others from which a design or selection was carried out.

25.8 Please note that Munters cannot accept any liability for contamination from our product however arising. It is the responsibility of others to ensure effective precautions are in place to protect the application to which the Munters product is serving.

26. Exercise of rights

26.1 Any failure or delay by the Company to exercise any right or remedy available to it under the terms of this Agreement or otherwise shall not operate as a waiver of such right and single or partial exercise by the Company of such a right does not preclude the exercise by the Company or any other right or remedy.

27. Assignment

27.1 The Company may assign this Agreement or any part of it to any person, firm or company. The customer shall not be entitled to assign the Agreement or any part of it without the prior written consent of the Company.

28. Force Majeure

28.1 If any force majeure including fire, flood, tempest, accident, act of God, war, riots, civil commotion, pestilence, national emergency, strike, lock-out or other cause outside the control of the Company prevents the Company from performing its obligations under this Agreement the Company shall give notice to the Customer whereupon the obligations of the parties hereunder shall be suspended.

29. Insolvency or Bankruptcy

29.1 The Company shall have the right to terminate the Agreement forthwith if the Customer becomes insolvent or bankrupt or makes any arrangement with its creditors or suffers a receiver to be appointed over its assets or being a body corporate enters into liquidation and in any such circumstances the Company shall have no further obligation hereunder and the Prices for Goods delivered shall become immediately due and payable

30. Severance

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

31. Notices

31.1 Any notices to be given pursuant to the terms of this Agreement shall be given in writing to the party due to receive such notice as its address set out in this Agreement or such other address as may have been notified for the purpose to the other party hereto in accordance with this Condition. Any notice to be given pursuant to the terms of this Agreement to the Company shall be marked clearly for the attention of the Managing Director. Notice shall be delivered personally or sent by first class pre-paid recorded delivery or registered post (air mail if overseas) and shall be deemed to be given:-

- (i) in the case of delivery personally, on delivery, and
- (ii) in the case of posting (in the absence of evidence of earlier receipt) 48 hours after posting (six days if sent by air mail).

32. Jurisdiction

32.1 The Agreement shall be construed by and in accordance with English law and the parties Agreement hereby submits to the exclusive jurisdiction of the English courts.