

COOLVAN LIMITED – TERMS AND CONDITIONS OF SUPPLY

1. Definitions and Interpretation

1.1 In these Terms, the following definitions apply:

Affected Party: has the meaning given to it in clause 15.1.

Agreement: the contract between CoolVan and the Customer for the Supply, incorporating these Terms and the Proposal.

Applicable Laws: all applicable laws, statutes and regulations and codes from time to time in force.

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

Business Hours: the period of 7:30am to 5:00pm between Mondays to Thursdays and the period of 7.30am to 1:00 pm on Fridays, noting that this is only on any Business Day.

Charges: the fees payable for the Supply and such other fees payable by the Customer in accordance with these Terms, as particularised further in the Proposal (as the case may be).

Confidential Information: means any and all confidential information (whether in oral, written or electronic form) relating to the other's business, finance or technology, know-how, Intellectual Property Rights, assets, strategy, services, software, products, solutions and customers, including without limitation information relating to manufacturing or other processes, management, financial, marketing, technical and other arrangements or operations of any person, firm, or organisation associated with that party.

Converted Vehicle: means any Customer Vehicle which has been subject to the Installation Services, and Converted Vehicles shall be construed accordingly.

CoolVan: means Cool Van Limited, incorporated in England and Wales with company registration number 02646249, and whose registered address is at 2 York Street, Clitheroe, Lancashire, England, BB7 2DL.

CoolVan's Premises: means any premises owned or occupied by CoolVan or any of its subcontractors under this Agreement, as nominated by CoolVan in writing.

Customer: the customer to which CoolVan provides the Supply, and which wishes to purchase the Supply from CoolVan and to which the Proposal is addressed.

Customer Default: has the meaning given to it in clause 3.8.

Customer's Vehicle: means any van or motor vehicle owned or leased by the Customer and provided to CoolVan for the receipt of the Installation Services, and Customer's Vehicles shall be construed accordingly.

Data Protection Legislation: all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR (as defined in section 3(10) (as supplemented by section 205(4)) of the DPA 2018; the DPA 2018 (and all regulations made thereunder); the Privacy and Electronic Communications Regulations 2003 (*SI 2003/2426*) as amended and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications); and the guidance and codes of practice issued by the Information Commissioner or other relevant regulatory authority and applicable to a party.

Delivery Location: means the location which the Product(s) and/or Converted Vehicle(s) (in each case) shall be delivered or otherwise made available for collection, as set out in the Proposal or otherwise agreed between the parties in writing.

Dispute: has the meaning given in clause 24.

Dispute Notice: has the meaning given in clause 24(a).

DPA 2018: the Data Protection Act 2018.

DVLA: the Driver and Vehicle Licensing Authority.

Force Majeure Event: means events, circumstances or causes beyond a party's reasonable control including but not limited to, Acts of God, flood, drought, earthquake or other natural disaster, terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo or breaking off of diplomatic relations, nuclear, chemical, biological contamination or sonic boom, epidemic or pandemic or similar event, any law guidance restriction or other action taken by a Government or a public authority including without limitation imposing an export or import restriction quota or prohibition, the collapse of buildings, fire, explosion or accident, or failure of telecommunications, utilities or any supplier, subcontractor or third-party service provider.

ICC: has the meaning given to it in clause 24(d).

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, Confidential Information (including know-how), 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.

Installation Services: means the installation of the Product(s) into, or such other services carried out in respect of, a Customer Vehicle (including the commissioning of the same), as set out in the Proposal or otherwise agreed between the parties.

Loss: means actions, awards, charges, claims, compensation, costs, damages, demands, expenses, fees, fines, interest, liabilities, losses, penalties, proceedings and settlements, and Losses shall be construed accordingly.

OEM: the original equipment manufacturer.

Operating Instructions: all operating manuals, literature, materials and specifications or other instructions for use howsoever provided to the Customer by CoolVan or the OEM.

Order: means the Customer's written purchase order for the Supply, raised in response to the Proposal and in accordance with clause 2 below.

Order Period: has the meaning given to it in clause 2.2.

Order Confirmation: means CoolVan's written acceptance of the Order.

Product: means any refrigeration conversion kits, refrigerated vehicles (or any part of them) as set out in the Proposal and particularised further within any applicable Specification, whether supplied to the Customer and/or subject to the Installation Services.

Promotional Materials: CoolVan's catalogues, brochures, Website, or such other applicable sales or promotional literature, materials or publications.

Proposal: means CoolVan's proposal (whether in writing or given orally) to provide the Supply to the Customer, which is based on the Specification.

Specification: any specification for the Supply, including any related plans and drawings, as set out in the Proposal, or as otherwise agreed between the Customer and CoolVan in writing.

Supply: means CoolVan's supply of temperature-controlled van and refrigeration solution(s), comprising of the Product(s), Converted Vehicle(s) and/or Installation Services as and to the extent detailed in the Proposal.

Terms: means these terms and conditions.

Transfer: has the meaning given to it in clause 16.1.

VAT: value added tax chargeable in the UK.

Warranty Breach: has the meaning given to it in clause 7.3.

Warranty Period: has the meaning given to it in clause 7.2.

Website: www.CoolVan.co.uk or such other website(s) as may be operated by CoolVan from time to time.

1.2 In these Terms, the following rules of interpretation apply:

- (a) a person includes a natural person, corporate or unincorporated body (whether or not having a separate legal personality);
- (b) a reference to a party includes its personal representatives, successors and permitted assigns;
- (c) a reference to legislation or legislative provision:
 - (i) is a reference to it as amended or re-enacted; and
 - (ii) shall include all subordinate legislation made under that legislation or legislative provision from time-to-time;
- (d) any words following the terms including, include or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms;
- (e) a reference to writing or written includes email but not fax; and
- (f) any party shall include that party's personal representatives, successors and permitted assigns.

1.3 If there is any ambiguity, conflict or inconsistency in or between the documents comprising the Agreement, the priority of the documents (to the extent of such ambiguity, conflict or inconsistency) shall be in accordance with the following sequence:

- (a) the Proposal; and
- (b) the Terms.

2. Commencement and duration

2.1 These Terms apply to the exclusion of any other terms that the Customer seeks to impose or incorporate (whether within an Order or otherwise), or which are implied by law, trade custom, practice or course of dealing.

2.2 The Proposal shall remain valid for a period of 30 days from the date specified on it (Order Period). Where the Customer accepts the position within the Proposal, it shall be required to raise an Order during the Order Period.

2.3 The Order consists an offer by the Customer to purchase the Supply in accordance with these Terms. The Customer is responsible for ensuring that the

terms of the Proposal and the Order (and any applicable Specification) are complete and accurate in every respect.

2.4 CoolVan may accept or reject the Order at its absolute discretion and for any reason whatsoever. The Order shall only be deemed to be accepted at the earlier of when CoolVan:

- (a) commences with the supply of the Supply; or
- (b) issues a written Order Confirmation,

at which point the Agreement shall come into existence.

2.5 CoolVan reserves the right to amend the Specification, if:

- (a) required by Applicable Laws; or
- (b) the amendment will not materially affect the nature or quality of the Supply, and CoolVan shall notify the Customer in any such event.

2.6 Following the coming into existence of the Agreement in accordance with clause 2.4, the Order may not be cancelled by the Customer except with the prior written agreement of CoolVan. Without prejudice to any further terms that may be agreed between the parties, any such agreement is on the basis that the Customer shall indemnify CoolVan in full against all Losses (which for the purpose of this clause shall include the cost of labour and materials, damages, charges, expenses, loss of profit, loss of business, loss of goodwill, loss of business opportunity, loss of anticipated saving and any other indirect, special or consequential loss) incurred by CoolVan as a result of the cancellation.

2.7 Any samples, drawings, descriptive matter or advertising produced by CoolVan and any descriptions or illustrations contained in the Promotional Materials made available are produced for the sole purpose of giving an approximate idea of the element of the Supply referred to therein (each to the extent applicable). The Promotional Materials shall not form part of the Agreement nor have any contractual force.

3. general obligations of the customer – special attention is drawn to this clause

3.1 The Customer is responsible for ensuring and warrants that:

- (a) any information provided to CoolVan so as to enable it to prepare the Proposal (including without limitation, any information regarding the Customer Vehicle);
- (b) the terms of the Proposal; and
- (c) any applicable Specification,

are complete, true, accurate and suited to the Customer's specific requirements in every respect.

3.2 The Customer shall:

- (a) fully co-operate with CoolVan in connection with any and all reasonable requests connected with the Supply and these Terms;
- (b) provide CoolVan in a timely manner with any information reasonably required by CoolVan from time-to-time in connection with the performance of its obligations under these Terms;
- (c) obtain and maintain all necessary licences, consents, authorisations and permissions as are required to enable CoolVan to perform its obligations in respect of the Supply; and
- (d) comply with all Applicable Laws to enable CoolVan to perform its obligations in respect of the Supply.

3.3 The Customer warrants, represents and undertakes that it shall ensure that the Product(s) or Converted Vehicle(s) (as the case may be) are operated in a proper manner, in accordance with any Operating Instructions or good industry practice (in the absence of the same) and agrees and acknowledges that CoolVan shall have no responsibility or liability where any issue with the Products or a Converted Vehicle results from its failure to do so.

Installation Services

3.4 Where the Supply comprises the provision of Installation Services, the Customer warrants and represents that it:

- (a) is the legal owner of the Customer Vehicle; or
- (b) has obtained prior written consent from the legal owner of the Customer Vehicle (as determined at the DVLA) for the modification of the Customer Vehicle and the provision of the Installation Services.

3.5 The Customer shall:

- (a) deliver to CoolVan's Premises the Customer Vehicle(s) in a timely manner, at times and dates notified to it by CoolVan in writing;
- (b) ensure that the Customer Vehicle(s) is clean and free from any debris, rubbish, spare components and hazardous materials or substances;
- (c) deliver to CoolVan proof of ownership of the Customer Vehicle, including but not limited to any copies of vehicle titles or registration issued by the DVLA and any other information or documentation requested by CoolVan in respect of the Customer Vehicle; and

(d) provide CoolVan with access to each Customer Vehicle (including by providing at least one key).

3.6 Where the Customer fails to comply with the requirements of clause 3.5(b), CoolVan shall invoice the Customer a removal fee of £100 + VAT for the removal of any relevant components. CoolVan shall use its reasonable endeavours to notify the Customer for the collection of any spare components, but may, at its absolute discretion, dispose of any components or spare parts as it sees fit.

3.7 Any services supplied by CoolVan in accordance with the Products, which do not form part of the Installation Services, for the ongoing servicing and maintenance of the Converted Vehicles or Customer Vehicles into which the Products have been installed by a party other than CoolVan, shall be governed by a separate service contract.

Customer Default

3.8 If CoolVan's performance of any of its obligations under these Terms is prevented or delayed by any act or omission by the Customer or any failure by the Customer to perform any relevant obligation (Customer Default):

(a) without limiting or affecting any other right or remedy available to it, CoolVan shall have the right to suspend performance of the Supply (whether or not directly affected by the Customer Default) and to rely on the Customer Default to relieve it from the performance of any of its obligations under these Terms until such time as the Customer remedies the Customer Default,;

(b) CoolVan shall not be liable for any Losses suffered or incurred by the Customer arising directly or indirectly from CoolVan's failure or delay to perform any of its obligations under these Terms; and

(c) the Customer shall indemnify CoolVan on written demand for any Losses sustained or incurred by CoolVan arising directly or indirectly from the Customer Default.

4. Product(s)

4.1 Subject to clause 4.2, the Product(s) shall in all material respects, be delivered as described in the Proposal, as modified by any applicable Specification.

4.2 Any weight and measurements included in the Specification shall be approximate only, and may vary in accordance with relevant manufacturing tolerances.

4.3 If, due to a Force Majeure Event, CoolVan is unable to supply a particular item of Product(s), CoolVan will notify the Customer. CoolVan will use reasonable endeavours to replace it with an item of equivalent standard and value or otherwise advise when the Product(s) will be available for supply.

5. converted vehicles – installation and commissioning

5.1 Where the Supply comprises the provision of Installation Services, CoolVan warrants that the Installation Services performed by it shall in all material respects:

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- conform to any agreed Specification; and
- be executed with reasonable skill and care and by appropriately qualified and experienced personnel.

5.2 Provided always that any Installation Date(s) shall be estimates only, CoolVan shall use reasonable endeavours to carry out the Installation Services on or by (as the case may be) the agreed Installation Date(s). Time for completion of the Installation Services in accordance with the Installation Date(s) is not of the essence.

5.3 If CoolVan cannot carry out the Installation Services on or by (as the case may be) the Installation Date(s) then it shall notify the Customer as soon as reasonably practicable and an alternative date(s) shall be arranged.

5.4 On CoolVan's completion of the Installation Service(s), it shall make the Converted Vehicle available to the Customer in accordance with clause 6.

5.5 Acceptance of the Converted Vehicle(s) by the Customer's representative shall constitute conclusive evidence that the Customer has, following CoolVan's performance of the Installation Services, has or had the opportunity to examine, inspect and test the:

- (a) operability of the Converted Vehicle(s) in line with the Specification;
- (b) condition of the Converted Vehicle(s) so as to ascertain whether it is in good condition, fully functional and fit for the purpose for which it is intended; and
- (c) Installation Services as having been delivered in accordance with these Terms.

5.6 If required by CoolVan, the Customer's authorised representative shall sign a receipt confirming its acceptance of the Converted Vehicle(s).

6. Delivery– special attention is drawn to this Clause

6.1 CoolVan shall deliver the Product(s) and/or Converted Vehicle(s) to the Delivery Location.

6.2 Where the Customer is to collect the Product(s) and/or Converted Vehicle(s) from the Delivery Location, the Customer shall collect the Product(s) and/or Converted Vehicle(s) from CoolVan's Premises at the time notified by CoolVan in writing. The Customer shall collect any Product(s) and/or Converted Vehicle(s) within

Business Hours on the day that CoolVan notifies the Customer that the Product(s) and/or Converted Vehicle(s) are ready to be collected. The Customer warrants that it shall comply with all reasonable instructions provided by CoolVan in relation to the collection of the Product(s).

6.3 Delivery is completed on:

(a) the unloading of the Product(s) and/or Converted Vehicle(s) at the Delivery Location; or

(b) where the Customer is to collect the Product(s) and/or Converted Vehicle(s) in accordance with clause 6.2, on the earlier of:

(i) the Customer taking control of the Product(s) and/or Converted Vehicle(s) at CoolVan's Premises; or

(ii) one (1) Business Day after the collection day nominated by CoolVan to the Customer in writing.

6.4 In making physical delivery of the Product(s) at the Delivery Location (which is not CoolVan Premises), the Customer shall provide CoolVan, or any agent or courier instructed on its behalf, with safe and unrestricted access to, movement around, and egress from the Delivery Location. CoolVan shall ensure that each delivery of the Product(s) and/or Converted Vehicle(s) is accompanied by a delivery note that shows all relevant Customer and CoolVan reference numbers, the type and quantity of the Product(s) and/or Converted Vehicle(s) and, if the Product(s) and/or Converted Vehicle(s) are being delivered by instalments, the outstanding balance of the Product(s) and/or Converted Vehicle(s) remaining to be delivered.

6.5 Any dates quoted for delivery are estimates only, and the time of the delivery is not of the essence under these Terms.

6.6 If the Customer fails to:

(a) accept delivery of the Product(s); or

(b) collect the Converted Vehicle(s),

within one (1) Business Day of CoolVan attempting to make delivery of the Products or notifying the Customer that the Converted Vehicle(s) is ready for collection (as the case may be), then, except where such failure or delay is caused by a Force Majeure Event or CoolVan's failure to comply with its obligations under these Terms:

(a) delivery of the Product(s) and/or Converted Vehicle(s) shall be deemed to have been completed; and

(b) CoolVan shall store the Product(s) and/or Converted Vehicle(s) until actual delivery takes place and, at its absolute discretion, charge the Customer for all

related costs and expenses (including insurance, which CoolVan may take out at its absolute discretion).

6.7 If ten (10) Business Days after the day on which CoolVan attempted to make delivery of the Product(s), CoolVan may resell or otherwise dispose of Product(s) forming part or all of the Supply and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Supply or charge the Customer for any shortfall below the price of the Product.

6.8 CoolVan may deliver the Product(s) and/or Converted Vehicle(s) in instalments, which shall be invoiced and paid for separately. Any delay in delivery or defect in instalments shall not entitle the Customer to cancel any other instalment.

7. QUALITY, inspection and acceptance – special attention is drawn to this Clause

7.1 This clause only applies in connection with Product(s) that is supplied and/or been the subject of any Installation Services by CoolVan and does not apply to the general functionality, operation or performance of any Customer Vehicle (or any part thereof) which has not been subject to the Supply.

7.2 CoolVan warrants that (as the case may be), on completion of:

- (a) delivery, where CoolVan is not performing Installation Services in connection with the Product(s); or
- (b) the Installation Services, where CoolVan is performing Installation Services in connection with the Product(s),

and for a period of 36 months thereafter (Warranty Period), the Products shall:

- (c) subject to the Customer's general warranty at clause 3.1, conform in all material respects with its description and any applicable Specification;
- (d) be free from material defects in design, material and workmanship;
- (e) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979); and
- (f) be fit for any purpose held out by CoolVan.

The Warranty Period shall be extended in respect of any aspects of the Converted Vehicle which are not manufactured by CoolVan by a period equivalent to that offered by the OEM, subject at all times to any terms and conditions set forth by that OEM and the Customer's compliance therewith.

7.3 If the Customer gives notice in writing to CoolVan at any time during the Warranty Period that it alleges a breach of the warranties set out in clause 7.2 (Warranty Breach), then the Customer agrees to:

- (a) provide CoolVan and any third party instructed on CoolVan's behalf with a reasonable opportunity of examining the Product(s) and any corresponding Converted Vehicle in question, together with any documentation, information, and materials as may reasonably be requested by CoolVan; and
- (b) return the Products and corresponding Converter to CoolVan's Premises at its own cost (or if requested to do so by CoolVan, allow CoolVan or any third party instructed on CoolVan's behalf to collect the Product(s) and any corresponding Converted Vehicle for further inspection),

in order for CoolVan to investigate the Warranty Breach.

7.4 Where CoolVan agrees that there has been a Warranty Breach, CoolVan shall, at its option:

- (a) repair or replace the defective Product(s); and/or
- (b) reperform any defective Installation Services; and/or
- (c) otherwise refund a proportionate amount of the Charges.

7.5 Where CoolVan does not agree that there has been a Warranty Breach, CoolVan shall:

- (a) provide the Customer with written reasons for determining such;
- (b) in respect of Product(s) and/or Converted Vehicle(s) that CoolVan has collected for further inspection under clause 7.3(b), return such Product(s) and/or Converted Vehicle(s) to the Customer on a date to be agreed (not later than five (5) Business Days thereafter) between the parties (and clause 6.3 shall apply to such return); and
- (c) be entitled to levy an additional charge on the Customer for any inspection, collection, return and other support provided under this clause 7.

7.6 CoolVan shall not be liable for the Product(s) failure to comply with the warranties contained in clause 7.2 if:

- (a) the Customer makes any further use of such Product(s) and/or Converted Vehicles after giving notice in accordance with clause 7.3;
- (b) the defect arises:
 - (i) because the Customer (or anyone acting under its authority or direction) failed to follow the Operating Instructions or good industry practice (in the absence of the same); or
 - (ii) as a result of a third party manufacturer's defect or any other damage or defect in relation to the Customer Vehicle (or part thereof), which are independent to, and have not been subject to the Installation Services;

- (iii) as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions;
- (iv) as a result of CoolVan following any drawing, design or Specification supplied by the Customer;
- (c) the Customer alters or repairs such Product(s) without the written consent of CoolVan;
- (d) any third party installation services provided in relation to the Products which are not included within the Supply;
- (e) the Product(s) differs from the Specification as a result of changes made to ensure it complies with Applicable Laws in accordance with clause 2.5(a); or
- (f) the defect arises due to any other Customer Default.

7.7 Except as provided in this clause 7, CoolVan shall have no liability to the Customer in respect of the Product(s) failure to comply with any warranties provided under these Terms.

8. TITLE AND RISK – special attention is drawn to this CLAUSE

8.1 The risk in the Product(s) and/or Customer Vehicles shall pass to the Customer upon completion of delivery in accordance with clause 6.3.

8.2 Title to the Product(s) shall not pass to the Customer until CoolVan receives payment in full (in cash or cleared funds) for the Product(s) and any other element of the Supply in respect of which payment has become due, in which case title to the Product(s) shall pass at the time of payment of all such sums.

8.3 Until title to the Product(s) has passed to the Customer, the Customer shall:

- (a) where applicable, store the Product(s) separately from all other product held by the Customer so that they remain readily identifiable as CoolVan's property;
- (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Product(s);
- (c) maintain the Product(s) in satisfactory condition and keep it insured against all risks for their full price from the date of delivery;
- (d) notify CoolVan immediately if it becomes subject to any of the events listed in clause 13.1(a) to clause 13.1(f); and
- (e) give CoolVan such information as CoolVan may reasonably require from time to time relating to:
 - (i) the Product(s); and
 - (ii) the ongoing financial position of the Customer.

9. Charges and payment – special attention is drawn to this clause

9.1 The Charges payable under these Terms shall be as set out in the Proposal.

9.2 The Customer shall pay all Charges due to CoolVan in accordance with the payment terms detailed in the Proposal. If no such terms are specified, CoolVan shall invoice the Customer for the Supply at any time after the Agreement is entered into.

9.3 Any invoice submitted by CoolVan to the Customer shall be payable within thirty (30) days of the date of the invoice to which those Charges relate. Time for payment of the Charges shall be of the essence.

9.4 The Charges are exclusive of amounts in respect of VAT. The Customer shall on receipt of a valid VAT invoice from CoolVan, pay to CoolVan such additional amounts in respect of VAT as are chargeable in connection with the Supply.

9.5 If the Customer fails to make any payment due to CoolVan under these Terms by the due date for payment, then:

(a) the Customer shall pay interest on the overdue amount at the rate of 8% per annum above the Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date until the actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount; and

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- CoolVan may suspend all or part of the Supply (including any part that is unaffected by the Customer's failure to make payment) until payment has been made in full.

9.6 The Customer shall pay all amounts due under these Terms in full and without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law).

9.7 CoolVan may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable (or any other liability) on behalf of CoolVan to the Customer.

10. Liability AND INDEMNITY – special attention is drawn to this clause

10.1 Neither party excludes or limits liability to the other party for:

- (a) fraud or fraudulent misrepresentation;
- (b) death or personal injury caused by negligence; or

(c) any matter in respect of which it would be unlawful to exclude or restrict liability.

10.2 Subject to clause 10.1:

(a) CoolVan shall under no circumstances whatsoever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any:

- (i) loss of profit;
- (ii) loss of goodwill;
- (iii) loss of business;
- (iv) loss of business opportunity;
- (v) loss of anticipated saving;
- (vi) loss or corruption of data or information; or
- (vii) indirect, special or consequential Loss,

that arises under or in connection with these Terms; and

(b) CoolVan's total liability to the Customer in respect of all other Losses arising under or in connection with these Terms, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the total Charges actually paid by the Customer to CoolVan in the preceding 12 months under this Agreement in connection with the Supply.

10.3 In light of the commitments provided by CoolVan to the Customer in respect of the Supply under these Terms, the terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and section 3, 4 and 5 of the Supply of Goods and Services Act 1982 and all other express or implied warranties or conditions, including implied warranties or conditions of satisfactory quality and fitness for a particular purpose (each to the extent applicable) are, to the fullest extent permitted by law, excluded from these Terms.

10.4 The Customer shall indemnify CoolVan, keep CoolVan indemnified and hold CoolVan harmless for and against any and all Losses suffered or incurred by CoolVan howsoever arising out of or in connection with the Customer's performance, or failure to perform, its obligations under these Terms, whether such Losses arise under contract, tort (including negligence and breach of statutory duty), misrepresentation (whether innocent or negligent), restitution or otherwise and whether the same are direct, indirect, special or consequential including any loss of profits, contract, business, revenue, goodwill or reputation or any other pure economic loss, loss or corruption of data or information.

11. Intellectual property rights

11.1 The parties agree that any and all Intellectual Property Rights in or arising out of or in connection with the Supply (or any part thereof), shall be owned by CoolVan (or its licensors) and that for the avoidance of doubt any and all Intellectual Property Rights remain in the possession of CoolVan (or its licensors) at all times, do not transfer to the Customer under these Terms.

11.2 The Customer shall not, whether by act or omission, do anything which is inconsistent or contradictory with the ownership by CoolVan of any Intellectual Property Rights referred to in clause 11.1.

11.3 CoolVan makes no warranties or representations and provides no assurances to the Customer that the Supply shall not breach the rights (including Intellectual Property Rights) of third parties).

12. Confidentiality

12.1 Each party agrees and undertakes that it shall maintain the confidentiality of and will not use for its own purposes nor without the prior written consent of the other party disclose to any third party the other party's Confidential Information and shall not, without the prior written consent of the other party, use, disclose, copy or modify such Confidential Information or permit others to do so other than as necessary for the performance of its right and obligations under these Terms.

12.2 Each party shall:

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- disclose the other party's Confidential Information only to those of its officers, employees, agents and contractors to whom and to the extent to which such disclosure is necessary for the purposes contemplated under these Terms, and
- to procure that such persons are made aware of and agree in writing to observe the obligations in this clause.

12.3 Each party shall:

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- give notice to the other party of any unauthorised misuse, disclosure, theft or loss of its Confidential Information immediately upon becoming aware of the same;
- take all reasonable steps to maintain the confidentiality of the Confidential Information;

- maintain adequate security measures to safeguard the Confidential Information from theft, and from access by any person other than as permitted by these Terms;
- promptly bring to the other party's attention any infringement of its rights in, or any unauthorised use of, the Confidential Information, which it becomes aware of.

12.4 The provisions of this clause shall not apply to information which is:

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- or comes into the public domain through no fault of the recipient, its officers, employees, agents or contractors;
- lawfully received by the other party from a third party free of any obligation of confidence at the time of its disclosure;
- independently developed by the recipient, without access to or use of such information; or
- required by Applicable Law, by court or governmental or regulatory order to be disclosed provided that the other party is, where possible, notified at the earliest opportunity.

12.5 Whilst CoolVan may publicly announce that a business relationship has been entered into with the Customer, CoolVan shall not otherwise be permitted to publish or announce any Confidential Information relating to the Customer without the Customer's prior written consent.

13. termination – special attention is drawn to this clause

13.1 Without limiting its other rights or remedies, CoolVan may terminate the Agreement (in whole or any part of it) with immediate effect by giving written notice to the Customer if:

- (a) the Customer fails to pay any amount due under these Terms on the due date for payment and remains in default not less than five (5) Business Days after being notified to make such payment;
- (b) the Customer commits a material breach of any term of these Terms and (if such a breach is remediable) fails to remedy that breach within ten (10) Business Days of that party being notified in writing to do so;
- (c) the Customer repeatedly breaches any of the terms of these Terms in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to perform these Terms;

- (d) the Customer 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), obtaining a memorandum, 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;
- (e) the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or
- (f) the Customer's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of these Terms is in jeopardy.

13.2 Without limiting its other rights or remedies, CoolVan may suspend the provision of the Supply or its obligations under any other contract between the Customer and CoolVan if any of the events listed in clause 13.1(a) to clause 13.1(f) take place, or CoolVan reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under these Terms on the due date for payment, without liability to the Customer.

13.3 On termination or expiry of these Terms for any reason:

- (a) the Customer shall immediately pay to CoolVan all of CoolVan's outstanding unpaid invoices and interest and, in respect of the Supply but for which no invoice has been submitted, CoolVan shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- (b) any provision of these Terms that expressly or by implication is intended to come into or continue in force on or after termination of these Terms shall remain in full force and effect;
- (c) any licence granted by CoolVan to the Customer under these Terms shall immediately terminate; and
- (d) the Customer shall return to CoolVan all documents and materials (and any copies) containing CoolVan's Confidential Information and, to the extent possible, erase any such Confidential Information from its computer systems

13.4 Termination (howsoever arising) or expiry of these Terms, shall not affect any of the parties' rights and remedies that have accrued at termination, including the right to claim damages in respect of any breach of these Terms which occurred at or before the date of termination or expiry.

14. Data Protection

In performing its respective obligations under these Terms, each party shall comply with the Data Protection Legislation. Without limiting its rights under the Data

Protection Legislation, CoolVan shall process personal data relating to the Customer in accordance with CoolVan's Privacy Policy made available via its Website or otherwise notified to the Customer from time to time.

15. Force majeure

15.1 If a party is prevented, hindered or delayed in or from performing any of its obligations (except a payment obligation) under the Agreement by a Force Majeure Event (Affected Party), the Affected Party shall not be in breach of the Agreement or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.

15.2 The corresponding obligations of the other party will be suspended, and its time for performance of such obligations extended, to the same extent as those of the Affected Party.

15.3 If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than 6 months the party not affected by the Force Majeure Event may terminate the Agreement by giving 4 weeks' written notice to the Affected Party.

15.4 This clause 15 shall not apply in respect of the Customer's obligation to pay the Charges to CoolVan in connection with the Supply.

16. Assignment

16.1 CoolVan may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with (Transfer) all or any of its rights or obligations under these Terms.

16.2 The Customer may not Transfer any or all of its rights or obligations under these Terms without the prior written consent of CoolVan, which CoolVan may withhold or provide subject to conditions.

17. Notices

17.1 Any notice or other communication given to a party under or in connection with these Terms shall be in writing and shall be:

(a) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or

(b) sent by email to contact details specified in the Proposal or otherwise as notified previously by that party.

17.2 Any notice shall be deemed to have been received, if:

(a) delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;

(b) sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service; or

(c) sent by email, at 9.00 am on the next Business Day after transmission.

17.3 This clause does not apply to service of any proceedings or other documents in any legal action, or where applicable, any arbitration or other method of dispute resolution.

18. Entire agreement

18.1 The Agreement constitutes the entire agreement between the parties and to the exclusion of any other terms that the other party seeks to impose or incorporate, or which are implied by trade, custom, practice or dealing and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

18.2 Each party acknowledges that in entering into the Agreement it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in these Terms.

18.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in these Terms.

19. Variation

No variation of the Agreement (or these Terms) shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

20. WAIVER

20.1 No failure or delay by a party to exercise any right or remedy provided under the Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.

20.2 No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

21. Severance

21.1 If any provision or part-provision of these Terms is or becomes invalid, illegal or unenforceable, it shall 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 shall be deemed deleted. Any

modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of these Terms.

21.2 If any provision or part-provision of these Terms is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

22. No partnership or agency

22.1 Nothing in these Terms is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

22.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

23. Third-party rights

23.1 The Agreement does not give rise to any rights under the Contract (Rights of Third Parties) Act 1999 to enforce any term of the Agreement

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

24. Multi-tiered dispute re Supply procedure

If a dispute arises out of or in connection with this Agreement or the performance, validity or enforceability of it, excluding any dispute that solely relates to the Customer's payment of the Charges, (Dispute) then, except as expressly provided in this Agreement, the parties may at their discretion follow the procedure set out in this clause:

(a) either party shall give the other written notice of the Dispute, setting out its nature and full particulars (Dispute Notice), together with the relevant supporting documents. On service of the Dispute Notice, employees at management level (or the nearest equivalent) of the parties shall attempt in good faith to resolve the Dispute;

(b) if the management level employees are for any reason unable to resolve the Dispute within Thirty (30) days of service of the Dispute Notice, the Dispute shall be referred to the directors of the parties who shall attempt in good faith to resolve it;

(c) if the directors of the parties are for any reason unable to resolve the Dispute within thirty (30) days of it being referred to them and the Customer is not registered in the United Kingdom, the parties will attempt to settle by mediation;

(d) the parties shall have recourse to mediation in accordance with the International Chamber of Commerce's (ICC) Mediation Rules (Rules), which are deemed to be incorporated by reference into this clause;

(e) if the Dispute is not settled by mediation within thirty (30) days of the commencement of the mediation, or such further period as the parties shall agree in writing, the Dispute shall be submitted to the International Court of Arbitration of the ICC whose seat shall be London and shall be finally settled under the Arbitration Rules, of the ICC (Arbitration Rules) by one or more arbitrators appointed in accordance with the Arbitration Rules. The Emergency Arbitrator Provisions under the Arbitration Rules shall not apply;

(f) this clause 24 shall take the form of an arbitration agreement and is governed by the law of England and Wales.

(g) The language to be used in the mediation and in the arbitration shall be English.

(h) if the directors of the parties are for any reason unable to resolve the Dispute within thirty (30) days of it being referred to them and the Customer is registered in the United Kingdom, the parties may commence court proceedings under clause 26 in relation to whole or part of the Dispute.

25. Governing law

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

26. Jurisdiction

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Agreement or its subject matter or formation (including non-contractual disputes or claims).

Installation Date(s): shall mean the date(s) specified in the Proposal (or otherwise agreed between the parties in writing) on or by which the Installation Services shall take place.