

## 1. DEFINITIONS

**Buyer:** means the purchaser, whose name is set out in Howden's tender or as shown in Howden's acceptance of the Buyer's order.

**Contract:** means the agreement arising as a result of the Buyer's acceptance of Howden's tender, or Howden's acceptance of the Buyer's order, incorporating these terms and conditions.

**Contract Price:** means the total sum payable as specified in the Contract.

**Direct Costs:** means such direct costs borne and incurred by Howden associated with the Contract up to and including the date of suspension and/or termination, including but not limited to manufacturing costs, salaries, third party supplier costs and reasonable overhead and profit margin.

**Goods:** means the equipment, parts or materials as specified in the Contract.

**Gross Negligence:** means a voluntary disregard of a reckless nature, which is so great it appears to be a conscious violation of other people's rights to safety.

**Howden:** means the Howden business unit, which bids for, or accepts an order from the Buyer.

**Services:** means the supervisory and/or technical services required at site as specified in the Contract.

## 2. GENERAL

2.1 The Contract shall be subject to the following terms and conditions and to any such other terms and conditions as stated in or referred to in Howden's tender or in Howden's official order acceptance. All other terms and conditions are excluded unless expressly agreed by Howden in writing.

## 3. PERFORMANCE

3.1 Any figures quoted by Howden for performance are based on Howden's experience and are such as Howden expect to attain on test. However, Howden will accept no liability for failure to attain any such figures unless Howden have specifically guaranteed them, subject to any tolerances specified or agreed to by Howden.

## 4. INSPECTIONS AND TESTS

4.1 Howden products are carefully inspected and where practicable, subject to Howden's standard tests before dispatch. If tests other than those specified in Howden's tender or tests in the presence of the Buyer or the Buyer's representative are required, these will be at additional cost to the Buyer. In the event the Buyer delays in carrying out any inspection or attending such tests after being given at least forty-eight (48) hours notice that Howden is ready to test, the inspection, or tests, will proceed in the Buyer's absence and shall be deemed to have been made in the Buyer's presence and the results accepted by the Buyer.

## 5. DELIVERY

5.1 Unless otherwise agreed, delivery shall be Ex-Works in accordance with Incoterms 2020, and part deliveries shall be acceptable to the Buyer.

5.2 In the event that Howden is unable to achieve the agreed Incoterms for reasons attributable to the Buyer within fourteen (14) days from notification of Goods readiness, Howden shall be entitled to invoice the Buyer and receive payment. Furthermore, after this fourteen (14) day period, storage costs will be chargeable to the Buyer in accordance with clause 6.1.

## 6. STORAGE

6.1 If the Buyer does not: (i) take delivery of the Goods; (ii) arrange storage; or (iii) as appropriate, give Howden its forwarding instructions to enable the dispatch of the Goods within fourteen (14) days from notification of Goods readiness, Howden is entitled to arrange storage on the Buyer's behalf and all charges shall be payable by the Buyer.

## 7. TITLE AND RISK

7.1 Legal and beneficial ownership (title) of the Goods shall remain vested in Howden until full payment of the Contract Price has been made by the Buyer.

7.2 The Goods will be at the Buyer's risk from the date of delivery, or if delivery is delayed by the Buyer for any reason, risk will transfer to the Buyer from the date that delivery should have taken place.

## 8. SUBCONTRACTING

8.1 At its option, Howden may arrange for the manufacture of proprietary and subcontracted Goods and/or assembly, testing or any site related Services to be carried out by Howden (Howden manufacturing facilities operate Quality Management Systems compliant with EN ISO 9001), and/or Howden's choice of approved subcontractor. Howden shall give the Buyer advance notice of its intention to exercise this option.

## 9. TERMS OF PAYMENT

9.1 Unless otherwise agreed, payment shall be made within thirty (30) days from the date of Howden's invoice.

9.2 Should any payment fall into arrears Howden is entitled to postpone or cancel performance of the Contract wholly or in part and to be paid immediately for performance of the Contract to date.

9.3 Howden reserve the right to charge interest on any late payment of eight percent (8%) per annum above the base rate quoted by the Bank of England from time to time on the daily balance from the due date until payment is made.

9.4 No claim by the Buyer under warranty or otherwise shall entitle the Buyer to any deduction, retention or withholding of any part of the Contract Price. The terms of payment must be adhered to and any such claims handled separately.

**10. CONTRACT VARIATIONS**

**10.1** In the event of a variation to the Contract ("**Variation Order**" or "**VO**"), resulting in an extension to the delivery date(s), which will impact Howden's invoice schedule, Howden reserve the right to invoice the Buyer for the original Contract Price, in accordance with the most recent project plan, prior to the VO. Previous invoice milestones will be adjusted pro-rata and invoiced upon Howden's acceptance of the VO.

**11. LIABILITY FOR DELAY**

**11.1.** Any lead times quoted by Howden shall run from Howden's acceptance of the Buyer's order and/or on Howden's receipt of all necessary information to enable Howden to commence work under the Contract, and shall be subject to continued and timely performance from the Buyer.

**11.2** In the event of a delay in the supply of the Goods or Services, which is solely attributable to the fault of Howden, Howden shall be liable to pay liquidated damages in a sum equal to half of one percent (0.5%) of the value of the delayed Goods or Services per week, subject to a maximum of five percent (5%) of the value of the delayed Goods or Services. Such liquidated damages shall be the sole and exclusive remedy in the event of Howden's delay.

**11.3** If Howden is delayed in its performance of the Contract, which is solely attributable to the fault of the Buyer, the Buyer's agent and/or other contractors, Howden is entitled to receive payment at the time Howden was originally scheduled to be paid notwithstanding the delay.

**12. SUPERVISION OF ERECTION / INSTALLATION / COMMISSIONING**

**12.1** The following provisions shall apply where the Contract includes supervision by Howden's engineers of erection, installation and/or commissioning ("**Erection**"):

- (i) Howden's sole responsibility in supervising Erection shall be to provide suitably qualified supervisor(s) who shall give the Buyer the benefit of their experience in the Erection of the Goods or similar installations and who shall advise the Buyer's personnel as to the Erection in an efficient manner. It shall be the Buyer's sole responsibility to carry out Erection and to achieve the desired work schedules, timescales and quality of workmanship for Erection using appropriately qualified workmen in sufficient numbers to achieve the task.
- (ii) Howden shall not be responsible for any overruns in the work programme of Erection and the Buyer shall not be entitled to instruct Howden's supervisor(s) to undertake any work in addition to supervision, whether or not necessary to achieve such programme.
- (iii) If, due to any overruns in the timescales for Erection, Howden is required to keep its supervisor(s) on site for longer than anticipated, Howden shall be entitled to charge for the further site attendance at Howden's standard daily rate.
- (iv) If the Erection work is suspended by the Buyer or for any reason outwith Howden's control for more than two (2) working days Howden shall be entitled to withdraw its supervisor(s) from site. If the Buyer requires Howden's attendance on site thereafter, the Buyer will pay the supervisor(s) return travel fares (business class) and any other reasonable costs Howden incur due to the withdrawal from, and the return to site.

**12.2** The Buyer shall, at its own expense and responsibility, unless otherwise expressly agreed:

- (i) Provide all health, welfare and security facilities (including, but not limited to, medical, messing, accommodation, toilet and like facilities as appropriate) as required by law and otherwise reasonably necessary for personnel working on site;
- (ii) Provide any necessary office, telephone and like facilities on site;
- (iii) Where the site is offshore or otherwise inaccessible or is located overseas, provide all necessary transportation facilities to and from site;
- (iv) Obtain all necessary statutory and other consents, approvals, licences and permissions for Erection, for the work to proceed, and for Howden personnel to travel to and from the site.

**12.3** The Buyer shall indemnify Howden against any loss, damage or injury including death suffered by the person or property of Howden, the Buyer, or respective personnel or any third party and against any claims, liability, costs or expenses associated therewith or arising out of the Buyer's performance of Erection or the Buyer's failure to perform or otherwise, save as expressly provided under clause 17.1, including, but not limited to, that which was caused by faulty lifting tackle, scaffolding or other facilities provided by the Buyer.

**12.4** Any associated Goods shall be considered accepted at the earlier of:

- (i) When Erection is complete and the Goods have completed such tests as are specified in the Contract or otherwise are to Howden's reasonable satisfaction;
- (ii) Forty five (45) days after the Goods have been delivered by Howden, although not installed or successfully commissioned or tested due to reasons attributable to the Buyer or to industrial action or anything beyond Howden's reasonable control.

**12.5** Acceptance shall not be delayed due to additions, minor omissions or defects that do not materially affect the use of the Goods. The Buyer shall sign Howden's acceptance certificate upon request.

**13. OTHER ON SITE /SERVICE PROVISIONS**

**13.1** Howden's on site personnel, subcontractors and/or representatives shall be given unobstructed access to the site and the work. If there are delays caused by anyone other than Howden, the time and expense of the same shall be charged to the Buyer.

**13.2** Howden is an independent contractor and is not responsible for any oversight, for completion of the Erection, or for the property or employees of the Buyer or others, including, without limitation, matters such as health and safety, or security.

**13.3** The Buyer shall advise Howden's personnel in advance of all known and/or suspected hazardous/unsafe conditions and risks that may be encountered while on site. Howden's personnel shall not be required to take any action, or to enter or remain in any site, region or country, where Howden reasonably determine that it would be unsafe. Furthermore, if Howden has substantive travel and/or security concerns regarding the Buyer's site and/or the general region and/or

country, in accordance with the latest Foreign and Commonwealth Office travel advice (as found at <https://www.gov.uk/foreign-travel-advice>), Howden shall be excused from site attendance, and such an event will be considered a Force Majeure.

#### 14. SUSPENSION

14.1 The Buyer shall have the right to suspend the Contract. If the suspension period should exceed thirty (30) days, Howden has the right to consider the Contract terminated for convenience and be compensated in accordance with clause 15.1.

#### 15. TERMINATION

15.1 In the event of termination for Buyer's convenience, Howden shall be reimbursed for the reasonable Direct Costs incurred by Howden in performing the Contract until termination and for its costs in effecting such termination, notwithstanding any other provision of the Contract.

15.2 If Howden fail to cure a material breach within a reasonable time after receipt of notice of breach from Buyer, and on Howden's acceptance of such breach, Buyer shall have the right, at its option, to terminate the Contract upon payment to Howden for work performed until the time of termination.

#### 16. WARRANTY

16.1 Howden warrants that: (i) any Goods provided hereunder will be of good material and workmanship; (ii) any Services provided by Howden shall be performed by competent and qualified personnel in a professional and workmanlike manner in accordance with generally established industry standards; and (iii) the Goods and/or Services supplied by Howden hereunder will conform to any applicable technical specifications and/or drawings that have been agreed upon between the parties in writing.

16.2 In the event that defects appear in the Goods under proper use, Howden will repair or replace, at Howden's option and cost (excluding removal and/or reinstallation costs if so necessary) within the warranty period set forth: Unless otherwise expressly agreed, whichever period expires earlier: (i) twelve (12) months from first operation of any such Goods; or (ii) eighteen (18) months from Howden's notification of Goods readiness.

16.3 Howden's warranty on any Services performed by Howden will be in effect until ninety (90) days after the date of the performance of any such Services. The Buyer's sole and exclusive remedy for breach thereof shall be the re-performance of such Services by Howden.

16.4 In the event that removal of the Goods under warranty or any part thereof becomes necessary the Buyer shall furnish Howden with a clear, unobstructed path of adequate size for removal of the Goods or part thereof.

16.5 Howden's warranty shall exclude liability for defects arising from: (i) installation, commissioning and/or operation, not in accordance with Howden's O&M manual or good industry practice; (ii) use of unapproved spares, unauthorized modification or alteration of the Goods; (iii) normal wear and tear; (iv) the failure of Buyer and/or the end-user to provide adequate storage; or (v) use of the equipment otherwise than in accordance with the agreed operational parameters (including composition, pressure and temperature of the feed gas). No part shall be deemed defective by reason of its failure to resist fouling and the action of erosive or corrosive gases.

16.6 Any warranty repair or replacement of Goods or re-performance of Services shall be warranted by Howden for the remainder of the original warranty period.

16.7 The warranties set forth in this Contract are exclusive and lieu of all other warranties and guarantees (including any warranty of merchantability or fitness for use for the purpose intended).

#### 17. LIABILITY FOR ACCIDENTS AND DAMAGE

17.1 Howden will indemnify the Buyer against any claim, damage, expense or liability (including reasonable attorneys fees) on account of any damage to, loss or destruction of any third party property or bodily injury or death of any third party to the extent caused by the Gross Negligence of Howden, Howden's subcontractors or agents while working on site, but not otherwise by making good such damage to property or compensating personal injury. Provided that: (i) the Buyer makes no statement prejudicial to Howden; and (ii) Howden has sole control of the defence of such claim and all related settlement negotiations.

#### 18. INSURANCE

18.1 Howden will maintain the following insurance coverage: (1) Public and Products Liability with a limit of one million pounds (£1,000,000) in the aggregate; and (2) Employers' liability or Workers' compensation as required by applicable law. Howden shall have no further obligations related to insurance coverage.

#### 19. LIMITATION OF LIABILITY AND EXCLUSION OF CONSEQUENTIAL DAMAGES

19.1 Notwithstanding anything to the contrary contained herein or elsewhere in the Contract and save to the extent this limitation is prohibited by law:

- (i) Howden's total liability pursuant to this Contract whether by way of indemnity, for breach of Contract, warranty or guarantee obligations or by reason of any tort, statute or otherwise shall in no event exceed the Contract Price.
- (ii) Howden shall not be liable to Buyer, end-user or any third party, for any indirect, punitive or consequential damages of any kind or nature whatsoever, or for loss of profits/revenue or loss of production, regardless of whether such damages are based upon Contract, tort, strict liability in tort, negligence or indemnity.

This clause shall survive any termination, default, cancellation or any other discontinuance of this Contract.

#### 20. NO HAZARDOUS SUBSTANCES

20.1 Howden warrants to the Buyer that no Hazardous Substance will be used or is contained in the manufacture and supply of the Goods. For the purpose of the clause, a "Hazardous Substance" means asbestos or any material

containing asbestos that is capable of causing harm to the natural and man-made environment including all or any of the following media: air (including air within buildings and other natural or man-made structures above or below the ground), water, land, and any ecological systems and living organisms (including man) supported by those media, and in the case of people, this includes offence caused to any of their senses or harm to their property.

## 21. INTELLECTUAL PROPERTY

- 21.1** Howden will indemnify the Buyer against any claim for infringement of copyright, letters patent, registered design or trade mark (published at the date of the Contract) by the use or sale of any article or material supplied by Howden to the Buyer and against all costs and damages which the Buyer may incur in any action for such infringement or for which the Buyer may become liable in any such action. Provided always that this indemnity shall not apply to any infringement which is due to: (i) Howden having followed a design, process or instruction furnished or given by the Buyer; (ii) the use of such article or material in a manner, or for a purpose, or in a country, not specified or disclosed to Howden; or (iii) the use of such article or material in association or combination with any other article or material not supplied by Howden. And provided also that this indemnity is conditional on the Buyer giving to Howden the earliest possible notice in writing of any claim being made or action threatened or brought against the Buyer and on the Buyer permitting Howden at its own expense to conduct any litigation that may ensue and all negotiations for a settlement of the claim. The Buyer warrants that any design or instruction furnished or given by the Buyer shall not cause Howden to infringe any copyright, letters patent, registered design or trade mark in the execution of the Contract.
- 21.2** All patents, copyright and other intellectual property rights in or relating to the Goods or their design or the specifications, drawings, manuals or information prepared or supplied by Howden, or which arise under or in the course of Howden's performance of the Contract, are, shall be and shall remain Howden's absolute property and shall not be used or reproduced without Howden's consent in writing. Howden shall grant the Buyer a royalty free licence to use such intellectual property rights for the sole purpose of operating and maintaining the Goods.

## 22. CONFIDENTIALITY

- 22.1** Any specifications, drawings, manuals, information or particulars supplied with Howden's tender or under the Contract are supplied by Howden in confidence. They shall not be used by the Buyer except for the purposes of the Contract and for the proper use of the Goods and shall not be disclosed by the Buyer to any third party (except the Buyer's employees having a need to know for the aforesaid purposes) for any other purpose whatsoever without Howden's prior written agreement. The foregoing shall not apply to information which is or becomes public knowledge without fault or failure by the Buyer or its employees.

## 23. EXPORT CONTROL

- 23.1** The Buyer agrees that it will not participate directly or indirectly in the sale, resale, export, transfer or disposal of Howden products or technology ("**Products**") to any entity or to any country in breach of applicable export control and sanctions laws including but not limited to those of the US, the EU, member states of the EU or the United Kingdom (together "**Export Control and Sanctions Rules**") and the Buyer will not sell, resell, export, transfer, dispose or otherwise deal with the Products to any country, destination or person without first obtaining any required export licence or other governmental approval, and completing such formalities as may be required by Export Control and Sanctions Rules. The Buyer shall not put the Products in their entirety or in part to any use in connection with any prohibited or illicit end use including, but not limited to, use in nuclear, chemical or biological weapons or rocket or missile applications. Upon Howden's request, the Buyer shall provide information in response to any reasonable request (including a written certification) regarding compliance with applicable laws, rules or regulations and/or in connection with any applications made by Howden to the authorities in connection with the export or supply of the Products. Failure by the Buyer to comply with the terms of this clause shall constitute a material breach of the Contract. Howden reserve the right to refuse to enter into or to perform any order, to cancel any order, or to void any warranty concerning the Products, if Howden determine, at its sole discretion, that the entry into such order or the performance of the transaction to which such order relates would be unlawful or be at risk of prohibition by any Export Control and Sanctions Rules. Howden shall be excused from performance, and not be liable for damages or costs of any kind including, but not limited to, liquidated damages and/or penalties for late delivery, for failure to deliver or delay in delivering the Products, or for delay or refusal to repair or replace under any warranty, resulting from Howden's exercise of its rights pursuant to this clause.

## 24. FORCE MAJEURE

- 24.1** Neither party shall be considered in default or in breach of its obligations under the Contract to the extent that performance of such obligations is prevented or delayed by any circumstances outside its reasonable control including, without limitation: strikes, lock-outs or other industrial disputes, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, embargoes, economic or trade sanctions, including any amendments to such embargoes and economic and trade sanctions, accidental breakdown of plant or machinery, fire, flood, storm, disease outbreak or epidemic and/or any resulting quarantine restrictions ("**Force Majeure**"). Either party shall be entitled to terminate the Contract if the Force Majeure situation continues, or it is obvious that it will continue, for more than one hundred and eighty (180) days without liability to the other party.

## 25. LAW AND JURISDICTION

- 25.1** The Contract shall in all respects operate and be construed as an English Contract governed by the laws of England and Wales.
- 25.2** All notices and other communications and dealings between the parties including legal proceedings shall be in the English Language.
- 25.3** If at any time a dispute should arise between the Buyer and Howden in relation to or in connection with the Contract, either party may give written notice to the other of the existence of such dispute and the same shall be referred to the

arbitration of a person to be mutually agreed upon or, failing agreement within thirty (30) days of the receipt of written notice, such dispute shall be finally settled in accordance with the Arbitration Rules of the International Chamber of Commerce (ICC) without recourse to the ordinary courts of law. Arbitration to take place in London, England. The number of arbitrators is one. The language of the arbitration proceedings is English.

**25.4** The Uniform Law on the International Sale of Goods shall not apply to any Contract arising from any order placed under these conditions.

**26. ENTIRE AGREEMENT**

**26.1** This Contract contains the entire understanding of the parties with respect to the subject matter hereof and supersedes any and all prior negotiations, contracts, commitments, and writings with respect thereto. There are no oral understandings, terms or conditions and neither party has relied upon any representation, express or implied, not contained in this Contract.

**27. DATA PROTECTION**

**27.1** The personal data disclosed by a party under the course of the Contract does not belong to the recipient of such data. The data must be protected and shall not be disclosed to any third party, or altered, violated or used except for the purposes of the Contract. Either party may require the destruction of this data upon the end of the relationship between the parties. The parties undertake to comply with all applicable laws on the protection of personal data.