

**GEA PHE Systems UK - trading division of GEA Heat Exchangers Ltd****1. GENERAL TERMS.**

- 1.1 Binding Contract.** Unless otherwise noted in the Seller's Proposal, the Proposal shall lapse automatically upon the expiration of a thirty (30) day period after the date of its submission unless it has been previously accepted by the Purchaser or revoked in writing by Seller. The Contract incorporating these Terms and Conditions does not become a binding contract until the Seller receives the Purchaser's unqualified acceptance of the Proposal or the Seller confirms the Purchaser's order in writing.

These Terms and Conditions are the only terms and conditions on which the Seller contracts for the supply of Equipment and they are incorporated in all contracts entered into by the Seller. Any other terms and conditions are excluded.

- 1.2 Plans, Drawing and Illustrations.** Proposal pages, catalogue illustrations and preliminary drawings are submitted only to show the general style, arrangement, approximate dimensions and weight of Equipment. The Seller reserves the right to make such changes of design, construction or arrangement as it deems necessary to achieve the specifications contained in the Proposal. The Purchaser is to provide the drawings of all foundations, concrete construction and reinforcement and required housings, based upon the Seller's Equipment drawings.

- 1.3 Proprietary and Confidential Information.** The Proposal and all drawings, documents, operating data, specifications, and other information, data and material provided to the Purchaser (whether supplied orally, in writing, electronically or otherwise) by either the Seller or any of its subcontractors or sub-suppliers shall remain the proprietary and confidential property of the Seller or the subcontractor or sub supplier, respectively, and shall be used by the Purchaser only with respect to the work covered by the Contract and shall not be used by the Purchaser in connection with any other project. Such proprietary and confidential information and data shall not be shown or otherwise made available to any third party at any time without the Seller's prior written consent.

Neither the Purchaser itself shall, nor shall the Purchaser permit any third party to, reverse engineer, measure or otherwise technically examine or test the Seller's Equipment without the Seller's prior written consent. Any such proprietary and confidential information which the Purchaser determines must be disclosed to its employees shall only be disclosed to them on a need-to-know basis for the operation, maintenance, and repair of the Equipment provided under the Contract. Intellectual property or patent rights which may be obtained on the basis of the information given or made available to the Purchaser under the Contract or with respect to the Seller's Equipment shall remain the exclusive property of the Seller or its subcontractor and/or sub supplier, respectively.

**2. SAFETY REQUIREMENTS OF PURCHASER.**

The Purchaser shall use, and shall train and require its employees to use and shall cause any end user to use, all safety devices, guards, and proper safe operating and maintenance procedures as prescribed by all applicable laws, rules, regulations, codes and standards and as set forth in operating and maintenance manuals and instruction sheets furnished by the Seller. The Purchaser shall not, and shall cause any end user not to, remove or modify any safety device, guard or warning sign.

If the Purchaser fails strictly to observe any of the obligations set out in the preceding paragraph with regard to any of the Equipment, the Purchaser agrees to defend the Seller against, and indemnify and save the Seller harmless from, any claim, liability or

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obligation (including legal fees and expenses) incurred by the Seller as a result of persons being injured or property being damaged directly or indirectly in connection with the operation of such Equipment as a result of such failure. The Purchaser also agrees to indemnify and save the Seller harmless from, any claim, liability or obligation incurred by the Seller as a result of persons being injured or property being damaged due to the Purchaser's use of the Equipment for materials or products not specified in the Contract or use of non-original replacement parts not specifically authorized in writing by the Seller or due to changes in the Equipment made by the Purchaser without the Seller's specific written authorization.

**3. CHANGE REQUESTS.**

The Purchaser has the right to request a variation in the scope of supply. To this end the Purchaser shall inform the Seller in due time in writing with details of such request ("Change Request"). The Seller shall, within 10 working days from receipt of the Change Request, make an offer in writing to the Purchaser regarding the performance of the requested variations (additional purchase price, modified delivery periods etc.). If more than 10 working days is required to determine the delay or cost increase necessitated by the change, then the Seller shall advise the Purchaser within such 10 working days and proceed diligently thereafter to determine the additional costs and time required.

If the Purchaser accepts the Seller's offer in writing within 10 working days from the date it is sent to the Purchaser, the Seller shall be obliged to perform the agreed modifications subject to changes being made to the purchase order or Contract to reflect the Seller's response to the Change Request. Notwithstanding the foregoing, the Seller shall not be required to accept or implement any change which the Seller believes in good faith is technically impossible, is unsafe or is likely to have an adverse impact on any of the Equipment to be supplied by the Seller. In any such case, the Seller will inform the Purchaser as soon as practicable and the Change Request shall be deemed to have been withdrawn by the Purchaser.

**4. COMPLIANCE WITH LAWS.**

The Seller shall use reasonable endeavours to ensure that the Equipment complies in technical respects with PED/AD 200 and in all other respects with applicable laws, rules, regulations, codes and standards that are in force and publicly available in England and Wales at the date of the Proposal subject to the following: if any such laws, rules, regulations, codes or standards are changed, or if new laws, regulations, codes or standards or interpretations are enacted or adopted subsequent to the date of the Proposal which require a change in the Seller's Equipment, an equitable adjustment shall be made to the purchase price, delivery schedule and payment terms. If required by the Seller, the Purchaser shall provide the relevant information on these laws, rules, regulations, codes or standards in writing.

**5. PRICE AND PAYMENT.**

- 5.1 The purchase price shall be paid in accordance with the Seller's Proposal. Unless otherwise stated in the Contract all amounts invoiced shall be due for payment within 30 days of the invoice date. Any right of the Purchaser to withhold or set-off any sum against amounts properly invoiced is expressly excluded unless (i) the Purchaser has given the Seller written notice of its intention to withhold or set-off any amount with reasons at least 5 working days before the due date for payment of the Seller's invoice and (ii) the Purchaser's claim is undisputed or has been determined by a final judgement of a competent court or arbitration.

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5.2 Whatever the means of payment used, payment shall not be deemed to have been effected before the full payment has been irrevocably credited to the Seller's bank account.

5.3 If the Purchaser fails to make any payment by the due date, the Seller shall be entitled to interest from the day on which payment was due until the date of its receipt. The rate of interest shall be the applicable rate calculated pursuant to the Late Payment of Commercial Debts (Interest) Act 1998. Additionally, if the Seller is required to expend costs and expenses in collecting any payments, the Purchaser shall reimburse the Seller for such costs of collection (including reasonable legal fees).

In case of late payment the Seller may, in addition to its other rights, suspend its performance of the Contract until it receives payment. If the Purchaser has not paid the amount due within three months the Seller shall be entitled to terminate the Contract by notice in writing to the Purchaser and to claim compensation for the losses and damages it has incurred.

All amounts are quoted by the Seller exclusive of Value Added Tax which shall be added and paid by the Purchaser as appropriate.

**6. TRANSPORTATION; INSURANCE; RISK OF LOSS.**

**6.1 Transportation, Delivery**

All delivery dates given by the Seller in the Proposal are estimates only and are given in good faith but the Seller will not have any liability to the Purchaser for any failure to meet any estimated delivery date.

Where transportation costs are prepaid, Equipment will be delivered to an unloading point designated by the Purchaser. Unloading, haulage from the designated unloading point and further necessary handling shall be at the Purchaser's risk and expense, independent of any installation services that may be requested by the Purchaser.

Delivery instructions are to be supplied by the Purchaser within 30 days after issue of the purchase order by the Purchaser, but in any event not later than 10 working days prior to delivery. If the delivery date is less than 10 working days after the Contract comes into effect, delivery instructions are to be supplied by the Purchaser along with the purchase order. In the event the Purchaser fails to supply delivery instructions, the Seller at its option may place the Equipment in the Seller's or any public or private storage facilities at the Purchaser's risk and expense and the Seller will invoice the Purchaser for all such costs.

**6.2 Insurance.** Risk in all Equipment shall pass to the Purchaser upon delivery. Until the contract price is paid in full, the Purchaser shall provide and maintain insurance to the total value of the Equipment delivered against all loss or damage including, but not limited to, risks of fire and explosion, flood, earthquake and other unforeseeable risks.

**6.3 Title; Right of Possession.** Ownership of all Equipment will remain with the Seller until payment in full of all amounts due to it from the Purchaser under the Contract has been received by the Seller.

Until ownership passes to the Purchaser, the relationship between the Seller and the Purchaser will be that of bailor and bailee and the Purchaser will be responsible for the safe custody and insurance of the Equipment.

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Until ownership passes, the Purchaser, having taken delivery, will keep the Equipment identified as the property of the Seller and the Seller will be entitled to enter premises where the Equipment is stored and recover it.

No re-sale of any of the Equipment by the Purchaser shall take place until payment is made in full to the Seller, nor will the Purchaser be entitled to incorporate any of the Equipment in other materials or products without the prior written consent of the Seller. However, if the Purchaser wishes to re-sell any of the Equipment before it has been paid for in full, it shall give notice with details to the Seller who will not unreasonably withhold consent if the Purchaser first assigns its rights to receive payment from the third party buyer to the Seller in a form acceptable to the Seller and the Purchaser agrees to reimburse the Seller's costs in preparing the documents for any such assignment.

**7. DEFAULT OF PURCHASER.**

7.1 The Seller shall be entitled to terminate the Contract by giving notice to the Purchaser if:

(i) the Purchaser fails to make any payment on the due date, or

(ii) the Purchaser becomes insolvent or, being a company, has a resolution passed for its liquidation (other than for reorganization while solvent) or has a receiver, administrative receiver or administrator appointed over any of its assets or suffers any similar event in any jurisdiction or if the Seller reasonably considers that any such event is likely to occur.

7.2 Upon termination under clause 7.1, the Seller shall be entitled to payment of all amounts then owing to the Seller and a due proportion of the purchase price in respect of all Equipment in course of production. In addition the Seller reserves the right and the Purchaser agrees that the Seller may enter any premises of the Purchaser where any of the Equipment is situated and repossess the same and retain all monies already paid by way of compensation for the use of such Equipment.

7.3 Termination of the Contract shall be without prejudice to the accrued rights of the parties at the termination date.

**8. ASSIGNMENT.**

Except as stated in clause 6.3, the Purchaser shall not have the right to assign any of its rights or interests in the Contract without the prior written consent of the Seller.

**9. INCREASE IN PRICE.**

Unless otherwise noted in the Proposal, all prices for brazed Plate Heat Exchangers quoted are subject to surcharges in accordance with the provisions posted on a monthly basis on the Seller's Internet site ( [www.gea-phe.com](http://www.gea-phe.com) ). If delivery is delayed by the Purchaser beyond sixty (60) days or as specified in the Proposal, the price may be increased to the price in effect at the time the Equipment is delivered.

**10. SELLER'S LIABILITY; FORCE MAJEURE.**

10.1 The Seller shall not be liable for delay or loss or damage of any kind resulting from: (i) the Purchaser failing to supply any necessary technical data, as required by the Seller; (ii) the Purchaser failing to supply the apparatus, materials and services required; (iii) failure of suppliers to furnish purchased material or auxiliary equipment within scheduled dates provided that the purchased material or auxiliary equipment was properly ordered and

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appropriately expedited; (iv) by any other reason beyond its control; or (v) any delay caused by late payments by the Purchaser.

- 10.2** The Seller shall attempt to overcome but shall not be liable for any loss or damage from delay in delivery of any Equipment or completion of any work as a result of causes of any kind beyond the reasonable control of the Seller, such as, but not limited to, strikes or other labour difficulties, war, riots, changes in laws and regulations and other acts of governmental authorities, inclement weather, fire, flood or unavoidable casualties, or any delays in transportation of materials, or inability to obtain timely delivery of materials from suppliers where such transportation or delivery has been properly procured and appropriately expedited. In the event of any such delay, the Seller will notify the Purchaser within a reasonable time after the Seller becomes aware of such cause of delay and it is agreed that the time for delivery or completion shall be extended for a period of time at least equal to the time lost by reason of the delay.

**11. MATERIAL AND WORKMANSHIP WARRANTY.**

The Seller warrants to the Purchaser that the Equipment purchased from the Seller is free from defects in material and workmanship. The warranty period shall be twelve (12) months from the date of the Purchaser's initial operation using the Equipment but not more than eighteen (18) months from the date of delivery of the Equipment. Any warranty given by the Seller shall be subject to the following: (i) the Equipment is installed in accordance with the Seller's specifications and instructions and is used and maintained normally and properly in accordance with the Seller's instructions as to maintenance and operation, as set forth in written operation and maintenance manuals and instruction sheets furnished by the Seller; (ii) the Equipment has not been changed without the prior written approval of the Seller; (iii) the Purchaser gives prompt written notice to the Seller whenever a defect appears and in any event before the end of the warranty period specifying all alleged defects in the Equipment purchased; and (iv) the Purchaser preserves and either hands over to the Seller or permits reasonable inspection by the Seller of all allegedly defective Equipment, parts or items and access to the Equipment to observe its startup, operation and maintenance.

This warranty shall not cover (i) any equipment furnished by the Purchaser or any third party (other than a subcontractor of the Seller), (ii) any defects arising from corrosion, abrasion, use of unsuitable lubricants, freezing or other operation outside of prescribed temperature ranges, or negligent attendance or faulty operation, (iii) ordinary wear and tear, or (iv) any defects caused by errors on the part of the Purchaser in not providing a suitable place in which the Equipment is to be located, adequate foundation works, or adequate protection against influences within or outside the place where the Equipment is to be located which may affect the Equipment or its operation. Notwithstanding the warranty set forth above, where the vendor of any of the Equipment (other than the Seller) is specified by the Purchaser, the warranty period in respect of that Equipment shall be no longer than the period warranted by that vendor.

When the Equipment or any part of the Equipment is replaced by the Seller under this warranty, the warranty period in respect of the replacement Equipment or part shall be twelve (12) months or until eighteen (18) months from the delivery date of the original Equipment, if earlier.

The Seller's obligation under this warranty (and any other warranty or guarantee which is included in the Contract) is limited to the repair or replacement of any Equipment or parts determined to be defective on inspection by an authorized representative of the Seller. The Seller assumes no responsibility and shall have no liability for any repairs or replacements undertaken by the Purchaser without the Seller's prior written authorization.

If the Seller did not originally install the Equipment, the Seller shall have no liability for the costs of removing or segregating any defective Equipment so that the repairs or replacements can be made.

Except as expressly stated in these Terms and Conditions, the warranty of material and workmanship in this clause 11 is the only warranty given by the Seller and is in lieu of all other warranties or guarantees, whether express or implied, including but not limited to warranties of merchantability or fitness for purpose nor does the Seller make any representations or assume any further or other liabilities including any liability for latent defects and nothing in this Agreement shall be construed as expressing or implying the contrary, it being agreed that the obligations and liabilities of the Seller contained in these Terms and Conditions are exhaustive and exclude any obligations or liabilities that might otherwise be implied by law and whether arising in contract or in tort, including but not limited to negligence and breach of statutory duty. Under no circumstances shall the Seller have any obligation or liability to the Purchaser after expiry of the warranty period, except in relation to claims notified before then.

## **12. LIMITATION OF LIABILITY.**

The aggregate liability of the Seller, its employees, subcontractors and others for whom it is responsible, whether in contract or in tort (including negligence or breach of statutory duty) which arises out of or in connection with the Contract and any collateral or other agreement entered into pursuant to the Contract shall be limited to an amount equal to the purchase price of the Equipment.

Under no circumstances shall the Seller be liable to the Purchaser for any loss of production, loss of use, loss of revenue, or any other indirect economic or consequential loss or damage suffered or incurred by the Purchaser.

However, excluded from the foregoing limitations is (i) liability for fraud on the part of the Seller and (ii) and liability for loss or damages in respect of death or personal injury caused by any act or omission of the Seller, its employees or subcontractors.

## **13. INTELLECTUAL PROPERTY RIGHTS.**

The Seller shall take all necessary steps to protect the Purchaser against any claims that the Equipment supplied by the Seller infringes any intellectual property rights of a third party. The Purchaser shall promptly notify the Seller of any such claim and will fully cooperate with the Seller and permit the Seller to conduct the defence of any proceedings. Under no circumstances will the Purchaser settle any such claim without the previous written consent of the Seller.

The Seller shall have no responsibility for any infringement of any third party's intellectual property rights or unfair competition resulting from the use of the Seller's Equipment with the Purchaser's process, or in combination with other equipment not supplied by Seller.

## **14. PRODUCT SELECTION AND USE.**

The Purchaser shall be responsible for accurate design and operating conditions used in the selection and use of the Seller's products. The Purchaser's selection and use of the Seller's products from published literature shall be at the Purchaser's risk as to appropriate application, design conditions and performance criteria use.

**15. STANDARDS AND TOLERANCES.**

All product dimensions and published information is subject to change without notice. All of the Seller's products furnished to the Purchaser shall also be subject to tolerances and variations consistent with usages of the trade concerning dimensions, composition and mechanical properties and normal variations in performance characteristics and quality.

**16. GENERAL.**

**Notices.** Every notice to be given under clause 3 (Change Requests), 7 (Default of Purchaser), 11 (Material and Workmanship Warranty), 14 (Intellectual Property Rights) and 17 (Dispute Resolution) shall be in writing and delivered by hand or sent by first class recorded delivery post to the address of the recipient. A notice sent by post shall be treated as having been received two working days after posting. A notice delivered by hand shall be treated as having been received at the time of delivery unless this is after the normal working hours of the recipient, in which case delivery shall be treated as occurring at 9.00 a.m. on the next working day.

**Entire Agreement.** The Contract incorporating these Terms and Conditions constitutes the only agreement between the parties and supersede any previous arrangements, agreements or understandings relating to the Equipment.

**Amendment.** Any amendment to the terms of the Contract shall only be effective if in writing and signed by an authorised signatory of the Seller and of the Purchaser.

**No Reliance on Warranties.** The Purchaser acknowledges that it has not relied on and will have no remedy in respect of any statement, representation, warranty, or undertaking of any person (whether a party to this Agreement or not) other than is expressly set out in the Contract.

**Severance.** If any provision of the Contract becomes illegal or unenforceable, this shall not affect the legality or enforceability of any other provision of the Contract. In that situation the parties shall use reasonable endeavours to agree an alternative provision which is legally enforceable.

**Waiver.** The waiver by either party of a breach by the other in the performance of its obligations under the Contract shall not constitute a waiver of any default nor shall failure to complain of any default constitute a waiver of that default by the other party.

**17. DISPUTE RESOLUTION; GOVERNING LAW**

The parties will endeavour to resolve any difference or dispute arising out of or in connection with the Contract through direct negotiation. If it has not been resolved within 14 days, or such longer period as is mutually agreed, the dispute shall be referred to the chief executive officers of the Purchaser and the Seller.

It shall be a condition precedent to any subsequent proceedings that the dispute shall be submitted for resolution by such chief executive officers, but if those officers do not reach a resolution within twenty-one (21) days of the dispute being submitted to them, then the dispute, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration by one or more arbitrators under the LCIA (London Court of International Arbitration) Rules, which Rules are deemed to be incorporated by reference into this clause. The place of arbitration shall be London, England.

The Contract between the Seller and the Purchaser shall be construed in accordance with and governed by the laws of England.

**18. DEFINITIONS**

In these Terms and Conditions:

“Contract” means the contract between the Seller and the Purchaser for the supply of Equipment which will comprise these Terms and Conditions, the Seller’s Proposal, any documents referred to in the Proposal as forming part of the contract, the Purchaser’s order and the Seller’s confirmation of that order (or the Purchaser’s unqualified acceptance of the Proposal);

“Equipment” means the equipment, goods and materials to be supplied to the Purchaser under the Contract;

“Proposal” means the Seller’s written proposal to the Purchaser for the supply of the Equipment;

“Purchaser” means the person identified as the purchaser of the Equipment in the Proposal and the Contract;

“Seller” means GEA PHE Systems UK , trading division of GEA-Heat Exchangers Ltd