

These Conditions will apply to all contracts between Weatherite and the Customer in relation to the supply by Weatherite of any and all Goods and/or Services. The definitions used in these Conditions are set out in The Schedule.

1. **BASIS OF CONTRACT**
- 1.1 The Order constitutes an offer by the Customer to purchase Goods and/or Services in accordance with these Conditions.
- 1.2 The Order will only be deemed to be accepted when Weatherite issues written acceptance of the Order at which point and on which date the Contract will come into existence (**Commencement Date**).
- 1.3 Any samples, drawings, descriptive matter or advertising issued by Weatherite and any descriptions of the Goods or illustrations or descriptions of the Services contained in Weatherite's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Services and/or Goods described in them. They will not form part of the Contract or have any contractual force.
- 1.4 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.
- 1.5 Any quotation given by Weatherite will not constitute an offer, and is only valid for a period of 30 days from its date of issue.
- 1.6 All of these Conditions will apply to the supply of both Goods and Services except where application to one or the other is specified.
2. **GOODS**
- 2.1 The Goods are described in the Goods Specification.
- 2.2 To the extent that the Goods are to be manufactured in accordance with the Goods Specification supplied by the Customer, the Customer will indemnify Weatherite against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by Weatherite arising out of or in connection with any claim made against Weatherite for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with Weatherite's use of the Goods Specification. This clause 2.2 will survive termination of the Contract.
- 2.3 Weatherite reserves the right to alter the Goods Specification (i) if required by any applicable statutory or regulatory requirement, and Weatherite will notify the Customer in any such event; or (ii) where such amendment will not significantly affect their use, or performance.
3. **DELIVERY OF GOODS**
- 3.1 Unless otherwise agreed by the parties in writing, all deliveries of Goods by Weatherite will be subject to the DAP (Delivered at Place), Incoterms 2020 ("**Incoterms 2020**"). If any provision of these Conditions (excluding clauses 3.8 to 3.12) conflict with the provisions of the Incoterms 2020, the provisions of the Incoterms 2020 will apply to the extent required to resolve the conflict.
- 3.2 Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. Weatherite will not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or by the Customer's failure to do or omit to do anything required of it including (but without limitation) failing to provide Weatherite with adequate delivery instructions or any other instructions that Weatherite deems relevant to the supply of the Goods.
- 3.3 If Weatherite fails to deliver the Goods, its liability will be limited to refunding any amount paid by the Customer in respect of the price of the Goods.
- 3.4 If the Customer fails to accept delivery of the Goods when Weatherite delivers them, then:
- 3.4.1 Weatherite may charge the Customer:
- (a) an aborted delivery fee to cover its losses and expenditure resulting from the Customer's failure to accept delivery of the Goods;
- (b) daily storage charges which will be calculated by multiplying Weatherite's standard daily storage charging rate per square metre by the space in square metres occupied by such Goods; and
- (c) 50% of the amount calculated pursuant to clause 3.4.1(b) in respect of additional space required around the Goods to permit suitable access to them and the Customer will pay invoices rendered pursuant to this clause 3.4.1 in accordance with clause 8 doing so within 30 days of the date of invoice.
- 3.4.2 except where such failure or delay is caused by a Force Majeure Event or by Weatherite's failure to comply with its obligations under the Contract in respect of the Goods:
- (a) delivery of the Goods will be deemed to have been completed at 9.00 am on the third Business Day following the day on which Weatherite notified the Customer that the Goods were ready or the date Weatherite first attempted delivery (whichever is earliest); and
- (b) Weatherite will, subject to clause 3.7, store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- 3.5 If 10 or more Business Days have passed after Weatherite notified the Customer that the Goods were ready for delivery and the Customer has not accepted delivery of them:
- 3.5.1 Weatherite may dispose of part or all of the Goods;
- 3.5.2 the Customer will be liable to Weatherite for all storage, handling, transport and administration costs, which Weatherite incurs in relation to the Goods after they became ready for delivery and any disposal thereof;
- 3.5.3 the Customer will be liable to Weatherite for any amount by which the sale proceeds less costs Weatherite incurs pursuant to clause 3.5.2 fall short of the price of the Goods; and
- 3.5.4 Weatherite will account to the Customer for any amount by which the sale proceeds less costs Weatherite incurs pursuant to clause 3.5.2 exceed of the price of the Goods.
- 3.6 If Weatherite delivers up to and including 5% more or less than the quantity of Goods ordered the Customer may not reject them, but on receipt of notice from the Customer that the wrong quantity of Goods was delivered, Weatherite will make a pro rata adjustment to the invoice for the Goods.
- 3.7 Weatherite may deliver the Goods by instalments, which will be invoiced and paid for separately. Each instalment will constitute a separate contract. Any delay in delivery or defect in an instalment will not entitle the Customer to cancel any other instalment.
- 3.8 Weatherite may in its discretion agree to deliver Goods to addresses outside the United Kingdom and in such cases Weatherite will prepare the export declaration and any other necessary export documentation. The Goods will be declared to be "of UK origin".
- 3.9 There are restrictions on some Goods in some delivery destinations located outside the United Kingdom and the Customer must ascertain and provide Weatherite with all relevant information regarding the existence and applicability of such restrictions.
- 3.10 If the Customer orders Goods for delivery outside of the United Kingdom, that order may be subject to clearance, import and/or export duties and taxes. The Customer will be responsible for (i) payment of all such clearance, export and import duties and taxes; (ii) Weatherite's costs incurred in relation to the preparation of the export documentation referred to in clause 3.8; and (iii) the costs of arrangement by Weatherite of suitable transport for the delivery of the Goods. Weatherite will invoice the Customer for all such amounts and the Customer will pay these in accordance with clause 8.6.
- 3.11 It is the Customer's responsibility to make arrangements (including (without limitation) the preparation of all relevant and required documentation) at the earliest opportunity (and in advance of the Goods' arrival at port in the delivery country) for the import and clearance of the Goods to enable their smooth and efficient entry into the delivery country.
- 3.12 The Customer must comply with all applicable laws and regulations of the country for which the Goods are destined. Weatherite will not be liable or responsible if the Customer breaks any such law.
4. **QUALITY OF GOODS**
- 4.1 Weatherite warrants that on delivery, and for a period of 12 months from the date of delivery ("**Warranty Period**"), the Goods will:
- 4.1.1 conform to all material respects with any applicable Goods Specification;
- 4.1.2 be free from material defects in design, material and workmanship;
- 4.2 Subject to clause 4.3, Weatherite will, at its option, repair or replace any defective Goods, or refund the price of such defective Goods in full provided that:
- 4.2.1 the Customer gives notice in writing during the warranty period within 7 days of discovery that some or all of the Goods do not comply with the warranty set out in clause 4.1;
- 4.2.2 Weatherite is given a reasonable opportunity of examining such Goods; and
- 4.2.3 the Customer (if asked to do so by Weatherite) returns such Goods to Weatherite's place of business at the Customer's cost.
- 4.3 Weatherite will not be liable for the Goods' failure to comply with the warranty in clause 4.1 if:
- 4.3.1 the Customer makes any further use of such Goods after discovering that the same are defective;
- 4.3.2 the defect arises because the Customer failed to follow Weatherite's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice and, unless Weatherite has specifically agreed otherwise in writing, all commissioning and maintenance work must be carried out by Weatherite or parties appointed by Weatherite. Where commissioning or maintenance has been carried out by any other person without Weatherite's permission, the warranty set out in clause 4.1 will be invalidated.
- 4.3.3 the defect arises as a result of Weatherite following any drawing, design or Goods Specification supplied by the Customer;
- 4.3.4 the Customer alters and/or repairs such Goods without the prior written consent of Weatherite;
- 4.3.5 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; or
- 4.3.6 the Goods differ from any applicable Goods Specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards.
- 4.4 Except as provided in this clause 4, Weatherite will have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 4.1.
- 4.5 These Conditions will apply to any repaired or replacement Goods supplied by Weatherite.
5. **TITLE AND RISK**
- 5.1 The risk in the Goods will pass to the Customer on completion of delivery.
- 5.1.1 Title to the Goods will pass to the Customer when Weatherite has received payment in full (in cash or cleared funds) for the Goods and all other goods that Weatherite has supplied to the Customer and in respect of which payment has become due.
- 5.2 Until title to the Goods has passed to the Customer, the Customer will:
- 5.2.1 store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as Weatherite's property;
- 5.2.2 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- 5.2.3 maintain the Goods in good condition and keep them insured against all risks for their full price on Weatherite's behalf from the date of delivery;
- 5.2.4 notify Weatherite immediately if it becomes subject to any of the events listed in clause 12.1.3 to clause 12.1.5; and
- 5.2.5 give Weatherite such information relating to the Goods as Weatherite may require from time to time.
- 5.2.6 If, before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 12.1.3 to clause 12.1.5, then, without limiting any other right or remedy Weatherite may have, Weatherite may at any time:
- (a) require the Customer to deliver up all Goods in its possession which have not been resold, or irrevocably incorporated into another product; and
- (b) if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.
6. **SUPPLY OF SERVICES**
- 6.1 Weatherite will supply the Services to the Customer substantially in accordance with the Service Specification.
- 6.2 If the Service Specification states that a Design is required, Weatherite will prepare such Design. Weatherite will then submit the Design to the Customer for approval. The parties will use all reasonable endeavours to agree the Design. If the Customer does not approve the Design, it may instruct Weatherite to amend the Design at the Customer's expense.
- 6.3 If the Customer does not approve the amended Design, either party may refer the matter to be dealt with in accordance with the dispute resolution mechanisms detailed at clause 14.
- 6.4 If Weatherite submits a Design to the Customer for approval and the Customer does not respond to Weatherite in relation to that Design within 14 days of such submission, the Design will be deemed to be approved by the Customer and Weatherite will be entitled to proceed with its provision of the Services on the basis of that Design.
- 6.5 If the Services include commissioning of any Goods by Weatherite at the Customer's premises then, unless otherwise stated by Weatherite in writing:
- 6.5.1 The Customer will be responsible for ensuring that the Goods are Ready for Commissioning.
- 6.5.2 Such commissioning will be carried out in a single continuous visit at a time to be agreed following the Customer informing Weatherite that the relevant Goods are Ready for Commissioning;
- 6.5.3 For the purposes of clauses 6.5.1 and 6.5.2, the Goods to be commissioned will be "Ready for Commissioning" when they are fully installed so that:
- (a) any requisite wiring is complete and a permanent power supply available ["and connected"];
- (b) any requisite pipework is fully connected to the relevant Goods, metering is installed connected and working and the system comprising the Goods or of which they form part has been fully purged;
- (c) a gas supply is available ["and connected"];
- (d) any requisite test certificates in relation to certification of completion of the steps referred to in this clause 6.5.3 above are available;
- (e) where applicable, air volumes and control and fire dampers have been correctly balanced; and
- (f) anything else required to be done as stated in the related Order has been done
- 6.5.4 If commissioning cannot be carried out in a single continuous visit by reason of any act or omission by the Customer including (but without limitation) any failure to ensure that the relevant Goods are Ready for Commissioning as required by clause 6.5.1, any further or additional visits will be charged for by Weatherite on a time and materials basis in accordance with its standard rates from time to time applicable.
- 6.6 Weatherite will use all reasonable endeavours to meet any performance dates for the Services specified in the Service Specification or otherwise agreed in writing between the parties, but any such dates will be estimates only and time will not be of the essence for the performance of the Services.
- 6.7 Weatherite reserves the right to amend the Service Specification if necessary to comply with any applicable law or regulatory requirement, and otherwise if the amendment will not materially affect the nature or quality of the Services. Weatherite will notify the Customer of any such amendment.
- 6.8 Weatherite will, whilst working at the Customer's Premises, comply with all reasonable instructions given to it by the Customer relating to health and safety matters and procedures.
- 6.9 Weatherite may temporarily suspend all or part of the

- Services:
- 6.9.1 for operational reasons including (but without limitation) if machinery and/or equipment required for the Services is out of service or cannot be utilised for other reasons; or;
- 6.9.2 to comply with any applicable law or regulatory requirement.
- 6.10 If the Services will be (or Weatherite believes they are likely to be) suspended, Weatherite will give the Customer as much advance notice of any such suspension as is practicable.
- 6.11 On the occurrence of the circumstances anticipated by clause 6.9.1 and provided that Weatherite cannot recover such costs from the third party owners of such machinery and/or equipment, Weatherite may charge the Customer a fee to cover its wasted expenditure in relation to costs incurred by Weatherite, in connection with having machinery and/or equipment available and ready to perform the Services but that it cannot utilise due to poor weather conditions or other operational reasons outside of Weatherite's control.
- 6.12 If, as part of its provision of the Services, Weatherite agrees to remove old or used machinery and/or equipment from the Customer's Premises, Weatherite will be free to dispose of such machinery and/or equipment as it sees fit and if such machinery and/or equipment is sold by Weatherite, Weatherite will be entitled to retain all proceeds resulting from any such sale.
- 7. CUSTOMER'S OBLIGATIONS**
- 7.1 The Customer will:
- 7.1.1 ensure that the Order and all information it contains, the Service Specification and the Goods Specification are all complete and accurate;
- 7.1.2 co-operate with Weatherite in all matters relating to the Services;
- 7.1.3 provide Weatherite, its employees, agents, consultants and subcontractors, with access to the Customer's Premises, office accommodation and other facilities including (but without limitation) parking and electricity, as reasonably required by Weatherite to provide the Services;
- 7.1.4 provide Weatherite with such information and materials as Weatherite may require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
- 7.1.5 prepare the Customer's Premises for the delivery of the Goods and supply of the Services;
- 7.1.6 obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;
- 7.1.7 comply with all applicable laws, including health and safety laws;
- 7.1.8 keep all materials, equipment, documents and other property of Weatherite ("**Weatherite Materials**") at the Customer's Premises in safe custody at its own risk, maintain Weatherite Materials in good condition until returned to Weatherite, and not dispose of or use Weatherite Materials other than in accordance with Weatherite's written instructions or authorisation; and
- 7.1.9 comply with any additional obligations as set out in the Service Specification and the Goods Specification.
- 7.2 If Weatherite'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 without limiting or affecting any other right or remedy available to it, Weatherite will 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 in each case to the extent the Customer Default prevents or delays Weatherite's performance of any of its obligations;
- 7.2.2 Weatherite will not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from Weatherite's failure or delay to perform any of its obligations as set out in this clause 7.2; and
- 7.2.3 the Customer will reimburse Weatherite within 7 days of written demand for any costs or losses sustained or incurred by Weatherite arising directly or indirectly from the Customer Default.
- 8. CHARGES AND PAYMENT**
- 8.1 The price for Goods:
- 8.1.1 will be the price set out in the Order or, if no price is quoted, the price set out in Weatherite's published price list as at the date of the order; and
- 8.1.2 will be inclusive of all costs and charges of packaging, insurance, transport of the Goods.
- 8.2 The charges for Services will be the price set out in the Order save that Weatherite will be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom Weatherite engages in connection with the Services including travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by Weatherite for the performance of the Services, and for the cost of any materials.
- 8.3 Weatherite reserves the right to:
- 8.3.1 increase the charges for the Services on an annual basis with effect from each anniversary of the Commencement Date. Weatherite may so increase its charges by the same proportion as the proportion by which the Retail Prices Index has increased since the date on which the charges for the Services were last increased pursuant to this clause 8.3.1 or, since the date of the Contract in the case of the first such increase. [Weatherite will not apply more than [one] such increase in any 12 month period.] The Retail Prices Indexes to be used will be the latest available on the date with effect from which each increase is to take effect or the date of the Contract in relation to the first increase.
- 8.3.2 increase the price of the Goods, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Goods to Weatherite that is due to:
- (a) any factor beyond the reasonable control of Weatherite (including (but without limitation) foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
- (b) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Goods Specification; or
- (c) any delay caused by any instructions of the Customer in respect of the Goods or failure of the Customer to give Weatherite adequate or accurate information or instructions in respect of the Goods.
- 8.4 Weatherite may at any time invoice on a pro forma basis requiring the Customer to pay for Goods and/or Services before delivery.
- 8.5 Unless clause 8.4 applies or otherwise agreed, Weatherite will be entitled to invoice the Customer in respect of Goods on or at any time after it has notified the Customer that the Goods are ready for delivery and in respect of Services, when the same are completed or at any earlier time specified in the Order which may entitle Weatherite to invoice for Goods and Services in instalments or on reaching milestones or completing stages or work as specified in the relevant Order.
- 8.6 The Customer will pay each invoice submitted by Weatherite:
- 8.6.1 within 30 days of the date of the invoice or in accordance with any credit terms agreed by Weatherite and confirmed in writing to the Customer; and
- 8.6.2 in full and in cleared funds to a bank account nominated in writing by Weatherite; and
- 8.6.3 time for payment will be of the essence of the Contract.
- 8.7 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of VAT. Where any taxable supply for VAT purposes is made under the Contract by Weatherite to the Customer, the Customer will, on receipt of a valid VAT invoice from Weatherite, pay to Weatherite such additional amounts in respect of VAT as are chargeable on the supply of the Services or Goods at the same time as payment is due for the supply of the Services or Goods.
- 8.8 If the Customer fails to make a payment due to Weatherite under the Contract by the due date, then, without limiting any other remedies available to Weatherite whether hereunder or otherwise the Customer will pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 8.8 will accrue each day at the greater of 4% a year above the Bank of England's base rate from time to time, and the rate from time to time applicable to High Court judgment debts.
- 8.9 All amounts due under the Contract will be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 8.10 Unless otherwise agreed by the parties in writing, the Customer will pay Weatherite's invoices in the currency stated on the relevant invoice.
- 8.11 If Weatherite invoices the Customer in a currency other than pounds sterling and Weatherite incurs increased costs due to exchange rate fluctuations between the date of Weatherite's quotation or order acceptance given pursuant to clause 1.2 (whichever is earlier), such costs will be invoiced to the Customer and will be payable in accordance with clause 8.6 in addition to the price of the Goods and/or Services.
- 9. INTELLECTUAL PROPERTY RIGHTS**
- 9.1 All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Customer) will be owned by Weatherite.
- 9.2 Weatherite grants to the Customer or will procure the direct grant to the Customer, a fully paid-up, worldwide, non-exclusive, royalty-free perpetual and irrevocable licence to copy the Deliverables (excluding materials provided by the Customer) for the purpose of receiving and using the Services and the Deliverables in its business.
- 9.3 The Customer will not sub-license, assign or otherwise transfer the rights granted by clause 9.2.
- 9.4 The Customer grants Weatherite a fully paid-up, non-exclusive, royalty-free non-transferable licence to copy and modify any materials provided by the Customer to Weatherite for the term of the Contract for the purpose of providing the Services to the Customer.
- 10. CONFIDENTIALITY**
- 10.1 In this clause 10,
- 10.1.1 "Confidential Information" means all information of a confidential nature or which is identified by the party disclosing the same as confidential, (however recorded or preserved) disclosed by a party or its Representatives (as defined below) to the other party and that party's Representatives whether before or after the date of any Contract in connection with that Contract, its performance or the Goods or Services, including but not limited to:
- (a) any information that would be regarded as confidential by a reasonable business person relating to:
- (b) the business, assets, affairs, customers, clients, suppliers, [or] plans [, intentions, or market opportunities] of the disclosing party [(or of any member of the group of companies to which the disclosing party belongs)]; and
- (c) the operations, processes, product information, know-how, designs, trade secrets or software of the disclosing party [(or of any member of the group of companies to which the disclosing party belongs)]; and
- (d) any information developed by the parties in the course of performing a Contract.
- However, the term "Confidential Information" does not include any information which (i) is in the public domain otherwise than by reason of a breach of this clause 10 or (ii) was available to the receiving party on non-confidential basis prior to its disclosure by the other party to the Contract; or (iii) is developed by the party receiving the same independently of the information disclosed to it by the other party.
- 10.1.2 "Representatives" means, in relation to a party, its employees, officers, contractors, subcontractors, representatives and advisers.
- 10.2 Each party undertakes that it will not disclose to any person any Confidential Information except as permitted by clause 10.3.
- 10.3 Each party may disclose the other party's Confidential Information:
- 10.3.1 to its Representatives who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party will ensure that those of its Representatives, to whom it discloses the other party's confidential information comply with this clause 10; and
- 10.3.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 10.4 Neither party will use the other party's Confidential Information for any purpose other than to perform its obligations under the Contract.
- 11. LIMITATION OF LIABILITY**
- 11.1 Nothing in the Contract limits any liability which cannot legally be limited, including but not limited to liability for:
- 11.1.1 death or personal injury caused by negligence;
- 11.1.2 fraud or fraudulent misrepresentation; and
- 11.1.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 11.2 Subject to clauses 11.2 and 11.5, Weatherite's total liability to the Customer in respect of all breaches of duty occurring within any contract year will not exceed the lesser of £5,000,000 and 50% of the total charges in the contract year in which the breaches occurred.
- 11.3 In this clause 11.3 the following terms have the meanings given to them below:
- 11.3.1 **contract year** means a 12-month period commencing with the date of the Contract or any anniversary of it;
- 11.3.2 **total charges** means all sums paid by the Customer and all sums payable under the Contract in respect of goods and services actually supplied by Weatherite, whether or not invoiced to the Customer; and
- 11.3.3 **total liability** total liability includes liability in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract.
- 11.4 All indirect and consequential loss and the following types of loss (whether direct or indirect) are wholly excluded by Weatherite:
- (a) Loss of profits.
- (b) Loss of sales or business.
- (c) Loss of agreements or contracts.
- (d) Loss of anticipated savings.
- (e) Loss of use or corruption of software, data or information.
- (f) Loss of or damage to goodwill.
- 11.5 Weatherite will not be liable for any costs, losses or expenses incurred by the Customer (or any other party) arising out of or in connection with:
- 11.5.1 any delay in the delivery of the Goods which is due to delays at any port or delays incurred whilst the Goods progress through customs clearance; or
- 11.5.2 any delay in the delivery of the Goods which is due to Weatherite being unable to obtain raw materials or input goods required to supply the Goods for any reason including (without limitation) import problems or delays or any other disruptions.
- 11.6 If Weatherite incurs costs due to any delay in the delivery of the Goods which is due to delays at any port or delays incurred whilst the Goods progress through customs clearance, Weatherite will invoice such costs to the Customer to be paid in accordance with clause 8.6.
- 11.7 If there is a delay in delivery of the Goods for any reason, Weatherite will not be liable to the Customer (or any other party) for any on-costs arising out of or in connection with such delay.
- 11.8 Weatherite has given commitments as to compliance of the Goods and Services with relevant specifications in clause 4 and clause 6. In view of these commitments, the terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from this agreement.
- 11.9 Unless the Customer notifies Weatherite that it intends to make a claim in respect of an event within the notice period, Weatherite will have no liability for that event. The notice period for an event will start on the day on which the Customer became, or ought reasonably to have become, aware of the event having occurred and will expire 3 months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.
- 11.10 This clause 11 will survive termination of the Contract.
- 12. TERMINATION**
- 12.1 Without affecting any other right or remedy available to it, either party may terminate the Contract with

immediate effect by giving written notice to the other party if:

12.1.1 the other party fails to pay when due, any amount not subject to a bona fide dispute, and such amount remains unpaid 7 days or more after demand;

12.1.2 the other party commits a material breach of its obligations under the Contract and (if such breach is remediable) fails to remedy that breach within 30 days after receipt of notice in writing to do so;

12.1.3 the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;

12.1.4 the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or

12.1.5 the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

12.2 Without affecting any other right or remedy available to it, Weatherite may terminate the Contract with immediate effect by giving written notice to the Customer if:

12.2.1 any amount due hereunder is due and remains unpaid for 14 days or more after notice requiring payment has been served on the party owing such amount; or

12.2.2 there is a change of control of the Customer.

12.2.3 Without affecting any other right or remedy available to it, Weatherite may suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Customer and Weatherite if the Customer fails to pay any amount due under the Contract on the due date for payment, the Customer becomes subject to any of the events listed in clause 12.1.3 to clause 12.1.5, or Weatherite reasonably believes that the Customer is about to become subject to any of them.

13. CONSEQUENCES OF TERMINATION

13.1 On termination of the Contract:

13.1.1 The Customer will immediately pay to Weatherite all of Weatherite's outstanding unpaid invoices and interest and, in respect of Services and Goods supplied but for which no invoice has been submitted, Weatherite will submit an invoice, which will be payable by the Customer immediately on receipt;

13.1.2 The Customer will return all of Weatherite Materials and any Deliverables or Goods which have not been fully paid for. If the Customer fails to do so, then Weatherite may enter the Customer's premises and take possession of them. Until they have been returned, the Customer will be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract.

13.2 Termination of the Contract will not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.

13.3 Any provision of the Contract that expressly or by implication is intended to have effect after termination will continue in full force and effect.

14. DISPUTE RESOLUTION

14.1 The parties will in good faith seek to resolve any dispute or disagreement relating to a Design or any other technical matter such as the quality, specification, performance or features of Goods and Services. However if they are unable to do so within 30 days of the matter arising, either of them may notify the other that the matter is to be referred to an Expert for determination. Such Expert will be appointed in accordance with this clause 14.

14.2 Following a notification under clause 14.1, the parties will first agree on the appointment of an independent Expert and agree with the Expert the terms of his appointment.

14.3 If the parties are unable to agree on an Expert or the terms of the Expert's appointment within 7 days of either party serving details of a suggested expert on the other, either party will then be entitled to request the Centre for Effective Dispute Resolution ("CEDR") to appoint a suitable and appropriate Expert with the required expertise.

14.4 The Expert is required to prepare a written decision including reasons for such decision and give notice (including a copy) of the decision to the parties within a maximum of 3 months of the matter being referred to the Expert.

14.5 If the Expert dies or becomes unwilling or incapable of acting, or does not deliver the decision within the time required by this clause 14, then:

14.5.1 either party may apply to CEDR to discharge the Expert and to appoint a replacement Expert with the required expertise; and

14.5.2 this clause 14 will apply to the new Expert as if they were the first Expert appointed.

14.6 The parties are entitled to make submissions to the Expert and will provide (or procure that others provide) the Expert with any assistance and documents as the Expert reasonably requires to reach a decision.

14.7 Each party will, with reasonable promptness, supply each other with all information and give each other access to all documents, personnel and things as the other party may reasonably require to make a submission under this clause 14.

14.8 The Expert will act as an expert and not as an arbitrator. The Expert will determine the matters referred to the Expert under the agreement. The Expert's written decision on the matters referred to the Expert will be final and binding on the parties in the absence of manifest error or fraud.

14.9 All matters concerning the process and result of the determination by the Expert will be kept confidential among the parties and the Expert.

14.10 Each party will act reasonably and co-operate to give effect to the provisions of this clause 14 and otherwise do nothing to hinder or prevent the Expert from reaching their determination.

14.11 The Expert and CEDR will have no liability to the parties for any act or omission in relation to this appointment, save in the case of bad faith.

14.12 If any other dispute arises in connection with the Contract which does not relate to a Design or any other technical matter, the parties agree to enter into mediation in good faith to settle such a dispute and will do so in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties within 14 days of notice of the dispute, the mediator will be nominated by CEDR. To initiate the mediation a party must give notice in writing ("ADR Notice") to the other party to the dispute, referring the dispute to mediation. Unless otherwise agreed the mediation will start not later than 28 days after the date of the ADR Notice.

14.13 For the avoidance of doubt, clause 14.12 will not prevent Weatherite from immediately initiating court proceedings to seek any interim relief (including injunctive relief) or take advantage of any applicable time limitation.

15. FORCE MAJEURE

Weatherite will not be in breach of the Contract nor liable for delay in performing or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control.

16. GENERAL

16.1 Assignment and other dealings

16.1.1 Weatherite may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.

16.1.2 The Customer will not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of Weatherite.

16.2 Notices.

16.2.1 Any notice or other communication given to a party under or in connection with the Contract will be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause 16.2, and will be delivered personally, or sent by pre-paid first class post or other next working day delivery service or commercial courier.

16.2.2 A notice or other communication will be deemed to have been received: if delivered personally, when left at the address referred to in clause 16.2.1; if sent by pre-paid first class post or other next working day delivery service, at 1.00 pm on the second Business Day after posting or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.

16.2.3 The provisions of this clause 16.2 will not apply to the service of any proceedings or other documents in any legal action.

16.3 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it will be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision will be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause 16.3 will not affect the validity and enforceability of the rest of the Contract.

16.4 **Waiver.** A waiver of any right or remedy under the Contract or by law is only effective if given in writing and will not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law will not constitute a waiver of that or any other right or remedy, nor will it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law will prevent or restrict the further exercise of that or any other right or remedy.

16.5 **No partnership or agency.** Nothing in the Contract is intended to, or will be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.

16.6 Entire agreement.

16.6.1 The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

16.6.2 Each party acknowledges that in entering into the Contract it does not rely on, and will have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it will have no claim for innocent or negligent misrepresentation or negligent misrepresentation based on any statement in the Contract.

16.6.3 Nothing in this clause 16.6 will limit or exclude any liability for fraud.

16.7 Third parties rights.

16.7.1 Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

16.7.2 The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.

16.8 **Variation.** Except as set out in these Conditions, no variation of the Contract will be effective unless it is agreed in writing and signed by the parties (or their authorised representatives).

16.9 **Governing law.** The Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation will be governed by and construed in accordance with the law of England and Wales.

16.10 **Jurisdiction.** Subject to clause 14, each party irrevocably agrees that the courts of England and Wales will have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.

The Schedule

DEFINITIONS AND INTERPRETATION

Part 1

In these Conditions, the following definitions apply:

Business Day: a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

Commencement Date: has the meaning given in clause 1.2.

Conditions: these terms and conditions as amended from time to time in accordance with clause 16.8.

Contract: any contract between Weatherite and the Customer for the supply of Goods and/or Services in accordance with these Conditions.

Control: has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression change of control will be construed accordingly.

Customer: the person or firm who purchases the Goods and/or Services from Weatherite.

Customer's Premises: the address(es) contained in the Order.

Deliverables: the deliverables set out in the Order produced by Weatherite for the Customer.

Delivery Location: the location set out in the Order or such other location as the parties may agree from time to time.

Design: any applicable plans or drawings relevant to the Services stated to be required in the Service Specification.

Expert: has the meaning given in clause 14.

Goods: the goods (or any part of them) set out in the Order.

Goods Specification: any specification for the Goods, including any relevant plans or drawings, that is agreed by the Customer and Weatherite.

Intellectual Property Rights: patents, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Order: the Customer's order for the supply of Goods and/or Services, as set out in the Customer's purchase order form, or the Customer's written acceptance of Weatherite's quotation, or overleaf, as the case may be.

Retail Prices Index: the retail prices index published by the United Kingdom's Office for National Statistics provided that if at any time that index is no longer produced or published any index most nearly replacing the same will be used with such adjustments as Weatherite reasonably considers appropriate.

Services: the services, including the Deliverables, supplied by Weatherite to the Customer as set out in the Service Specification.

Service Specification: the description or specification for the Services provided by Weatherite to the Customer which may include a Design.

VAT: value added tax chargeable from time to time.

Weatherite: Weatherite Air Conditioning Limited registered in England and Wales with company number 01829910.

Weatherite Materials: has the meaning given in clause 7.1.8.

Part 2

In these Conditions, the following rules apply:

1. A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
2. A reference to a party includes its successors and permitted assigns.
3. A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.
4. Any words following the terms **including** or **include** or any similar expression will be construed as illustrative and will not limit the sense of the words, description, definition, phrase or term preceding those terms.
5. A reference to **writing** or **written** includes email but not fax.