



Bead Terms and Conditions of Service

Registered Address: Units 1 & 2, Shipston Close, Worcester, WR4 9XN
ThermaBead Ltd is a limited company registered in England and Wales.
Company registration No: 8072262

1. EPS Products

The volume of product to be delivered in any accepted order for EPS products will never be less than the volume required by the purchaser. The purchaser acknowledges and accepts that the volume of product that will be delivered by ThermaBead and paid for by the purchaser in respect of any order shall be a volume that ensures only full trailer deliveries are made to the purchaser.

2. Bonding Agent Products

Where ThermaBead accepts an order for bonding agent products, the volume of products to be delivered in such order will never be less than the volume required by the purchaser. The purchaser accepts that the volume of product ordered by the purchaser shall be a volume that ensures that only full drum/intermediate bulk container deliveries are made to the purchaser. Any order for bonding agent products must be in multiples of 25 litres, 200 litres or 1,000 litres. The volume of bonding agent product that will be delivered in respect of any accepted order will be notified to the purchaser in the delivery note accompanying the delivery.

3. Supplemental Charges

3.1 Cancellation Sum

The cancellation sum (chargeable in accordance with condition 4.7 where the purchaser cancels an order with less than two business days' notice to ThermaBead) shall be, in respect of EPS products £250 (+ VAT) and, in respect of bonding agent products 20% of the order value.

3.2 Waiting Time Tariffs

3.2.1. Trailer Collection Waiting Time Tariff – £36.00 for every hour or part hour over the usual trailer collection time taken to collect the ThermaBead trailer.

3.2.2. Product Unloading Waiting Time Tariff – £36.00 for every hour or part hour over the usual delivery time (defined in condition 6.4) taken to complete unloading of the order so that ThermaBead or its representative is able to depart the delivery location unloaded.

3.3 Trailer Retention Charge

The trailer retention charge (chargeable in accordance with condition 11.2 where the purchaser retains the ThermaBead trailer after the first 30 days) shall be £100 (+VAT) per week or part week.

3.4 Delivery Charges

One-Way Delivery Charge (chargeable in accordance with condition 3.13 of Schedule 2 where ThermaBead delivers a ThermaBead Trailer and does not collect a ThermaBead Trailer from the Delivery location in the same journey or collects a ThermaBead Trailer and does not deliver a ThermaBead Trailer from the same location in the same journey) shall be £250 (+ VAT).

4. Ordering

4.1 The order constitutes an offer by the purchaser to purchase services in accordance with these conditions. Each order shall be given by the purchaser in writing by email to c.upfield@thermabead.co.uk and specify the type and quantity of products ordered.

- 4.2 The order shall only be deemed to be accepted when the company issues written acceptance of the order at which point and on which date the contract shall come into existence (commencement date).
- 4.3 The contract constitutes the entire agreement between the parties. The purchaser acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the company which is not set out in the contract.
- 4.4 These conditions apply to the contract to the exclusion of any other terms that the purchaser seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 4.5 No order shall be deemed to be accepted by ThermaBead until it issues a written acceptance of the order (which may for the avoidance of doubt be by email) (acknowledgement of order).
- 4.6 Each order shall be deemed to be a separate offer by the purchaser to purchase products in line with our terms and conditions, which ThermaBead shall be free to accept or decline at its absolute discretion.
- 4.7 The purchaser may at any time at least two business days prior to the delivery date amend or cancel an order by written notice to ThermaBead. If the purchaser cancels an order with less than two business days' notice to ThermaBead, the purchaser shall pay ThermaBead on demand the cancellation sum as liquidated damages. The parties confirm that this sum represents a genuine pre-estimate of ThermaBead's loss in respect of ThermaBead's costs incurred in fulfilling the order up to the date of cancellation.

5. Products, Quality and Packing

- 5.1 The products supplied to the purchaser by ThermaBead under this contract shall:
 - 5.1.1 conform to the specification;
 - 5.1.2 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and fit for any purpose held out by ThermaBead; and
 - 5.1.3 be free from defects in design, material and workmanship and remain so for three (3) months after delivery.
- 5.2 Insofar as the products comprise or contain products or components which were not manufactured or produced by ThermaBead, the purchaser shall be entitled only to such warranty or other benefit as ThermaBead has received from the manufacturer.
- 5.3 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the contract.

6. Delivery

- 6.1 Unless otherwise agreed in writing by ThermaBead, delivery of an order accepted by ThermaBead, shall be made:
- 6.2 to the delivery location on a date or dates specified by ThermaBead between 5 business days and two months of the date of ThermaBead's acknowledgement of order;
 - 6.2.1 unless otherwise agreed in writing by ThermaBead in respect of that order and set out in the acknowledgement of order, between 9am and 5pm on any business day.
Time for delivery shall not be of the essence to this contract.
- 6.3 Unless ThermaBead has agreed in writing that it will unload the products at the delivery location, delivery shall be completed when ThermaBead places the order at the purchaser's disposal at the delivery location. Where ThermaBead has agreed in writing that it will unload the products at the delivery location, delivery of an order shall be completed when the products are unloaded at the delivery location.
- 6.4 Unloading of the products at the delivery location (so that ThermaBead or its representative is able to depart from the delivery location unloaded) should take a maximum of 1 hour 45 minutes from the arrival of ThermaBead or ThermaBead's representative at the delivery location ("usual delivery time"). Where unloading of a delivery of an order at the delivery location is not complete within the usual delivery time through no fault of ThermaBead or its representative, ThermaBead may (in its sole discretion) charge the purchaser the product unloading waiting time tariff.
- 6.5 ThermaBead may deliver orders by instalments, which may be invoiced and paid for separately. References in this contract to orders shall, where applicable, be read as references to instalments.
- 6.6 Delays in the delivery of an order shall not entitle the purchaser to:
 - 6.6.1 refuse to take delivery of the order; or
 - 6.6.2 claim damages; or

- 6.6.3 terminate this contract.
- 6.7 ThermaBead shall have no liability for any failure or delay in delivering an order to the extent that such failure or delay is caused by the purchaser's failure to comply with its obligations under this contract
- 6.8 Without prejudice to any other right or remedy available to ThermaBead, in the event of breach by the purchaser of this contract, ThermaBead may, without liability to the purchaser, suspend performance of its obligations under this contract.
- 6.9 If the purchaser fails to take delivery of an order on the delivery date, then, except where such failure or delay is caused by ThermaBead's failure to comply with its obligations under this contract
- 6.9.1 delivery of the order shall be deemed to have been completed at 9.00am on the delivery date; and
- 6.9.2 ThermaBead shall store the order until delivery takes place, and charge the purchaser for all related costs and expenses (including insurance).
- 6.10 Without prejudice and in respect of an order, ThermaBead delivers up to and including 45m³ more or less than the quantity of EPS products ordered, the purchaser shall not be entitled to reject the order, but a pro rata adjustment shall be made to the order invoice.
- 6.11 The purchaser shall make any ThermaBead trailer in the purchaser's possession available for collection at such times as ThermaBead shall reasonably request. Subject to any trailer collection waiting time tariff payable by the purchaser in accordance with condition 10.3, returns of ThermaBead trailers shall be at ThermaBead's expense.
- 6.12 To facilitate delivery and/or collection of any ThermaBead trailer, the purchaser shall at its sole expense provide all requisite materials, facilities, access and suitable working conditions to enable delivery and/or collection (as applicable) to be carried out safely and expeditiously, including the provision of unrestricted and safe access to the purchaser's storage silo or location at the delivery location where the ThermaBead trailer will be situated, by ThermaBead or its representative's delivery vehicle.
- 6.13 The delivery location of any order shall be in mainland Great Britain ("usual delivery parameter"). Delivery to any location outside the usual delivery parameter shall require prior approval in writing from ThermaBead and shall incur a delivery charge (the "excess delivery charge"), the value of which shall be advised to the purchaser by ThermaBead and shall be noted on the acknowledgement of order
- 6.14 Where, in accordance with condition 6.1 the products shall be collected by the purchaser rather than delivered by ThermaBead, reference to 'delivery' or 'delivery' in conditions 6.1 – 6.7 inclusive and conditions 5.1.3, 6.10, 6.12, 7.1, 8.1 shall be deemed to refer to the transfer of physical possession of the products to the purchaser at the location set out in ThermaBead's acknowledgement of order on collection of the products.

7. Acceptance and Defective Products

- 7.1 The purchaser may reject any products delivered to it that do not comply with condition 5.1, provided that:
- 7.1.1 notice of rejection is given to ThermaBead and ThermaBead is permitted to make a full examination of the alleged defect;
- 7.1.2 in the case of a defect that is apparent on normal visual inspection, within ten (10) business days of delivery;
- 7.1.3 in the case of a latent defect, within a reasonable time of the latent defect having become apparent; and
- 7.1.4 none of the events listed in condition 7.3 apply.
- 7.2 If the purchaser fails to give notice of rejection in accordance with condition 7.1, it shall be deemed to have accepted such products.
- 7.3 ThermaBead shall not be liable for products' failure to comply with the warranty set out in condition 5.1 in any of the following events:
- 7.3.1 the purchaser makes any further use of such products after giving notice in accordance with condition 7.1;
- 7.3.2 the defect arises because the purchaser failed to follow the manufacturer's and/or ThermaBead's oral or written instructions as to the storage, installation and use of the products or (if there are none) good trade practice regarding the same;

- 7.3.3 the defect arises as a result of ThermaBead following any drawing, design or specification supplied by the purchaser;
 - 7.3.4 the purchaser alters such products without the prior written consent of ThermaBead;
 - 7.3.5 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions including the use of installation equipment which has not been approved by ThermaBead; or
 - 7.3.6 the products differ from the specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 7.4 If the purchaser rejects products under condition 7.1 then the purchaser shall be entitled to:
- 7.4.1 require ThermaBead to repay the price of the rejected products in full, or at the purchaser's option, issue a credit note to the value of the price of the rejected products.
- 7.5 Once ThermaBead has complied with the purchaser's request, it shall have no further liability to the purchaser in respect of the rejected products' failure to comply with condition 5.1.
- 7.6 Any products replaced shall belong to ThermaBead and any repaired or replacement products shall be subject to the warranty under condition 5.1 for the un-expired portion of the three-month period.
- 7.7 The terms of this contract shall apply to any repaired or replacement products supplied by ThermaBead.

8. Title, Risk and Insurance

- 8.1 Risk in products and any ThermaBead trailer shall pass to the purchaser on delivery.
- 8.2 Title to products shall not pass to the purchaser until ThermaBead has received payment in full (in cleared funds) for:
- 8.2.1 such products; and
 - 8.2.2 all other sums which are or which become due to ThermaBead from the purchaser for sales of products or on any account.
- 8.3 Until title to products has passed to the purchaser, the purchaser shall:
- 8.3.1 hold such products on a fiduciary basis as ThermaBead's bailee;
 - 8.3.2 store such products separately from all other goods held by the purchaser so that they remain readily identifiable as ThermaBead's property;
 - 8.3.3 not remove, deface or obscure any identifying mark or packaging on or relating to such products; and
 - 8.3.4 maintain such products in satisfactory condition and keep them insured on ThermaBead's behalf for their full price against all risks with an insurer that is reasonably acceptable to ThermaBead. The purchaser shall obtain an endorsement of ThermaBead's interest in the products on its insurance policy. On request the purchaser shall allow ThermaBead to inspect such products and the insurance policy, and shall supply ThermaBead with proof of premium payment but the purchaser may resell or use products in the ordinary course of its business.
- 8.4 If before title to products passes to the purchaser the purchaser becomes subject to any of the events in conditions 13.2.3 to 13.2.11 inclusive then, provided that such products have not been resold and without limiting any other right or remedy ThermaBead may have, ThermaBead may at any time require the purchaser to deliver up such products and, if the purchaser fails to do so promptly, enter any premises of the purchaser or of any third party where the relevant products are stored in order to recover them.
- 8.5 ThermaBead shall be entitled to perform credit checks on the purchaser at any time during the term of the contract and may register information about the purchaser and the conduct of the contract with a licenced credit reference agency.
- 8.6 Any ThermaBead trailer shall remain at the sole risk of the purchaser during any period during which the ThermaBead Trailer is in the possession, custody or control of the purchaser (risk period) until such time as the ThermaBead trailer is collected by ThermaBead. During the risk period, the purchaser shall, at its own expense, obtain and maintain insurances against all risks relating to the ThermaBead trailer, third party liability and/ or such other risks as a prudent owner or operator of the ThermaBead trailer would insure for or as may be required by law.
- 8.7 The purchaser shall give immediate written notice

8.7.1 If the purchaser becomes subject to any of the events in conditions 13.2.3 to 13.2.11 inclusive then, without limiting any other right or remedy ThermaBead may have, ThermaBead may at any time require the purchaser to deliver up any ThermaBead trailer in its possession or control and, if the purchaser fails to do so promptly, enter any premises of the purchaser or of any third party where the relevant ThermaBead trailer is stored in order to recover it.

9. Price, Charges and Payment

- 9.1 The product prices shall, subject to condition 9.5, be the prices set out on your order invoice.
- 9.2 The product prices and supplemental charges are exclusive of amounts in respect of VAT. The purchaser shall pay to ThermaBead such additional amounts in respect of VAT as are chargeable on the supply of products. ThermaBead will provide a valid VAT invoice to cover these amounts.
- 9.3 Subject to any supplemental charges payable in accordance with condition 9.4, the product prices are inclusive of the costs of packaging, insurance and carriage of the products.
- 9.4 The purchaser shall pay ThermaBead the applicable supplemental charges calculated in accordance with condition 3 and in accordance with this contract.
- 9.5 ThermaBead shall have the right at any time during the term and for any reason, to adjust the product prices and/or the supplemental charges, subject to ThermaBead giving the purchaser not less than one month's prior notice in writing (which may be by email) of the adjustments. Changes shall take effect on the date specified in ThermaBead's notice.
- 9.6 ThermaBead shall be entitled to invoice the purchaser for:
- 9.6.1 each order on or at any time after order; and
 - 9.6.2 the supplemental charges at any time after the supplemental charges are incurred.
- 9.7 Unless otherwise agreed in writing by ThermaBead, the purchaser shall pay invoices in full and in cleared funds within:
- 9.7.1 one (1) hour of receipt of ThermaBead's Acknowledgement of order; or
 - 9.7.2 in respect of any invoice relating to supplemental charges, within five days of the date of the invoice.
- 9.8 Payment shall be made, unless otherwise agreed in writing by ThermaBead, to the bank account nominated in writing by ThermaBead. If a party fails to make any payment due to the other under this contract by the due date for payment ("due date"), then, without limiting the other party's remedies under this contract, the defaulting party shall pay interest on the overdue amount at the rate of 5% per annum above the Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. The defaulting party shall pay the interest together with the overdue amount. This clause shall not apply to payments that the defaulting party disputes in good faith
- 9.9 ThermaBead may, without limiting any other rights or remedies it may have, set off any amounts owed to it by the purchaser under this contract against any amounts payable by it to the purchaser under this contract.
- 9.10 All payments payable to ThermaBead or the purchaser under this contract shall become due immediately on its termination. This clause 9.10 is without prejudice to any right to claim for interest under the law or under this contract
- 9.11 Once an invoice has become overdue we reserve the right to all remaining invoices becoming payable immediately both for lease and bead.

10. Installer Obligations

- 10.1 The purchaser shall during the term:
- 10.1.1 ensure that the products are kept in a suitable environment and installed safely and appropriately, which shall as a minimum meet the requirements set out in the BBA certificate and the ThermaBead Installer Manual;
 - 10.1.2 ensure that the products are only installed:
 - 10.1.2.1 by trained competent staff, who in each instance have been trained and certified by ThermaBead and are registered with the BBA;

- 10.1.2.2 in compliance with the BBA certificate and any and all applicable laws and industry obligations;
- 10.1.3 take such steps (including compliance with all safety and usage instructions provided by ThermaBead and/or the manufacturer of the product) as may be necessary to ensure, so far as is reasonably practicable, that the products are at all times safe and without risk to health when being stored, used and/or installed;
- 10.1.4 comply with all the requirements of ThermaBead as system designer of the BBA certificate;
- 10.1.5 maintain records as detailed in the BBA surveillance scheme, CIGA good practice guides and all other relevant laws and regulations;
- 10.1.6 grant ThermaBead or its representatives and the representatives of any and all relevant industry bodies access to inspect:
 - 10.1.6.1 any records held by the purchaser;
 - 10.1.6.2 and any installation of the products, in relation to the purchaser's compliance with the BBA certificate and any and all applicable laws and industry obligations.
- 10.1.7 maintain its membership with both the BBA and CIGA;
- 10.1.8 make no alteration to the products;
- 10.1.9 ensure any and all installation equipment used with the products is:
 - 10.1.9.1 equipment supplied by ThermaBead; or
 - 10.1.9.2 equipment that has been approved by ThermaBead for use with the products;
- 10.1.10 keep ThermaBead fully informed of all material matters relating to products;
- 10.1.11 permit ThermaBead or its duly authorised representative to inspect the products at all reasonable times and for such purpose to enter any premises at which the products may be located, and shall grant reasonable access and facilities for such inspection;
- 10.1.12 not do or permit to be done any act or thing which could invalidate the insurances referred to in conditions 8.3.4 and 8.6.
- 10.1.13 in respect of the ThermaBead trailers, where a ThermaBead trailer is used by the purchaser to store the products:
 - 10.1.13.1 only use the ThermaBead trailer for storage of the EPS products supplied by ThermaBead hereunder; and
 - 10.1.13.2 not remove, tamper with or obscure the chassis number, serial number or ministry of transport number on the ThermaBead trailer.
- 10.1.14 not use the products for any unlawful purpose;
- 10.1.15 not do anything which will or may harm the reputation of ThermaBead and/or the products;
- 10.1.16 notify ThermaBead of any defects in and/or complaints made to the purchaser in respect of the products or installation of the products by the purchaser;
- 10.1.17 not produce, hold, use, or process any marketing or advertising materials relating to or bearing the marks or names of ThermaBead or the products without first obtaining the prior written approval of ThermaBead in each instance; and
- 10.1.18 not make any reference to ThermaBead, this contract or the products in any media or advertising material, publication or broadcast without first obtaining the prior written approval of ThermaBead in each instance.
- 10.2 For the avoidance of doubt, subject to condition 12.3, ThermaBead shall not be liable for any loss, damage or injury howsoever incurred whether directly or indirectly arising from the installation of the products by the purchaser. Such liability shall vest absolutely in the purchaser.
- 10.3 The collection of ThermaBead trailers from the delivery location should take a maximum of 30 minutes from the arrival of ThermaBead or ThermaBead's representative at the delivery location ("usual trailer collection time"). Where ThermaBead or ThermaBead's representative is unable to collect a ThermaBead trailer within the usual trailer collection time through no fault of its own, ThermaBead may (in its sole discretion) charge the purchaser the trailer collection waiting time tariff.
- 10.4 The purchaser acknowledges that ThermaBead shall not be responsible for any loss of, damage to or defect in the products arising out of or in connection with any negligence, misuse, mishandling

of the products or otherwise caused by the purchaser or its officers, employees, agents and contractors, and the purchaser undertakes to indemnify ThermaBead on demand against the same, and against all losses, liabilities, claims, damages, costs or expenses of whatever nature otherwise arising out of or in connection with any failure by the purchaser to comply with the terms of this contract.

11. ThermaBead Obligations

11.1 ThermaBead shall use its reasonable endeavours to:

- 11.1.1 provide, subject to the purchaser providing ThermaBead with all information requested by ThermaBead in respect of the relevant purchaser staff member, assessment and certification opportunities to purchaser's staff at times and at costs agreed in advance and in writing by ThermaBead;
- 11.1.2 supply purchaser staff who have successfully passed the ThermaBead assessment and training referred to in condition 11.1.1, subject to the purchaser providing ThermaBead with all information requested by ThermaBead in respect of the relevant purchaser staff member, with identity cards confirming their competence in accordance with the procedures set out in the Installer's Manual; and
- 11.1.3 assist in the training of purchaser operatives as reasonably requested in writing by the purchaser, at costs and within timescales agreed in advance and in writing by ThermaBead.

11.2 Without prejudice to condition 11.3 below, ThermaBead trailers used by the purchaser to store EPS product shall be available to the purchaser for up to 30 days from its delivery by ThermaBead. On or before the 30th day after delivery the purchaser shall either make the ThermaBead trailer available for collection by ThermaBead or shall inform ThermaBead that it wishes to retain the ThermaBead trailer for which ThermaBead shall charge a fee of £100 plus VAT per week or part thereof (the "trailer retention charge").

11.3 ThermaBead shall be entitled to remove any ThermaBead trailer in the purchaser's possession on at least twenty-four (24) hours notice where

- 11.3.1 such ThermaBead trailer is required for a statutory inspection and in such circumstances, ThermaBead shall be entitled to retain the ThermaBead trailer for such time as is required to complete the statutory inspection, following which ThermaBead shall return the ThermaBead trailer to the purchaser; or
- 11.3.2 the purchaser does not pay the trailer retention charge when it becomes due under condition 9.6.

11.4 It is the responsibility of the purchaser to ensure suitability of site in regards to access, insurance, highway laws and regulations relating to the ThermaBead trailer on and following delivery.

12. Liability – The purchasers attention is particularly drawn to this clause

12.1 This condition sets out the entire financial liability of ThermaBead (including any liability for the acts or omissions of its employees, agents and subcontractors) to the purchaser in respect of:

- 12.1.1 any breach of this contract however arising; any use made or resale of the products by the purchaser, or of any product incorporating any of the products; and any representation, statement or tortious act or omission (including negligence) arising under or in connection with this contract.

12.2 Subject to condition 12.3 and 12.4, ThermaBead's maximum aggregate liability for breach of this contract (including any liability for the acts or omissions of its employees, agents and subcontractors), whether arising in contract, tort (including negligence), misrepresentation or otherwise, shall be limited in respect of:

- 12.2.1 each claim, to a sum equal to the total payments paid by the purchaser under the contract up to the date of the claim; and
- 12.2.2 all claims (connected or unconnected) in any consecutive 12 month period running from the commencement date and each anniversary of the commencement date thereafter (the "liability year");
- 12.2.3 to the sum equal to the total payments paid and payable by the purchaser under the contract in the immediately preceding liability year; and

- 12.2.4 in respect of the first liability year (running from the commencement date), to a sum equal to the greater of £200,000 and the total payments paid and payable by the purchaser under the contract up to the first date of claim in that liability year.
- 12.3 Nothing in this contract shall exclude or in any way limit either party's liability for death or personal injury caused by its own negligence, fraud or fraudulent misrepresentation or any other liability which cannot be excluded by law.
- 12.4 Subject to condition 12.3, ThermaBead shall under no circumstances whatever be liable to the other, hether in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise, for any loss of profit, loss of goodwill, loss of business, loss of business opportunity, loss of anticipated saving, or special, indirect or consequential damage suffered by the purchaser that arises under or in connection with this contract.

13. Termination and Consequences of Termination

- 13.1 Either party may at any time terminate this contract by giving to the other party not less than three (3) months' notice in writing.
- 13.2 Either party may terminate this contract with immediate effect by giving written notice to the other if:
- 13.2.1 the other party fails to pay any amount due under this contract on the due date for payment and remains in default not less than 30 days after being notified to make such payment;
 - 13.2.2 the other party commits a material breach of any other term of this contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified to do so;
 - 13.2.3 the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
 - 13.2.4 the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;
 - 13.2.5 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 of the other party;
 - 13.2.6 an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party;
 - 13.2.7 the holder of a qualifying floating charge over the assets of the other party has become entitled to appoint or has appointed an administrative receiver;
 - 13.2.8 a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
 - 13.2.9 a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;
 - 13.2.10 any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events referred to in conditions 13.2.3 to 13.2.9 (inclusive);
 - 13.2.11 the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or
 - 13.2.12 if the termination right under condition 11 arises.
- Termination of this contract by ThermaBead shall not affect any other right or remedy available to ThermaBead.
- 13.3 For the purposes of condition 13.2.2, material breach means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which ThermaBead would otherwise derive from:
- 13.3.1 a substantial portion of this contract; or

13.3.2 any of the obligations set out over the term of this contract. In deciding whether any breach is material no regard shall be had to whether it occurs by some accident, mishap, mistake or misunderstanding.

13.4 On termination of this contract each party shall promptly (subject to the record keeping obligations set out in conditions 10.1.5 and 15):

13.4.1 return to the other party all equipment, materials and property belonging to the other party that the other party had supplied to it or a member of its Group in connection with the supply and purchase of the products under this contract;

13.4.2 return to the other party all documents and materials (and any copies) containing the other party's confidential information;

13.4.3 erase all the other party's confidential Information from its computer systems (to the extent possible); and

13.4.4 on request, certify in writing to the other party that it has complied with the requirements of this condition.

13.5 On termination of this contract the following clauses shall survive and continue in full force and effect: condition 10.4 (Indemnity), condition 12 (Liability), condition 15 (Confidential Information, Record Keeping and Audit), condition 13.4-13.7 inclusive (Obligations on termination) and conditions 17.10 and 17.14 (Governing law and jurisdiction).

13.6 Termination or expiry of this contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, 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.

13.7 For the avoidance of doubt, termination or expiry of this contract shall not relieve the purchaser from any of its continuing obligations and liabilities set out in condition 10.

13.8 On termination or expiry of this contract the purchaser shall promptly return to ThermaBead all identity cards issued in accordance with condition 10.1.2 and any certificates or other documentation relating to ThermaBead's assessment of the purchaser's staff's competence in accordance with the procedures set out in the Installer Manual.

14. Force Majeure

For the purposes of this contract, force majeure event means an event beyond the reasonable control of the company including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the company or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.

The company shall not be liable to the purchaser as a result of any delay or failure to perform its obligations under this contract as a result of a force majeure event.

If the force majeure event prevents the company from providing any of the services for more than 30 days, the company shall, without limiting its other rights or remedies, have the right to terminate this contract immediately by giving written notice to the purchaser.

15. Confidential Information, Record Keeping and Audit

15.1 Each party undertakes that it shall not at any time during this contract and for a period of five years after termination disclose to any person any confidential information disclosed to it by the other party concerning the business or affairs of the other party or of any member of its group, including but not limited to information relating to a party's operations, processes, plans, product information, know-how, designs, trade secrets, software, market opportunities and customers ("Confidential Information"), except as permitted by condition 15.2.

15.2 Each party may disclose the other party's confidential information:

15.2.1 to its employees, officers, agents, consultants or sub-contractors ("representatives") who need to know such information for the purposes of carrying out the party's obligations under this contract provided that the disclosing party takes all reasonable steps to

ensure that its representatives comply with the confidentiality obligations contained in this condition 15 as though they were a party to this contract. The disclosing party shall be responsible for its representatives' compliance with the confidentiality obligations set out in this clause; and

15.2.2 as may be required by law, court order or any governmental or regulatory authority including the BBA and CIGA.

- 15.3 Each party reserves all rights in its confidential information. No rights or obligations in respect of a party's confidential Information other than those expressly stated in this contract are granted to the other party or to be implied from this contract. In particular, no licence is hereby granted directly or indirectly under any patent, invention, discovery, copyright or other intellectual property right held, made, obtained or licensable by either party now or in the future.
- 15.4 The purchaser shall keep at its normal place of business detailed, accurate and up to date records relating to its installation of the products and its compliance with condition 10, in each case during the previous six years. The purchaser shall ensure that such records and books of accounts are sufficient to enable ThermaBead to verify the purchaser's compliance with its obligations under condition 10.
- 15.5 The purchaser shall permit ThermaBead and its third party representatives, on reasonable notice during normal business hours, but without notice in case of any reasonably suspected breach of condition 10, to access and take copies of the purchaser's records and any other information held at the purchaser's premises and to meet with the purchaser's personnel to audit the purchaser's compliance with its obligations under condition 10. Such audit rights shall continue for three years after termination of this contract. The purchaser shall give all necessary assistance to the conduct of such audits during the term of this contract and for a period of three years after termination of this contract.

16. Intellectual Property Rights

- 16.1 ThermaBead is the system designer of the BBA certificate, and owns all associated intellectual property rights and data relating to the BBA certificate.
- 16.2 Except as expressly provided in this contract the purchaser shall have no rights in respect of any intellectual property rights of ThermaBead however used by ThermaBead in relation to the products and/or the BBA certificate and the purchaser hereby acknowledges that it shall not acquire any rights in respect thereof and that all intellectual property rights are and shall remain vested in or controlled by ThermaBead.
- 16.3 The purchaser shall inform ThermaBead as soon as reasonably practicable in writing of any actual infringement of the intellectual property rights of ThermaBead relating to the products and/or the BBA certificate or of any claim that the product and/or the BBA certificate infringe the intellectual property rights of a third party of which the purchaser is aware but the purchaser shall take no steps or enter into any proceedings with respect to such infringement or claim (unless the purchaser is the defendant in an action which has already commenced) without the prior written consent of ThermaBead (such consent not to be unreasonably withheld or delayed).
- 16.4 The purchaser shall take all such steps as ThermaBead may reasonably require to assist ThermaBead in maintaining the validity and enforceability of the intellectual property rights of ThermaBead during the term of this contract.
- 16.5 Without prejudice to the right of the purchaser or any third party to challenge the validity of any intellectual property rights of ThermaBead, the purchaser shall not do or omit to do or authorise any third party to do or omit to do any act which would or might invalidate or be inconsistent with any intellectual property rights of ThermaBead.

17. General

- 17.1 The purchaser may not assign or transfer or sub-contract any of its rights, benefits or obligations under this contract without the prior written consent of ThermaBead. ThermaBead may assign, transfer or sub-contract its rights and obligations under this contract.
- 17.2 This 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.
- 17.3 Each party acknowledges that in entering into this contract does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this contract and that it shall have no claim for innocent or negligent misrepresentation based on any statement in this contract.
- 17.4 No variation of this contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 17.5 Nothing in this contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.
- 17.6 Each party confirms it is acting on its own behalf and not for the benefit of any other person.
- 17.7 Each party shall, and shall use all reasonable endeavours to procure that any necessary third party shall, execute and deliver such documents and perform such acts as may reasonably be required for the purpose of giving full effect to this contract.
- 17.8 This contract may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.
- 17.9 No term of this contract shall be enforceable under the contracts (rights of third parties) act 1999 by a person who is not a party to this contract, but this does not affect any right or remedy of a third party which exists or is available apart from under that act.
- 17.10 Any notice or other communication given to a party under or in connection with this contract shall be in writing and shall be addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service, commercial courier or fax. Any notice or other communication shall be deemed to have been received if delivered personally on signature of a delivery receipt or at the time the notice is left at the proper address if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second business day after posting or at the time recorded by the delivery service, or, if sent by fax, at 9.00 am on the next business day after transmission.
- 17.11 Condition 17.10 does not apply to the service of any proceedings or other documents in any legal action. For the purposes of condition 17.10, "writing" shall not include e-mail.
- 17.12 No failure or delay by a party to exercise any right or remedy provided under this contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.
- 17.13 If any provision or part-provision of this contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this condition shall not affect the validity and enforceability of the rest of this contract.
- 17.14 This contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this contract or its subject matter or formation (including non-contractual disputes or claims).