

Terms & Conditions

Toshiba Air Conditioning terms and conditions

1. GENERAL

1.1 In these conditions:

“Buyer” means the person(s), firm or company who purchases Equipment or Parts from the Seller;

“Contract” means any contract between the Seller and the Buyer for the sale and purchase of Parts or Equipment, or the provision of services, incorporating these conditions;

“Seller” means Toshiba Air Conditioning, a division of Toshiba Carrier UK Ltd.

1.2 Subject to any modification in accordance with this clause, the Contract will be on these Conditions and supersedes all previous or contemporaneous, oral or written statements (including any terms or conditions the Buyer purports to apply under any purchase order, confirmation of order, specification or other document). No modification or additions to the Contract or these Conditions shall be binding unless in writing and signed by both parties. No representation about the Equipment or Parts shall have any effect unless expressly agreed in writing and signed on behalf of the Seller. The Contract is personal to Buyer and may not be assigned without Seller's written consent.

1.3 If the Housing Grants Construction & Regeneration Act 1996 Part II applies to the Contract the Scheme under the Act shall apply and take precedence in the event of conflict between the Scheme and these Conditions.

1.4 Each order for Equipment or Parts by the Buyer from the Seller shall be deemed to be an offer by the Buyer to purchase such Equipment and Parts from the Seller subject to these Conditions.

1.5 No order placed by the Buyer shall be deemed to be accepted by the Seller until a written acknowledgment of order is issued by the Seller or (if earlier) the Seller delivers the Equipment or Parts to the Buyer.

1.6 Any quotation is given on the basis that no contract will come into existence until the Seller dispatches an acknowledgement of order to the Buyer. Any quotation is valid for a period of 30 days from its date, provided the Seller has not previously withdrawn.

2. PRICE AND PAYMENT

2.1 The price shall be as stated and is exclusive of taxes and any other governmental charges, including, but not limited to, VAT. Any discounts, deductions, or rebates agreed are only available if the price is paid by the due date.

2.2 Goods or services in addition to those specified in the Contract will be provided upon receipt of Buyer's written acknowledgement and shall be paid for as an extra and subject to these Conditions.

2.3 Payment shall be made sixty (60) days after the date of the invoice, which shall be issued on or at any time after delivery. Seller reserves the right to require cash payment or other alternative method of payment prior to shipment or completion of work if Seller determines, in its sole discretion, that Buyer or Buyer's assignee's financial condition at any time does not justify continuance of the 60 day payment terms. Buyer may not withhold payment of any invoice or other amount due to Seller by reason of any right of set off or counterclaim which Buyer may have or allege to have for any reason. Time for payment shall be of the essence.

2.4 If the Buyer fails to pay the Seller any sum due pursuant to the Contract the Buyer will be liable to pay interest to the Seller on such sum from the due date for payment until the date of actual payment at the rate of 4% per day above the prevailing HSBC base rate.

3. DELIVERY

3.1 Delivery shall occur when the Equipment or Parts arrive at the delivery address specified by the Buyer or two (2) working days after delivery or collection is offered to Buyer. If the Buyer fails to make arrangements to accept delivery or collect the Equipment or Parts or if Seller is unable to deliver because of inadequate access to the delivery address or instruction from the Buyer, then the Seller may do any one or more of the following (without prejudice to any other right or remedy Seller may have):

a. Make additional charges for failed delivery;

b. Store the Equipment or Parts at Buyer's risk and cost;

c. Invoice Buyer for the Equipment or Parts;

d. Terminate this Contract without liability on Seller's part; and/or

e. Recover from Buyer all costs and losses incurred by Seller.

3.2 Delivery dates are given in good faith but are estimates only. Seller does not guarantee a particular date for shipment or delivery. Time for delivery shall not be of the essence of the Contract.

3.3 Seller shall have the right to ship any portion of the Equipment or Parts included in the Contract and invoice customer for such partial shipment.

4. TESTS, INSPECTION, DAMAGE AND LOSS

4.1 Equipment and/or Parts produced for Buyer will be factory tested at Seller's manufacturing laboratory at Buyer's request and in Buyer's presence subject to an additional charge. Seller shall not be liable for any delay caused by such tests and tests done in the absence of Buyer shall be deemed to have been carried out in the Buyer's presence if Buyer has received five (5) working days' notice of the test date.

4.2 Buyer shall inspect the Equipment or Parts at the place and time of unloading but nothing in these terms shall require Buyer to break packaging and/or unpack Equipment or Parts which are intended to be stored before use.

4.3 Unless you advise Seller by telephone immediately and written notice is received by Seller (and in the event of loss or damage in transit is also received by the carrier), within three (3) working days of unloading, of any claim for loss, damage, short delivery or failure to conform to the Contract apparent on inspection, the Equipment and/or Parts will be deemed to have been delivered in accordance with the delivery documents and Buyer shall not be entitled and waives any right to reject the Equipment and/or Parts.

5. TITLE AND RISK OF LOSS

5.1 Risk of loss of the Equipment and/or Parts shall pass to Buyer upon delivery.

5.2 Title shall remain with Seller until Buyer pays the price for the Equipment and/or Parts.

5.3 Until title passes Buyer shall hold the Equipment and/or Parts on a fiduciary basis and as Seller's bailee. The Equipment and/or Parts shall be stored separately from any other equipment, parts or other goods of the Buyer or any third party in such a way that they remain identifiable as the Seller's property and Buyer shall not interfere with any identification marks, labels, batch numbers or serial numbers on the Equipment and/or Parts.

5.4 Buyer's right to possession of Parts and Equipment shall terminate immediately if:

a. The Buyer encumbers, or in any way charges any of the Equipment or Parts, or seeks to do so;

b. The Buyer fails to observe or perform any of its obligations under the Contract or any other contract between the Buyer and Seller, or is unable to pay its debts within the meaning of section 123 Insolvency Act 1986 or the Buyer ceases to trade;

c. The Buyer has a receiver, administrator, or administrative receiver appointed of its undertaking or any part of it or a resolution is passed or a petition is presented to any court for the winding up of the Buyer or for the grant of an administration order in respect of the Buyer or the Buyer convenes a meeting of creditors or enters into liquidation.

5.5 Seller shall be entitled to recover payment for the Equipment and/or Parts notwithstanding that ownership of any of the Equipment and/or Parts has not passed from the Seller.

5.6 If the Equipment and/or Parts are to become affixed to any land or building, Buyer must ensure that they are capable of removal without material injury to the land or building and Buyer shall take all necessary steps to prevent title to the Equipment and/or Parts from passing to the owner or landlord of such land or building.

5.7 Seller, its employees or agents, may with such transport as is necessary, enter upon premises occupied by Buyer or to which Buyer has access and where the Equipment and/or Parts may be or are believed to be situated in order to inspect them or, where the Buyer's right to possession has terminated, to recover them.

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7. WARRANTY

7.1 Seller warrants that all equipment and parts manufactured by Seller will be free from defects in material and workmanship (the "Equipment" and "Parts"). For Equipment and Parts determined to be defective within thirty-six (36) months from the date of installation or thirty-nine (39) months from the date of shipment, whichever is earlier, Seller shall at its option repair, replace, or issue a credit, for such Equipment or Parts, provided that they were not damaged, abused, or affected by chemical properties. Any claim under this warranty must be provided to Seller in writing. **THIS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY (other than the Condition implied by Section 12 of the Sales of Goods Act 1979), INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.** Seller's obligation to repair, replace or issue a credit for any defective Equipment or Parts during the warranty period shall be customer's exclusive remedy. Seller shall be responsible for labour charges during Seller's normal business hours for removal or reinstallation of defective Equipment or Parts, however, Seller shall not be responsible for consumable items (including, but not limited to vee belts, oil and filters) transportation charges, cramage charges, out of Seller's normal working hours, handling and shipping or refrigerant loss. Seller may make a charge in accordance with its standard rates if after notification of a claim no defect in material or workmanship is found.

7.2 In order for the above warranty to apply, the Equipment and/or Parts must have been maintained by a recognised air conditioning service company with trained staff, experienced and knowledgeable on the Equipment in question, throughout the warranty period (proof of which may be required prior to a service visit being carried out).

8. DISCLAIMERS AND LIMITATION OF LIABILITY

8.1 Any errors or omissions in any sales literature, quotation, tender, price list, acceptance of offer, invoice or other document or information issued by Seller shall be subject to correction without liability on Seller's part.

8.2 Seller may make changes to the specification of the goods necessary to conform with any applicable statutory or EC requirements, or any relevant legislation, or where goods are supplied to Seller's specifications that do not materially affect their quality or performance.

8.3 Except in quotations or tenders against the Buyer's detailed drawings, statements of weight and dimensions are approximations only and the descriptions and illustrations in any of Seller's catalogues, price lists, or other advertising materials are intended to present only a general idea of the goods described therein and none of these shall form part of the Contract. The Seller does not accept responsibility for any drawings, designs or specifications not prepared by it and submission of the tender or quotation does not constitute any warranty, guarantee, representation or opinion of the practicability of construction, efficiency or safety or otherwise of materials to be supplied or work to be executed by the Seller accordingly. Additional work caused by defects in any such drawings, designs or specifications shall be chargeable as extra work.

8.4 Nothing in these Conditions excludes or limits the liability of the Seller for death or personal injury caused by the Seller's negligence or fraudulent misrepresentation.

8.5 Subject to conditions 7 and 8.4:

a. The Seller's total liability in contract and tort (including negligence or breach of statutory duty), misrepresentation or otherwise, arising in connection with the performance of the Contract shall be limited to the price paid by the Buyer to the Seller under the Contract;

b. The Seller shall not be liable to the Buyer for: i) personal injury, ii) damage to property, iii) loss of profits, iv) loss of business, v) indirect or consequential loss or damage, vi) costs (howsoever caused) which arise out of or in connection with the Contract.

9. INDEMNIFICATION

9.1 Buyer agrees to fully and unconditionally indemnify, defend and hold harmless Seller against any and all losses, damages, penalties, costs and expenses (including attorneys' fees) arising from any and all alleged or actual claims, demands, administrative proceedings or causes of action by any third party arising from the supply of the Equipment, Parts or Service. This indemnity will be reduced in proportion to the extent that such losses, damages, penalties costs and expenses (including attorneys' fees) are a directly caused by Seller's negligence.

9.2 Buyer agrees to fully and unconditionally indemnify and hold harmless Seller against any and all losses, damages, penalties, costs and expenses (including attorneys' fees) arising from Buyer's failure to comply with any laws (including export restrictions), Buyer's instructions, cancellation of the order and/or, in general, breach of this Contract.

10. DELAYS

Neither party shall be liable for the delayed performance or non-performance caused by conditions beyond their reasonable control.

11. TERMINATION

11.1 Seller may immediately terminate the Contract for Cause without any liability on Seller's part. Cause shall mean failure to pay any invoice or any sum due to Seller from Buyer under the Contract or any other contract between the Buyer and the Seller on the due date, and/or Buyer's credit limit is exceeded, and/or Buyer or Buyer's Associated Company (as defined in the Income and Corporations Taxes Act 1988) becomes Insolvent, and/or there is a material change in Buyer's or Buyer's Associated Company's constitution, the Seller is not satisfied with the outcome of any credit check or international trade compliance check on the Buyer, and/or Buyer commits a material breach of the Contract. If Buyer fails to remedy any of the above after being requested to do so, all sums outstanding between Buyer and Seller under the Contract shall become immediately due and payable and Seller shall be entitled to do any one or more of the following (without prejudice to any other right or remedy Seller may have):

a. Require payment in cleared funds in advance of further deliveries of Equipment and/or Parts;

b. Suspend or cancel any further deliveries of Equipment and/or Parts to Buyer under any contract without liability on Seller's part; and/or

c. Suspend or cancel any obligation to commission the Equipment whether under this or any other contract.

11.2 Buyer may cancel this Contract only with Seller's prior written consent, and upon payment of the specified cancellation charges. Such charges shall take into account costs and expenses incurred, and purchases or contract commitments made by Seller and all other losses due to the cancellation including a reasonable profit. Unused goods will be accepted for return at Seller's discretion and on terms agreed to by Seller.

11.3 Termination of the Contract shall not affect the rights and obligations that have already accrued at the time of termination.

12. BREXIT

12.1 Right to renegotiate or terminate. If a Brexit Trigger Event occurs, the Seller may serve notice requiring the Buyer to negotiate in good faith an amendment to this agreement to alleviate the Brexit Trigger Event. If no such amendment is made to this agreement within 30 days from the date of such notice, the Seller may terminate this agreement by giving the Buyer not less than 14 days written notice.

12.2 Brexit Trigger Event means any of the following events occurring at any time after the UK ceases to be a Member State of the European Union:

- a. Changes in law;
- b. Substantial adverse impact or restrictions on the Seller's ability to perform the agreement in accordance with its terms and the law;
- c. Increases in costs, fluctuating exchange rates, tariffs or other duties tax or levy imposed on exports or imports, changes to pricing of products or services incurred by Seller in performing the Agreement since the price of the product or service was agreed;
- d. Changes or new requirements for licenses or consents;
- e. Delays in export or import of products or services due to border delays, controls, processes or restrictions;
- f. Any other change to the business or economic environment in which Seller operates that may be unforeseen at the date of this Agreement.

12.3 Overlap with other rights and obligations. Save as expressly provided in this clause 12, a Brexit Trigger Event shall not terminate or alter (or give any party a right to terminate or alter) this contract, or invalidate any of its terms or discharge or excuse performance under it. If there is an inconsistency between the provisions of this clause and any other provision of this agreement, the provisions of this clause shall prevail.

13. DISPUTE RESOLUTION

13.1 The Contract shall be governed and interpreted according to the Law of England and Wales, except for its conflict of law provisions, and Buyer agrees to submit to the exclusive jurisdiction of the English Courts.

13.2 The parties agree that any suits arising from the performance or non-performance of the Contract, whether based on contract, negligence, strict liability or otherwise, shall be brought within one (1) year from the date that the claim arose.

13.3 If at any time any question, dispute or difference whatsoever shall arise between Buyer and Seller upon or in relation to or in connection with the Contract, either party may give the other notice in writing of the existence thereof and Seller reserves the right as to whether or not the same shall be referred to the arbitration of a person to be mutually agreed upon. Any submission shall be deemed to be a submission within the meaning of the Arbitration Act 1950, as amended.

14. MISCELLANEOUS

14.1 The Headings used in these Conditions are for convenience only and shall not affect their interpretation.

14.2 The waiver by either party of any breach or default of these Conditions shall not be construed as a continued waiver of that breach nor as a waiver of any subsequent breach of the same or any other provision.

14.3 Failure or delay by the Seller in enforcing or partially enforcing any provisions of the Contract will not be construed as a waiver of any of its rights under the Contract.

14.4 If any clause or sub-clause of these Conditions is held by a court or any other competent authority to be wholly or partly illegal, void, unreasonableness, invalidity or unenforceability it shall to the extent of such illegality, voidness, unreasonableness, invalidity or unenforceability be deemed severable and the remaining provisions of the Contract and of the other clauses and sub-clauses of Conditions shall not be affected and they shall remain in full force and effect.

14.5 Buyer represents and warrants that it will not do or omit to do anything that would place Seller, or any parent, subsidiary, or associated company, in breach of any laws, including, but not limited to English and foreign export and import laws.

15. RESTRICTIONS ON SENSITIVE COUNTRIES

The Buyer agrees that it will not either directly or indirectly sell, re-export or transfer products, equipment, software, technical information or any services supplied by the Seller to the following countries: Iran, Sudan (including Southern Sudan), Cuba, North Korea, Myanmar and Syria including any entities or persons located in those countries, or who are owned or controlled by the governments of those countries. The Seller reserves the right to change any of these countries in the future.

16. ANTI BRIBERY

Neither the Buyer nor the Seller shall, directly or indirectly, make a bribe or other illegal gift nor payment or offer, promise or authorize a bribe or other illegal gift or payment to any public or private person or entity. Both the Buyer and the Seller represent and warrant that they have not taken, or permitted any of its affiliates, agents, sub-contractors, suppliers or employees to take, any action which would constitute a breach of this provision, and covenants to comply with (and require its affiliates, agents and employees to comply with) this provision. This provision shall survive the termination of the Contract.

17. PERSONAL INFORMATION PROTECTION AND PRIVACY

17.1 Definitions

"Controller" means the party that determines the purposes and means of the Processing of Personal Information. If the parties both serve as a Controller, they are **Co-Controllers**.

"Data Breach Incident" is circumstances (whether intentional, or unintentional or accidental) that involve *actual* or a *reasonable possibility* of unauthorized access to or possession of, or the loss or destruction of, Personal Information, whether ultimately confirmed or not.

"Data Privacy Laws" mean applicable laws and regulations relating to Personal Information protection of any country, state, or municipality with jurisdiction to regulate the activity under this Contract.

"Modified Personal Information" means Personal Information that Buyer combines with other data or information, including but not limited to geolocation data, identifiers for individuals not in Seller's possession, or publicly available data. Modified Personal Information is a subset of Personal Information.

"Personal Information" means information and data exchanged in connection with this Contract that is related to any identified or identifiable natural person or, to the extent of a conflict with applicable law, which is subject to any Data Privacy Laws.

"Processing" means any operation or set of operations performed on Personal Information or on sets of Personal Information, whether or not by automated means, such as collection, recording, organization, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, sharing, alignment or combination, restriction, erasure or destruction.

"UTC" shall mean the United Technologies Corporation and its affiliates.

17.2 **Compliance with Law.** The products and/or services being provided require the collection of Personal Information to function as intended. Both parties will comply with applicable Data Privacy Laws as pertaining to Personal Information Processed in connection with activity under this Contract. If necessary, the parties will work together in good faith to make any amendments or enter into any additional agreements as may be required by a change in Data Privacy Laws.

17.3 **Ownership of Personal Information.** Any Personal Information contained within Seller's products or services is owned by Seller.

17.4 **The Controller.** Prior to providing Personal Information to the Seller, the Buyer is the Controller of the Personal Information and responsible for all obligations with respect to that data, including, without limitation, providing notice for the individuals for whom it provides personal information to Seller. Once the Buyer has provided Personal Information to Seller, Seller and Buyer are Co-Controllers.

17.5 Shared Rights and Obligations.

- (i) If a party Processes Personal Information for any purpose beyond the scope of this Contract, then that party assumes the notice obligations.
- (ii) If the Personal Information is involved in a Data Breach Incident, the party on whose system the data was stored is responsible for any notifications and associated costs. Unless prohibited by law or a regulator with jurisdiction over a party, the party making the notification shall make reasonable efforts to coordinate with the other party to allow for input into the content of a notification before it is made.
- (iii) While performing under this Contract, if a party learns of any: (i) complaint or allegation indicating a violation of Data Privacy Laws regarding Personal Information; (ii) request from one or more individuals seeking to access, correct, or delete Personal Information; or (iii) inquiry or complaint from one or more individuals relation to the Processing of Personal Information, the party will exercise reasonable efforts to promptly notify the other party in writing, except to the extent prohibited by law, law enforcement, or a regulator with jurisdiction over such party. The parties shall provide reasonable commercial assistance to each other in investigating the matter, identifying the relevant information, preparing a response, implementing a remedy, and/or cooperating in the conduct of and defending against any claim, court or regulatory proceedings. The parties will take all reasonable commercial and legal steps to protect Personal Information against undue disclosure.

17.6 Buyer's Rights and Obligations

- (i) If Buyer provides Seller with any Personal Information, Buyer will ensure that it has the legal right to do so. Buyer will provide notice to the individuals whose Personal Information it has provided to Seller prior to providing it to Seller. Seller has the option of providing a notice for Buyer to distribute for this purpose with the content of the notice being applicable to products and services that Seller provides under this Contract.
- (ii) If the Buyer uses other sources of data, including without limitation geolocation information, to connect Personal Information Processed in Products or Services under this Contract, Buyer shall have all responsibilities and obligations under Data Privacy Laws for such Modified Personal Information. The creation and Processing of Modified Personal Information shall comply with applicable law, including without limitation Data Privacy Laws.
- (iii) If Buyer uses Personal Information or Modified Personal Information for direct marketing purposes, Buyer shall comply with, and is solely responsible for complying with, Data Privacy Laws, including any applicable obligation to conduct direct marketing only after compliant opt-in consent is explicitly obtained.

17.7 Seller's Rights and Obligations.

- (i) Seller may share Personal Information with Seller's service providers but only in accordance with applicable Data Privacy Laws and with appropriate protections in place.
- (ii) Seller may store Personal Information on servers located and accessible globally by UTC entities and their service providers with appropriate protections in place.
- (iii) To the extent that Seller Processes Personal Information under the Contract, Seller will retain the Personal Information for the term of the Contract and thereafter as may be required by the Contract, to protect Seller's legal rights, or as may be required or permitted by law and/or audit requirements. To the extent that Seller Processes the Personal Information for purposes separate and apart from the Contract, Seller serves as a Controller and assumes legal obligations as a Controller, including for defining the appropriate retention.