

TERMS AND CONDITIONS OF TRADING

A larger font version of these Terms and Conditions is available upon request

1. DEFINITIONS

In these Terms and Conditions of Trading: 'Monodraught' means Monodraught Ltd, registered office is 4 Victoria Place, Holbeck, Leeds LS11 5AE. Trading address is Halifax House, Cressex Business Park, High Wycombe, Buckinghamshire HP12 3SE, (Company No. 01163485). 'Acknowledgement of Order' means Monodraught's written acknowledgement of receipt of the Buyer's Purchase Order for Goods as detailed in the Quotation. 'Buyer' means the person or firm who acquires the Goods under the Contract. 'Conditions' means these Terms and Conditions of Trading. 'Contract' means the contract between Monodraught and the Buyer for the supply of Goods. 'Goods' means any Goods sold by Monodraught to the Buyer and unless separately referred to, 'Goods' includes any related or connected services associated with the supply, including any installation, design, fabrication or construction undertaken by Monodraught or its agents. 'Purchase Order' means the Buyer's order for the supply of Goods as set out in the Buyer's purchase order form or written acceptance of the Quotation as the case may be. 'Quotation' Monodraught's written proposal for the supply of Goods.

2. CONTRACT

The Quotation constitutes an offer by Monodraught to supply the Goods to the Buyer in accordance with these Conditions. The Quotation shall only be deemed to be accepted when the Buyer issues a written Purchase Order at which point a Contract shall come into existence and, unless otherwise stated in the Quotation, the Contract will commence upon that date. If such Purchase Order is not issued, but Monodraught and the Buyer act in accordance with the terms of the Quotation, the Buyer will be deemed to have accepted the Quotation, including these Conditions. Monodraught will seek to submit an Acknowledgement of Order following receipt of the Purchase Order but failure to submit this will not affect the validity of the Contract. These Conditions apply to the Contract to the exclusion of any other terms and conditions that the Buyer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing. Goods shall be supplied in accordance with the Quotation and cannot be cancelled, deferred or altered and shall not be subject to reduction or variation except by mutual agreement confirmed in writing by both parties and subject to agreement as to related costs. Monodraught reserves the right to vary the Buyer's Credit Limit in accordance with Clause 7. The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter. Each party acknowledges that in entering into the Contract 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 the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in the Contract. Nothing in this clause shall limit or exclude any liability for fraud.

3. PRICES

All prices quoted by Monodraught are valid for a period of 30 days from the date of a Quotation or from the date of issue of price lists unless otherwise expressly stated in the Quotation or price list. All prices quoted for installation are for works carried out during normal working hours. All prices are subject to Valued Added Tax at the current rate at the time of delivery. All prices quoted are net trade prices and shall not be subject to retention or net discount, unless specifically stated in a Quotation. Carriage prices shown in Quotations are net prices and are not subject to any discount. The Buyer will not be entitled to return Goods to Monodraught unless Monodraught gives its prior written consent. Monodraught's consent shall always be subject to (i) the Goods being returned within 90 days of delivery (ii) the returned Goods being of first class quality and in immediate re-sellable condition in unbroken packaging, (iii) that the Buyer pays the costs of returning the Goods to Monodraught, and (iv) that the Buyer pays a restocking charge amounting to 20% of the purchase price for the returned Goods. Non-standard or bespoke Goods will be charged at full price. This provision does not affect the Warranty of Quality, clause 9.

4. DELIVERY

Monodraught will use its reasonable endeavours to make deliveries of Goods on the date/s agreed but time of delivery shall not be of the essence and Monodraught shall not be liable for any delay in delivery for events of Force Majeure or matters which are the responsibility of the Buyer and shall not otherwise be liable for delay unless otherwise agreed in writing before delivery. Monodraught's standard delivery terms are on a next day basis between 8am and 4pm, where the Buyer remains responsible for offloading the Goods from the delivery vehicle(s) provided by Monodraught. Timed or specialist delivery requirements such as a HIAB, truck mounted forklift and FORS are at an additional cost to the Buyer.

5. STORAGE

If by reason of instructions or lack of instructions from the Buyer the delivery of Goods in accordance with the Contract is delayed from the delivery date agreed in writing, then provided they are suitably and sufficiently marked as appropriated to the Contract and Monodraught has given to the Buyer an opportunity of inspecting them, the said Goods shall be deemed to have been delivered in accordance with the Contract and may be invoiced by Monodraught. Nevertheless, Monodraught shall use its best endeavours to deliver the said Goods in accordance with such instructions as may be given to it by the Buyer and in the meantime shall store, protect, preserve and, if required by the Buyer, insure them to the extent so required. The Buyer shall repay to Monodraught the reasonable cost of storing, protecting, preserving and insuring the said Goods.

6. RISK AND INSURANCE

Risk in the Goods shall pass to the Buyer from the point of delivery to the Buyer's address or other agreed place of delivery or on collection by the Buyer as appropriate, notwithstanding that property in the Goods may be retained by Monodraught in accordance with Clause 8. The Buyer shall be responsible for effecting its own insurance as appropriate from the date of delivery. Once the Goods have been delivered or installed the Buyer shall be responsible to fully protect them and keep them safe.

7. PAYMENT

Payment of any invoice shall become due on the date of Monodraught's invoice. The final date for payment shall be 30 days after the relevant invoice becomes due. Amounts unpaid beyond the final date for payment are payable with interest calculated at the rate of 8% over the base rate of the Bank of England applicable at the final date for payment until payment is received in full. All Contracts between Monodraught and the Buyer shall be subject to a credit limit determined by the availability of cover provided by Monodraught's credit insurance provider. If at any time the aggregate value of Monodraught's unpaid invoices (whether or not overdue) to the Buyer across all existing Contracts exceeds the Credit Limit Monodraught: (a) Shall be relieved of its obligations under any/all Contracts(s) until the Credit Limit is not exceeded; and/ or (at its sole discretion); (b) May terminate any/all Contract(s) with immediate effect by giving written notice to the Buyer. Monodraught reserves the right to adjust the Buyer's Credit Limit at any time by giving written notice to the Buyer if Monodraught is no longer able to obtain insurance at what it considers to be commercially reasonable rates and terms, save that any adjusted Credit Limit shall not take effect until Monodraught next submits an invoice (under any Contract). Within 5 days of an invoice becoming due, the Buyer shall notify Monodraught of the sum that the Buyer considers to be due at the payment due date and the basis on which that sum is calculated ('payment notice'). Not less than 7 days before the final date for payment, the Buyer may give notice if it intends to pay less than the notified sum, specifying the sum considered to be due and the basis on which that sum is calculated ('pay less notice'). Unless the Buyer gives a pay less notice then it shall pay the sum in the payment notice (or in the absence of a payment notice then the sum in Monodraught's invoice) on or before the final date for payment of the invoice. Where part delivery or part service work is carried out, a payment on account will be payable based on Monodraught's invoice for the relevant amount. The Buyer shall not be entitled to apply any set off against any sums owing to Monodraught under the Contract any other sums owing to Monodraught. If the Buyer fails to make any payment by the final date for payment, then without prejudice to any other rights Monodraught reserves the right to; suspend some or all obligations under the Contract, or terminate the Contract, or take down and retrieve any Goods previously installed. All costs, including any legal fees incurred in the pursuit of outstanding monies owed shall be charged to the Buyer. Any payments made by cheque will be subject to a 1% surcharge.

8. RETENTION OF TITLE

Title in the Goods shall remain with Monodraught until full payment for the Goods has been received. Until such time, the Buyer shall keep the Goods free from any charge, lien or other encumbrance whatsoever and identifiable as the property of Monodraught. Until payment in full for the Goods has been received, Monodraught may at any time require the Goods to be returned to it and if such requirement is not forthwith complied with, it may retake possession of the Goods and for such purposes is irrevocably authorised to enter upon any premises (whether or not occupied by the Buyer) and retrieve the Goods.

9. WARRANTY OF QUALITY

Monodraught warrants that from the date of commissioning of the Goods, or from the date of shipment of Goods that do not require commissioning, the Goods shall, conform with the specification set out in Quotation or if there is no such specification, the Goods will comply with reasonable standards of quality and will otherwise be reasonably free from material defects in design, materials and workmanship when under normal use. This warranty shall apply for; 10 years for Windcatcher (X-Air, Zero, GRP and Penthouse) and Solaboost (X-Air and GRP) natural / low energy ventilation roof terminals and Sunpipe natural lighting products; 5 years for Windcatcher Zero Heat Exchanger components, Cool-phase natural cooling products, HVR (Zero and APX) hybrid ventilation products, Monodamper products and Ventsair products. 5 years shall also apply for iVent and Acuity control panels and their associated controls components. All warranty periods are subject to a maintenance programme being carried out in accordance with Monodraught's instructions. Whilst all product information is given in good faith the use or application of the Goods is outside the control of Monodraught and accordingly Monodraught gives no warranty as to the fitness of the Goods for any particular purpose and any implied warranty or condition (statutory or otherwise) is excluded insofar as such exclusion is permitted by law, including in regard to the suitability of the Goods for the structure where the Goods are to be installed. It shall be the responsibility of the Buyer to obtain its own professional guidance on such matters. The Buyer shall make no claim against Monodraught in relation to defects in the Goods (or shortages in delivery) unless the Buyer has notified Monodraught in writing of the same within 48 hours of delivery. The Buyer must notify Monodraught directly about any such claim (including packaging) relating to carriage. In the event of a claim, Monodraught must be given a reasonable opportunity of examining the Goods. If asked to do so the Buyer shall return the Goods to Monodraught at the Buyer's cost. Monodraught at its option, may repair or replace defective Goods, or refund the price of the relevant Goods. Monodraught shall be under no liability in respect of defects arising from; the acts or omissions of persons other than Monodraught or its authorised personnel or agents, including but not limited to damage in transit, repairs, modifications or additions made to the Goods by the end-user or any other third party; failure to perform appropriate maintenance; continued use of the Goods after they exhibit signs of any defect or malfunction; carelessness, mishandling, wear and tear, vandalism or unforeseen events; use of the Goods contrary to Monodraught's recommendations; any failure or defect in related products or systems which the Goods have been integrated with, operate with or are dependent on; defects in materials or workmanship which are the result of installation by persons other than Monodraught. Monodraught shall be under no liability for variations in predicted performance as compared to performance under actual weather, temperature & daylight levels. Monodraught provides calculations and building simulations based on simulated weather files in accordance with industry standards. Monodraught shall not be liable for any loss in any form arising from or related to snow or water ingress into or through the Goods, unless such liability has been accepted by Monodraught in writing. Nothing in these Conditions shall limit or exclude Monodraught's liability for, death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors; fraud or fraudulent misrepresentation; or breach of relevant statutory provisions, subject to which Monodraught shall under no circumstances whatever be liable, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and its total liability to the Buyer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the value of the Goods and after taking into account what is fair and reasonable allowing for the relative contributions to any loss suffered by the Buyer of Monodraught and other parties who have entered into any arrangements (contractual or otherwise) with the Buyer in connection with the Goods or related project or works. Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract. Monodraught will at its sole discretion undertake for the Buyer or any end user of the Goods, the repair or replacement of the relevant Goods at its own cost and so that the Goods conform to the Contract. If however, in Monodraught's reasonable opinion, the end-user is unable to establish a failure on Monodraught to comply with the Contract then the Buyer shall be responsible for all costs and expenses incurred by Monodraught in investigating any alleged breach.

10. FORCE MAJEURE

Notwithstanding any agreement to the contrary, any delivery may be totally or partially suspended by Monodraught as a result in delay in manufacture, supply or delivery arising from acts of God, unforeseeable circumstances, acts of Government or local authority, war, revolution, fires, ice, strikes, industrial disputes, inability to obtain necessary and proper materials, facilities, transportation or labour or any other cause beyond Monodraught's control. Any Goods, the delivery of which has not been totally or partially suspended shall be accepted by the Buyer as soon as it is reasonably practicable after the reason for delay has abated.

11. TERMINATION

Either party may terminate the Contract with immediate effect by giving written notice to the other party if; the other party commits a material breach of its obligations under the Contract and fails to remedy that breach within 14 days after receipt of the written notice; or the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts or they fall due or admits inability to pay its debts or; a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up or bankruptcy of the other party; or an application is made to court, or an order is made, for the appointment of an administrator; or a receiver is appointed over the assets of the other party; or any event occurs, or proceeding is taken, with respect to the other party that has an effect equivalent or similar to any of the aforementioned events. In the event of any termination of a Contract by the Buyer prior to any goods or services being provided, the Buyer shall pay a cancellation charge amounting to 20% of the purchase price of the Contract. On termination of the Contract for any reason; Monodraught may submit an invoice for any outstanding but uninvocated work in progress and the Buyer shall immediately pay all of Monodraught's outstanding unpaid invoices and interest and shall return all of the Goods which have not been fully paid for. If the Buyer fails to do so, then Monodraught may enter the Buyer's premises or location of the goods and take possession of them. Until they have been returned, the Buyer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract. The accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract, which existed at or before the date of termination or expiry; and clauses which expressly or by implication have effect after termination shall continue in full force and effect.

12. LAW

The Contract shall be subject to English law and the English Courts. A person who is not a party to the Contract shall not have any rights under or in connection with it. Either party may refer a dispute arising under the Contract to adjudication at any time under Part 1 of the Scheme for Construction Contracts (England and Wales) Regulations, which Part shall take effect as if it was incorporated into this clause.