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## 1. Document Approval

Role	Sponsor	Approver
Name	Stuart Parris	Phil Brompton
Title	Managing Director	Director
Date	04/09/2018	04/09/2018

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### 3. Definition of Terms

The Buyer's attention is in particular drawn to the provisions of Clause 22.

In these Terms

- 3.1. "Company" shall mean Powrmatic Limited whose registered office is at Hort Bridge, Ilminster, Somerset, TA19 9PS.
- 3.2. "Buyer" shall mean the person, firm or company with whom the Contract is made or from whom an order is received by the Company.
- 3.3. "Contract" shall mean any contract between the Company and the Buyer for the sale and purchase of the Goods.
- 3.4. "Delivery" shall, unless otherwise agreed with the Buyer, mean ex-works when the Goods are made available for collection by the Buyer (whether or not the Buyer collects the Goods when made available) or when the Goods are put into storage at the request of the Buyer. The Goods are deemed to have been delivered whether or not they have been signed for by the Buyer or the Buyer's agent.
- 3.5. "Goods" shall mean the goods agreed in the Contract to be supplied to the Buyer by the Company and shall include all units, parts, accessories, repairs and related services covered by the Contract. If the Company agrees to provide commissioning or other services under a separate contract with the Buyer, these Terms (including without limitation Clause 22) shall for all purposes so far as the context admits apply as if such services were included in this definition of Goods.
- 3.6. "Heating Products" shall mean Goods which are designed for the purpose of warming air, or circulating warm air, and include but are not limited to those products listed in the Company's Powrmatic Limited Heating Published Industrial and Commercial Heating and Heat Exchange Module (HEM) Price Lists from time to time.
- 3.7. "Ventilation Products" shall mean Goods which are designed for the purpose of providing natural, forced or smoke control ventilation.
- 3.8. "Cooling Products" shall mean goods which are essentially designed for the purpose of providing comfort cooling with or without supplementary heating and specifically limited to those products supplied under the Midea, Vision, Climapac and Coolair brand names.
- 3.9. "Standard Products" shall mean those goods which the Company supplies to a standard specification, material and colour and specifically -
  - 3.9.1.1. Heating Product ranges designated as NVx, NVS, VPC, OUH and CPx;
  - 3.9.1.2. Ventilation Product ranges PV, PJ and PVe;
  - 3.9.1.3. All Cooling Products;
- 3.10. "Bespoke Products" shall mean those Goods which the Company supplies not of a standard specification, material and colour including, but not limited to -
  - 3.10.1.1. Heating Products designated NVx EA, CPxEA, CP+, TE, HEM-SL and HEM-NVx;
  - 3.10.1.2. Ventilation Products designated Opensky, Skyvent, Ultrasky, Naturalsky, Heatflow, Ridge Vent, Louvres, PGV, Krystalite, Sterling and SLV;

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- 3.11. "The Bribery Act" means The Bribery Act 2010 enacted by The Parliament of the United Kingdom on the 1st July 2011
- 3.12. A reference to a law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment thereof and includes any subordinate legislation for the time being made under it. Words in the singular mean the plural and in the plural include the singular. Clause headings do not affect the interpretation of these Terms.

#### **4. Application of Terms**

- 4.1. These Terms shall apply to all contracts of sale by the Company, whether such contracts are concluded orally or in writing, shall take precedence over all other terms and conditions of sale previously issued by the Company and shall apply to the exclusion of all terms or conditions of purchase or other conflicting terms or conditions which may be issued, provided or referred to by the Buyer, except insofar as variations are expressly accepted in writing by a Director of the Company. Company employees do not have authority to vary these Terms except where such variations are in writing signed by a Director of the Company.
- 4.2. These Terms shall apply not only to the Contract but also to all orders subsequently placed by or on behalf of the Buyer with the Company. The remedies available to the Company for breach or non-observance of these Terms by the Buyer shall be available to the Company in the event of the Buyer breaching any terms and conditions under any collateral or separate contracts between the Buyer and the Company in force at the date of acceptance of the order to which these Terms apply. The benefits available to the Company under the Contract shall apply to any associated or subsidiary company of the Company that is in contractual relationship with the Buyer.
- 4.3. The placing of an order based on a quotation or tender supplied by the Company means acceptance of these Terms notwithstanding that the Buyer may for his own administrative convenience issue a standard form of purchase order or other document setting out other terms and conditions. The Buyer accepts that such a purchase order shall not serve to incorporate such other terms and conditions into this or any other contract with the Company.
- 4.4. The Buyer's offer to purchase any goods or services from the Company must be notified to the Company in writing and such written confirmation or the acceptance by the Buyer of the goods or services concerned (whichever is the earlier) shall constitute acceptance by the Buyer of these Terms. The Company is not obliged to accept any order.
- 4.5. Notwithstanding the above, quotations and tenders by the Company are deemed to be invitations to treat and shall not be offers in law. No contract shall come into existence between the Buyer and the Company until the Buyer is in receipt of the Company's express acceptance, which shall take the form of an official order acknowledgement. Receipt of an order acknowledgement shall be a condition precedent to the existence of a contract between the Buyer and the Company. The Buyer shall ensure that the terms of its order and any applicable specification provided by the Buyer are complete and accurate and shall check that the Company's order acknowledgment and invoice correspond with the Buyer's order.
- 4.6. If any provision of these Terms is held by any court in England and Wales to be invalid or unenforceable in whole or in part the validity of the other provisions of these Terms and the remainder of the provision in question shall not be affected thereby.

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## 5. Breach by the Buyer

If the Buyer breaches any of these Terms and fails to remedy such breach within 30 days when requested to do so by the Company, the Company reserves the right to stop any work in progress, to stop or recall deliveries, to recover any Goods already delivered and to terminate the Contract by written notice to the Buyer. Where materials have been purchased or work performed specifically for the execution of the Contract, the Company reserves the right to charge for such materials or work. These rights are without prejudice to any of the Company's other rights and remedies under the Contract.

## 6. Prices

- 6.1. Unless otherwise agreed by the Company in writing, the price of Heating and Cooling Products will be the prices set out in the Company's price list valid on the date of Delivery or deemed Delivery less any trade discount that has been agreed in writing between the Buyer and the Company. The price for Heating and Cooling Products which have not been purchased against the published price list, and for all other Goods, will correspond with the original quotation price plus the cost of any subsequent variations.
- 6.2. The Company reserves the right unilaterally to increase its prices in its absolute discretion by notice to the Buyer prior to Delivery if orders are received for quantities less than those quoted for or if Delivery is required in smaller instalments than those quoted for.
- 6.3. Any quotation or tender is valid for the period of ninety days only from its date, provided that the Company has not previously withdrawn it.

## 7. Variation Costs, Storage Charges and Other Additional Costs

- 7.1. The Buyer agrees to pay for any loss or extra cost incurred by the Company through the Buyer's lack of instructions or inaccurate or inadequate instructions or drawings or the Buyer's failure to take Delivery or delay in taking Delivery, or through the Buyer's failure to comply with any contractual term, or through any request or act or default on the part of the Buyer or the Buyer's employees servants or agents. In particular the Buyer will pay for any work carried out by the Company at the Buyer's request not being work that the Company originally contracted to undertake.
- 7.2. Unless otherwise agreed in writing or set out in the Company's tender or quotation, the Prices quoted for the Goods will be on an ex works basis and exclusive of delivery and off-loading charges and such costs shall be payable in addition.
- 7.3. Unless otherwise expressly stated, all prices are exclusive of VAT which will be payable in addition at the prevailing rate and of all other charges, duties, fees or taxes.
- 7.4. If the Buyer does not arrange for despatch or storage within seven days of the date notified by the Company for Delivery, the Company may arrange storage at its own premises or elsewhere on behalf of the Buyer and the Buyer shall be liable for the costs of storage and insurance and all other associated costs.
- 7.5. Where the Buyer requests the Company to carry out any work of maintenance, service, adjustment, modification, or similar work in connection with the Goods after Delivery and such work is not provided for in the order or under the contractual warranty and the Company in its discretion undertakes the work, such work and the Company's related expenses shall be paid by the Buyer in accordance with the Company's relevant rates current at the date of the work.
- 7.6. In the event of storage, Goods will be insured and the cost of insurance will be included in the storage charge.

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7.7. The Buyer shall be responsible and have all risks for off-loading the Goods from the carrier at the place of Delivery. For the avoidance of doubt, it is acknowledged that the place of Delivery may not be the place of installation of the Goods. The Company shall have no responsibility for the storage at or movement to or within the Buyer's place of delivery, warehouse or site. The Buyer will, at his own expense, provide convenient access to and about the site to which the Goods are to be delivered on roads or surfaces suitable for transporting the weight of the Goods and materials.

## 8. Terms of Payment

- 8.1. The Buyer agrees to make payment in full pursuant to the Contract, without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Buyer
- 8.2. Goods must be paid for using pro forma invoices issued prior to manufacture or by arranging a credit account with the Company. The Company reserves the right to withdraw the Buyer's credit facilities at any time and for any reason.
- 8.3. Goods purchased on pro forma invoices will be manufactured following full payment of the invoice. In all other cases Goods will be invoiced on Delivery.
- 8.4. Unless otherwise agreed by the Company in writing, payment is due in pounds sterling and terms of credit payment are strictly net cash due 30 days from the date of invoice. All payments should be sent to the address given on the invoice issued by the Company. No payment shall be deemed to have been received until the Company receives cleared funds.
- 8.5. The Company reserves the right to issue invoices in respect of Goods which have been made available to the Buyer in accordance with the Buyer's original delivery instructions but where the Buyer has failed to accept delivery or arrange collection within seven days of having been notified by the Company.
- 8.6. The Company reserves the right to issue interim invoices and claims to the value of any Goods supplied including units, parts, accessories, repairs and services.
- 8.7. The Company reserves the right to issue invoices electronically and transmit via email. Invoices transmitted via this media shall be deemed to be valid.
- 8.8. Time for payment is of the essence.
- 8.9. All payments payable to the Company under the Contract shall become immediately due on its termination despite any other provision.
- 8.10. If an account is in arrears the Company reserves the right to suspend all or any work in progress and to withhold any further deliveries until all monies due are paid to the Company, and all monies otherwise due to the Company from the Buyer (including without limitation for part performance of the Contract) shall be immediately payable. In the event of any delay arising from any act or default within the Buyer's control, the Company shall be entitled to payment of such a part of the contract price as is proportionate to the Company's obligations already performed under the contract together with any additional costs incurred by the Company but without prejudice to any other rights that the Company may have.

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- 8.11. Without prejudice to its other rights, the Company may both before and after judgment against the Buyer charge interest at 4 percent above the base lending rate of Royal Bank of Scotland (RBS) plc accruing on a daily basis until payment is made. The Company reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.
- 8.12. The Buyer shall not be entitled to withhold payment by reason of any alleged defect in the Goods. If the Buyer considers that the Goods are defective, the Buyer shall send full details of the complaint to the Company's registered office within five working days of discovery of the defect. The Company will investigate and repair or replace the Goods as necessary, in accordance with Clause 10 below. This undertaking by the Company in no way alters the Buyer's obligation to pay in accordance with the Company's payment terms set out in this Clause 8.

## 9. Cancellation or Amendment of Order

- 9.1. Cancellation or amendment of orders and/or the return of the Goods in whole or in part cannot be accepted without the Company's prior consent in writing. The Company reserves the right to refuse to accept cancellation or amendments or to accept cancellation or amendments only subject to conditions specified by the Company. Credit notes will not be issued for Goods returned in an unusable condition or if the Goods are returned without the prior agreement of the Company. Cancellations or amendments will only be accepted by the Company on the basis that all expenses incurred by the Company (calculated from receipt of the Buyer's order) will be repaid to the Company by the Buyer in full,
- 9.2. In the event that Goods, in whole or part, have been incorrectly ordered, supplied or are no longer required then they can be returned, subject to the conditions set out in these Terms, provided that said Goods remain unused, uninstalled, in as new condition, with all packaging and labelling intact and are returned to us within 30 days from date of purchase.
- 9.3. In the event that an order or item within an order: -
- 9.3.1. is cancelled and the cancellation refers to a Standard Product as defined in clause 4.9, the Buyer will be subject to a minimum charge of 25 percent of the price;
- 9.3.2. is cancelled and that cancellation is of a non-standard product line, including but not limited to Bespoke Products as defined in clause 4.10, the Buyer will be subject to a minimum charge equivalent to the sales value of materials purchased and work completed;
- 9.3.3. is amended and that amendment is of a Standard Product as defined in clause 4.9, the Buyer will be subject to a minimum charge equivalent to the costs associated with that amendment;
- 9.3.4. is amended and that amendment is of a non-standard product line, including but not limited to Bespoke Products as defined in clause 4.10, the Buyer will be subject to a minimum charge equivalent to the sales value of materials purchased and work completed or the costs associated with that amendment;
- 9.4. Due to risk of damage and the cost of returns processing, items of flue sold as part of Heating Product sales are not eligible for return.
- 9.5. Nothing in the above clauses shall prejudice any right of the Company to claim damages not specifically set out above where the cancellation of order amounts to a wrongful repudiation of the Contract.

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## 10. Warranties

10.1. In respect of Heating Products the Company undertakes as follows, subject to the conditions set out below: -

10.1.1. The Company undertakes to repair or replace any Goods or any part of any Goods in which a defect in materials or workmanship appears within the period of two years from the actual date of Delivery or, if earlier, the date of the Company's invoice in circumstances where the Company has been asked to store the Goods on its premises before Delivery. The first year of such period is referred to below as the "HP Initial Warranty Period").

10.1.2. The combustion chamber and/or heat exchanger which forms part of a Heating Product is warranted against a defect in materials or workmanship for a period of ten years commencing from the actual date of Delivery or, if earlier, the date of the Company's invoice in circumstances where the Company has been asked to store the Goods on its premises before Delivery. Where such defect is evident then the Company may at its discretion either replace or repair the defective component. In Year One, the HP Initial Warranty Period, and in Year Two following the HP Initial Warranty Period the liability is as set out in sub-clause 11.1 above. Thereafter, in Years Three to Ten, the liability is restricted to a time related contribution by the Company. Full details of the time related contribution are available from the Company's Service and After Sales Department

10.1.3. Subject to sub-clause 10.1.5, the cost of labour is covered by the Company's warranty in the HP Initial Warranty Period, but not thereafter, and is subject to the condition that it is at the Company's discretion whether to supply the services of its own employee or agent, or to authorise the Buyer to perform the services at the Company's cost. However the Company is not obliged to meet the costs of the performance of any services authorised or arranged by the Buyer unless the Company has agreed the amount of the cost in writing beforehand.

10.1.4. Specific items which form part of a Heating Product (including thermocouples, ignition electrodes, flame rectification probes, drive belts, fusible links, control batteries, oil burner nozzles and oil line filter elements) are excluded from guarantee or warranty because such items are considered consumables.

10.1.5. The Company's warranty in respect of high and low velocity de-stratification fans is limited to parts only and does not include labour or cost of labour.

10.2. In respect of Ventilation Products and other Goods other than Heating/Cooling Products, the Company undertakes as follows, subject to the conditions set out below and: -

10.2.1. The Company undertakes to repair or replace any Goods or any part of any Goods in which a defect in materials or workmanship appears within twelve months of the actual date of Delivery or, if earlier, the date of the Company's invoice in circumstances where the Company has been asked to store the Goods on its premises before Delivery (the "VP Initial Warranty Period").

10.2.2. The cost of labour is covered by the Company's warranty in the VP Initial Warranty Period, but not thereafter, and is subject to the condition that it is at the Company's discretion whether to supply the services of its own employee or agent, or to authorise the Buyer to perform the services at the Company's cost. However the Company is not obliged to meet the costs of the performance of any services authorised or arranged by the Buyer unless the Company has agreed the amount of the cost in writing beforehand.

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10.2.3. Specific items which form part of a Ventilation Product (including fusible links and batteries) are excluded from guarantee or warranty because such items are considered consumables.

10.3. In respect of Cooling Products the Company undertakes as follows, subject to the conditions set out below and: -

10.3.1. The Company undertakes to replace any Goods or any validated part of any Goods in which a defect in materials or workmanship appears within twelve months of the actual date of Delivery or, if earlier, the date of the Company's invoice in circumstances where the Company has been asked to store the Goods on its premises before Delivery (the "CP Initial Warranty Period").

10.3.2. In respect of Midea branded goods only the cost of labour is covered by the Company's warranty in the CP Initial Warranty Period, but not automatically thereafter, and is subject to the condition that the Company will authorise the Buyer to perform the services at the Company's cost and that the Buyer is competent to perform the services. However the Company is not obliged to meet the costs of the performance of any services authorised or arranged by the Buyer unless the Company has agreed the amount of the cost in writing beforehand.

Where the Company does authorise the Buyer to perform the services at the Company's cost then a Limited Labour Allowance shall apply at the rate ruling at the time of repair. Full details of the Limited Labour Allowance are available from the Company's Service and After Sales Department.

10.3.3. On expiry of the CP Initial Warranty Period Cooling Products are guaranteed for a further two years on a restricted and limited basis. This two year extension only relates to Midea branded goods and not to other Cooling Products. In years Two and Three the Company warrants to replace any validated defected part. Labour costs are specifically excluded.

10.4. Unless otherwise expressly agreed in writing, if any Goods fail to comply in a material respect with any standard design or standard specification of the Company for the Goods concerned, which in either case is current at the commencement of manufacture of the Goods and has been specified in the Contract, that failure shall constitute a defect for the purposes of and subject to the terms of Clause 10.1, 10.2 or 10.3.

10.5. Whilst the Company will endeavour to provide products either to its standard colour or finish or to a colour or finish of a specification provided by the buyer due to variations in base material to which the paint or finish is applied, potential shadings within the paint material itself and degradation due to use, atmospheric or environmental conditions, proximity to coastal locations, air pollution, ultra-violet radiation, damage or spillage then no representation is made in respect of colour, shade or matching.


10.6. The warranties set out above are subject to the following conditions: -

10.6.1. the Buyer must have informed the Company in writing of the defect as soon as practicable after the discovery of the defect;

10.6.2. the Buyer makes no further use of the defective Goods or part of the Goods after they are discovered to be defective;

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- 10.6.3. there are no outstanding sums due to be paid by the Buyer to the Company under the Contract;
- 10.6.4. the Goods or part thereof are the Company's own manufacture and the Buyer shall have complied in full with Clause 19.1 below;
- 10.6.5. the Company is given the necessary access and facilities for inspection, investigation and testing of the Goods or part thereof. Where the Company is required to provide labour during the HP Initial Warranty Period, the VP Initial Warranty Period and the CP Initial Warranty period the Buyer shall ensure that the Company's representative or agent has free and unencumbered site access during normal working hours and safe access to the relevant Goods including the free provision of any necessary access equipment;
- 10.6.6. the Goods or parts thereof, if stored at the Buyer's site, are kept in a dry secure location and protected from the elements and damage by third parties; and
- 10.6.7. the defective parts are promptly returned by the Buyer to the Company at the Buyer's expense. While the Company may invoice the Buyer for replacement parts sent out under the warranties in Clause 10.1 or 10.2 at the time of despatch, the Company will issue a credit against that invoice following return of the defective part within a reasonable period and validation by the Company of the defect. In the event that parts are not promptly returned to the Company, or if they prove not to be defective or any of the conditions attached to the warranty has not been satisfied, the Company reserves the right to require payment for the parts supplied and associated labour costs.
- 10.7. The Company's warranties in Clauses 10.1, 10.2 and 10.3 are limited to repair or replacement of defective parts (as applicable) and do not extend to other loss or damage arising from use of the Goods. They do not cover defects from any non-compliance with Clause 19 below or other improper handling, storage or installation, inadequate maintenance, incorrect operation, inadequate or improper commissioning, modifications or repairs carried out by third parties, water ingress from any source and/or mechanical damage or abuse.
- Adequate commissioning will only have deemed to have taken place provided that commissioning sheets will have been completed and returned to the Company within Four Weeks from date of Delivery.
- 10.8. The different warranties on individual equipment and parts, included components, supplied by the Company are as stated in clauses 10.1, 10.2 and 10.3 whilst the equipment and/or components remain and are operated in the original condition where they were installed. The moving, relocation or reinstallation of said equipment and/or components voids all warranties be they expressed, written or implied.
- 10.9. If the Goods are not of the Company's own manufacture, the Company shall use its reasonable endeavours to pass onto the Buyer the benefits obtained under any warranty given by the Company's supplier. The Company shall only be liable to the Buyer for defects in the Goods or components not of the Company's manufacture, to the extent of the Company's entitlement against the manufacturer or supplier of such goods or components.
- 10.10. The Company shall not be liable for any repair or replacement costs, where repairs or replacements are covered under this warranty but the Buyer has had such repairs or replacements carried out by third parties.

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10.11. Where the Company has supplied replacement parts subsequently fitted by the Buyer, the Buyer's agent, representative or customer then the Buyer shall have responsibility for ensuring that the parts are of the correct specification, are fitted, positioned adjusted and set in accordance with the data, detail and recommendations of both the manufacturer and/or the Company.

The Company shall not be liable for the misapplication of parts.

10.12. All guarantees and warranties are subject to the Goods or replacement parts having been applied, installed, commissioned, serviced and, maintained in accordance with good practice and the recommendations of the Company's installation, operation, commissioning and servicing guidelines.

### **11. Indemnity by Buyer**

The Buyer shall indemnify the Company and keep the Company fully and effectively indemnified against any and all liability, loss, costs, expenses, claims or proceedings, whatsoever (including any liability of the Company to any third party) whether for loss or damage to property or injury to or death of any person arising out of or in consequence of the manufacture of the Goods or any part of the Goods or the application of any process to the Goods or any part of the Goods, in compliance with any specification submitted by or with any instruction given by or any design of the Buyer.

### **12. Descriptions and Representations**

12.1. Illustrations, data, descriptions, performance figures and weights given in any of the Company's catalogues and statements made by any representative of the Company are provided merely to give the Buyer a general description of the Goods concerned and do not form the basis of any contractual liability. No warranty or condition that the Goods shall accord with such illustration, data, description, performance figures or statement is to be implied and any such warranty or condition capable of arising is hereby excluded.

12.2. Prior to the Company's formal acceptance of any order by the sending of an order acknowledgement, no quotation or written or oral communication made by the Company to the Buyer, nor any information about the price, availability, delivery, design, specification or description of the Goods given to the Buyer, shall have any contractual effect.

12.3. The Buyer acknowledges that it has not relied on any statement or representation made or given by or on behalf of the Company which is not set out in these Terms. Any such statement or representation which is not in these Terms shall be of no effect, unless the Buyer sets out that statement or representation in a document to be enclosed with its order and requests that it be made a term of the Contract and it is specifically agreed to in writing by a Director of the Company. Nothing in these Terms shall exclude or limit the Company's liability for fraudulent misrepresentation.

12.4. The Company pursues a policy of continuous development and reserves the right to make changes to Goods without prior notice.

### **13. Materials**

The Company shall use its standard materials whenever available and if not, shall substitute the most suitable alternatives available at the time of manufacture.

### **14. Free Issue Components and Controls**

If the Company enters into an agreement with the Buyer to fit and wire controls and or valves and/or any other components supplied by a third party, such items and other parts and information necessary for the fitting of such items must be delivered to the Company no less than two weeks ahead of the agreed date for commencement of manufacture. If the Buyer fails to comply with this

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condition the Company reserves the right to charge the Buyer for the costs of rescheduling and other associated costs. The Buyer recognises that late Delivery of free issue components and controls to the Company may affect the Delivery date of the Goods.

## 15. Tests

- 15.1. All Goods manufactured by the Company are carefully inspected and subjected to the Company's standard tests. If special tests are required by the Buyer, these must be specified when the order is placed and will be subject to an additional charge and unless otherwise agreed will be carried out at the premises of the Company. If the Buyer requires any test to be witnessed by him or by any representative of his, the Company shall give the Buyer reasonable notice in writing of the date and the place of the test. If the Buyer or his representative fails to attend on the date and at the place notified, the Buyer will not be entitled to make any complaint about the method, nature, extent or results of the test and will be bound by the test and will reimburse the Company for the costs of the test.
- 15.2. The Buyer will be entitled to rectification of any Goods that fail such tests, and a repeat of such tests carried out by the Company within a reasonable time of the first failed tests, but the Buyer will have no further claim against the Company by reason of such failure or consequent delay or loss.

## 16. Manufacturing and Delivery Times

- 16.1. Manufacture by the Company will begin upon receipt by the Company of the Buyer's order or of all information necessary to enable the Company to proceed with uninterrupted manufacture, whichever is the later. The Delivery date is estimated from the time required for manufacture. In the cases of pro forma accounts the manufacturing time will run from the date when cleared funds are available to the Company. Times given for Delivery are given in good faith but are approximate and for guidance only and time shall not be of the essence of any contract nor shall the Company be under any liability for delay in Delivery whether arising out of fault on the part of the Company or otherwise.
- 16.2. Where the Goods have been subject to a change or changes in specification by the Buyer, the Company reserves the right to alter the Delivery date in its absolute discretion and to deliver without prior notice.
- 16.3. Unless special arrangements have been agreed in writing, the Company shall package the Goods for Delivery in any manner that it considers to be reasonably appropriate given the nature of the Goods.
- 16.4. If proof of Delivery is required by the Buyer, this must be requested within seven days of the date of Delivery or the date that the Buyer is invoiced for the Goods, whichever is the later. If such a request is made after the expiration of the seven days, the Company reserves the right to charge the Buyer £10.

## 17. Force Majeure

The Company reserves the right to suspend or defer manufacture and/or any delivery(ies) in whole or in part, and to extend any time of delivery accordingly, without liability to the Buyer, if Company is prevented from or delayed in performance of the Contract or the carrying on of its business generally due to circumstances beyond the reasonable control of the Company including, without limitation, acts of God, governmental actions, war or national emergency, adverse weather conditions, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable parts or materials, provided that, if the event or circumstance in question continues for a continuous period in excess of 60 days, the Company shall be entitled to give notice in writing to the Buyer to terminate the Contract and the

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Company shall not be liable to the Buyer for any costs incurred or loss suffered consequent on such termination.

### **18. Damage, Shortage or Loss**

If the Buyer requests the Company to arrange packing and/or transit of the Goods, the Buyer shall have no claim in transit, shortages or loss of the Goods unless in the case of damage in transit or shortages, written notice is given to the Company within three days of receipt of the Goods and in the case of loss of the Goods, written notice is given to the Company within ten days of the date of despatch. The unloading of the Goods is the responsibility of the Buyer and at the Buyer's risk whether or not unloading is carried out by the Company.

### **19. Use of Goods by the Buyer**

19.1. The Buyer will ensure that the Goods will at all times be operated, used and maintained: -

19.1.1. as required by the terms of the Health and Safety at Work Act 1974 and any equivalent and additional legislation concerning health, safety or environmental considerations which shall be enacted in the United Kingdom or by the European Community or by the country where the Goods are installed or used, and

19.1.2. with reasonable care and in full accordance with good engineering practice and with any operating and/or maintenance instructions relating to the Goods and issued by the Company.

19.2. The Buyer shall to indemnify the Company and keep the Company indemnified against any costs, damages or liabilities for which the Company may become liable as a result of any failure by the Buyer to comply with Clause 19.1.

19.3. Air conditioning equipment supplied by Powrmatic falls within the scope of the WEEE Directive. To ensure compliance, Powrmatic are registered WEEE producers for the sale of air conditioning equipment. The equipment supplied is high quality and designed to provide many years of long and trouble-free operation. At the end of the product's lifetime, it is the customer's responsibility to ensure that the air conditioning equipment is recycled responsibly and in full accordance with the WEEE Directive. Powrmatic can assist customers by locating the nearest and most convenient recycling facility in their area."

### **20. Risk and Title**

20.1. Risk shall pass to the Buyer, so that the Buyer is responsible for all loss, damage or deterioration of the Goods, at the time when the Goods arrive at the designated place of Delivery, notwithstanding any refusal of Delivery by the Buyer (if the Company delivers the Goods by its own transport, or in accordance with a specific contractual obligation arranges transport for the Goods) or, when the Goods are stored at the request of the Buyer or on the Goods being collected or made available for collection by the Buyer or on the Buyer's failure to accept or arrange Delivery or (in all other circumstances) at the time when the Goods leave the premises of the Company.

20.2. Title to the Goods shall only pass to the Buyer when the Buyer has paid to the Company in full in cleared funds all sums due or outstanding (including any interest) to the Company under the Contract and all other sums which are or which become due to the Company on any account from the Buyer or any associate or subsidiary company of the Buyer or any company under common control with the Buyer.

20.3. Until title to the Goods has passed to the Buyer, the Buyer must: -

20.3.1. hold the Goods on a fiduciary basis as the Company's bailee;

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- 20.3.2. store the Goods (at no cost to the Company) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as the Company's property;
- 20.3.3. not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods;
- 20.3.4. maintain the Goods in satisfactory condition and keep them insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company. On request the Buyer shall produce the policy of insurance to the Company; and
- 20.3.5. hold the proceeds of the insurance referred to in sub-clause 20.3.4 on trust for the Company and not mix them with any other money, nor pay the proceeds into an overdrawn bank account.
- 20.4. If the Buyer converts the Goods into other goods or the Goods in any way become incorporated into or fixed to or mixed with other goods, the Buyer will hold such other goods on trust for the Company as security for the payment in full of the price of the Goods and all other sums due to the Company from the Buyer under the contract.
- 20.5. If the Buyer sells the Goods before title has passed, then the Buyer shall hold on trust for the Company all proceeds of the sale until such proceeds are paid to the Company in settlement of the sum due under the Contract.
- 20.6. The Buyer may resell the Goods before ownership has passed to it solely on the following conditions: -
- 20.6.1. any sale shall be effected in the ordinary course of the Buyer's business at full market value;
- and
- 20.6.2. any such sale shall be a sale of the Company's property on the Buyer's own behalf and the Buyer shall deal as principal when making such a sale.
- 20.7. The Buyer's right to possession of and to resell the Goods shall terminate immediately if: -
- 20.7.1. the Buyer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Buyer or notice of intention to appoint an administrator is given by the Buyer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up of the Buyer or for the granting of an administration order in respect of the Buyer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer;
- 20.7.2. the Buyer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe or perform any of his/its

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obligations under the Contract or any other contract between the Company and the Buyer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Buyer ceases to trade;

20.7.3. the Buyer encumbers or in any way charges any of the Goods; or

20.7.4. the Company has reasonable doubts as to the solvency of the Buyer and so notifies the Buyer in writing

20.8. The Company shall be entitled to recover payment for the goods notwithstanding that ownership has not passed from the Company.

20.9. The Buyer grants the Company, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Buyer's right to possession or resale has terminated, to recover them.

20.10. On termination of the Contract, howsoever caused, the Company's (but not the Buyer's) rights contained in this Clause 20 shall remain in effect.

## 21. Termination

21.1. The Company may terminate the Contract with immediate effect by written notice to the Buyer if the Buyer: -

21.1.1. is in breach any of the terms of the Contract and (if such breach is remediable) fails to remedy such breach within 15 days of being notified of the breach;

21.1.2. fails to pay any amount due to the Company within 14 days of the payment being due;

21.1.3. suffers any of the events referred to in Clause 20.7.

21.2. In the event of termination in accordance with Clause 21.1, the Company shall have no further obligation to perform under the Contract and all monies due to the Company under the Contract (including for part performance of any Contract) shall be payable by the Buyer.

## 22. Liabilities

22.1. Subject to the warranties in Clause 10 above, the following provisions set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of: -

22.1.1. any breach of these Terms;

22.1.2. any use made or resale by the Buyer of any Goods, or of any product incorporating any of the Goods; and

22.1.3. any representation, statement or tortious or other unlawful act or omission including negligence arising under or in connection with the Contract.

22.2. Subject to Clause 22.3 and 22.4: -

22.2.1. The Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the price payable for the Goods under the Contract (excluding VAT and carriage);

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22.2.2. The Company shall not be liable to the Buyer for any pure economic loss, loss of profit, loss of business, depletion of goodwill or otherwise (in each case whether direct, indirect or consequential) or for any indirect or consequential loss or damage or other claims for consequential compensation whatsoever and howsoever caused, in each case which arise out of or in connection with the Contract.

22.3. All warranties, conditions and other terms implied by statute or common law (including without limitation any term as to satisfactory quality or fitness for purpose but save for the conditions implied by section 12 of the Sale of Goods Act 1979) are to the fullest extent permitted by law excluded from the Contract.

22.4. Nothing in these Terms shall exclude or limit any liability of the Company: -

22.4.1. for death or personal injury caused by the Company's negligence;

22.4.2. under section 2(3), Consumer Protection Act 1987;

22.4.3. for any matter which it would be illegal for the Company to exclude or attempt to exclude its liability; or

22.4.4. for fraud or fraudulent misrepresentation.

### 23. Assignment

23.1. Unless the Company gives its express consent in writing, the Buyer shall not assign, transfer, sublicense or subcontract to any third party all or any part of the benefit and/or burden of this Contract.

23.2. The Company shall be free to employ subcontractors to manufacture the Goods or components to be supplied under this Contract and may assign the Contract or any part of it to any person, firm or company.

### 24. Indulgence or Waiver

24.1. Any indulgence, forbearance or other concession by the Company to the Buyer, shall not in any way constitute a waiver or otherwise prejudice the Company's rights under this Contract.

24.2. A waiver by either party of any of these Terms shall apply only to the particular instance and shall not affect the further continuance in force of such Terms in all other circumstances.

### 25. Confidentiality

25.1. All specifications, plans, drawings, technical knowledge and other confidential information, whether of a technical or commercial nature, which may be passed to or come into the possession of the Buyer, shall not be used by the Buyer other than for the purpose of the Contract and shall not be disclosed to any other person, company or firm whatsoever except where this is for the purposes of the Contract. Any such specifications, plans or drawings and reproductions thereof, shall be returned to the Company on demand.

25.2. All drawings, specifications, descriptions and other information submitted by the Company shall remain the property of the Company, together with the copyright therein.

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## 26. Intellectual Property

The Buyer shall indemnify the Company and keep the Company indemnified against all damages, penalties, costs and expenses to which the Company may become liable as a result of work done in accordance with the specification of the Buyer and which involves the infringement of any letters, patent, registered design, trade mark, copyright or any other intellectual property belonging to third parties. Whilst every reasonable endeavour is made by the Company to avoid infringement of third party rights, no representation or warranty is made to the Buyer that the Goods supplied do not infringe the intellectual property rights of any third party.

## 27. Notices

Notices relating to the Goods or the Contract shall be in writing and may be delivered by hand or sent by prepaid mail or registered mail or facsimile to the Company or the Buyer (as the case may be) at its registered office or its last known business address as subsequently notified.

## 28. Third Party Rights

The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

## 29. The Bribery Act

- 29.1. The Company recognises the obligations of The Bribery Act 2010 and has a policy to contract with the Buyer on terms which are fully compliant. In circumstances where the Buyer suspects or knows of any breach or non-compliance with the Act then the Company shall be made immediately aware.
- 29.2. Buyers should promptly report to the Company any undue request or demand for any financial incentive or benefit that has been made in connection with the supply of goods and services by the Company.

## 30. Proper Law and Jurisdiction

The Contract shall be governed by and construed and performed in accordance with the law of England. The Buyer agrees, for the Company's exclusive benefit, that the English courts shall have sole jurisdiction to hear all claims or proceedings connected with the Goods or the Contract. The Company may nevertheless bring claims in any other courts of competent jurisdiction.

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