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 the contract between the Seller and the Buyer for the sale and purchase of Equipment or Parts, 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, tender, price list, acceptance of offer, invoice or other document or information issued by Seller). The Seller’s obligations are stated 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 The Consumer Rights Act 2015, the Unfair Contract Terms Act 1977, the Markets in Financial Instruments Directive (2006/70/EC) and any analogous or successor provisions of English law 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 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 the Seller’s agent) or 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 acknowledgment of order to the Buyer. Any variation is valid for a period of 30 days from its date, provided the Seller has not previously withdrawn.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 stated is exclusive of taxes and or 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 withdraw 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 Seller 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 HBSC base rate.

3. DELIVERY

3.1 Delivery shall occur when the Equipment or Parts arrive at the delivery address specified by the Buyer or (ii) 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 is unable to deliver because of inadequate access to the delivery address or instruction from the Buyer, then the Buyer may not have or allege to have for any reason. Time for payment shall be of the essence.

3.2 Seller’s obligation to repair, replace or issue a credit for any defective Equipment or Parts during the warranty period shall be the Seller’s exclusive remedy.

4. TESTS, INSPECTION, DAMAGE AND LOSS

4.1 Equipment and/or Parts produced for Buyer will be factory tested at Seller’s test facility 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 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 Any claims for shortages or damage must be advised to Seller in writing within thirty (30) working days of unloading, within five (5) working days of receipt of claim, of any claim for loss, damage, short delivery or failure to confirm 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 Seller will not be entitled and waives any right to reject the Equipment and/or Parts.

5. TITLE, RISK AND LIABILITY

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 If title does not pass 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 interefere 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 encounters, or in any way changes any of the Equipment or Parts, or seeks to do so;
   b. 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. Buyer becomes insolvent (whether by liquidation, bankruptcy, administration, or administrative receiver appointed of its undertaking or any part of it) or if 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 reserves the right to require cash payment or other alternative method of payment prior to shipment. If Buyer fails to remedy any of the above after being requested to do so, Seller may resell the Equipment and/or Parts at any price which Seller may obtain and deduct from the purchase price any reasonable selling expenses.

5.6 If the Equipment and/or Parts are to become affixed to any land or building, Buyer must ensure that they are affixed in such a way that they can be removed 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 of such land or building.

5.7 Seller, its employees, or agents engaged by Seller, has the right to be granted access to any land or building, and Buyer agrees to fully and unconditionally indemnify and hold harmless Seller against any and all losses, damages, penalties, costs and expenses (including attorney’s fees) which are directly caused by Seller’s negligence.

6. WARRANTY

6.1 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 own 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.

6.2 Seller’s obligation to repair, replace or issue a credit for any defective Equipment or Parts during the warranty period shall be the Seller’s exclusive remedy.

6.3 Seller shall be responsible for labour charges during Seller’s normal business hours for removal or resentallation of defective Equipment or Parts, however, Seller shall not be responsible for consumable items (including, but not limited to void toilet, belts, oil filters), transportation charges, craneage 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.

6.4 In the event of a conflict between the Scheme and these Conditions, Seller may apply under any purchase contract, agreement or similar document and Buyer shall be bound by the provisions of such document.

7. DISCLAIMER AND LIMITATION OF LIABILITY

7.1 In no event will Seller or related parties be liable for any indirect, special, incidental, punitive or consequential damages, losses, expenses or related costs or expenses (including attorneys’ fees), arising or resulted from or in connection with the Service.

7.2 Seller shall not be liable to 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 (however caused) which arise out of or in connection with the Contract.

8. INDEMNIFICATION

8.1 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 shall be reduced in proportion to the extent that such losses, damages, penalties costs and expenses (including attorneys’ fees) are deductible by reason of such a party’s negligence.

8.2 Seller shall be additionally and indirectly 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.

9. DELAYS

9.1 Seller’s obligations to the delayed performance or non-performance caused by conditions beyond their reasonable control.

10. TERMINATION

10.1 Seller may immediately terminate the Contract for cause without any liability on Seller’s part.

10.2 Seller’s obligations to the delayed performance or non-performance caused by conditions beyond their reasonable control.

11. CONFIDENTIALITY

11.1 Seller may use any information in the course of performing the Contract.

11.2 Seller shall not be liable to 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 (however caused) which arise out of or in connection with the Contract.

12. INSURANCE

12.1 Seller will use its reasonable efforts to obtain and maintain insurance in respect of the Equipment delivered to Buyer, the Equipment in transit and Seller’s liability in respect of delivery to Buyer. All such insurance policies shall be subject to the terms, conditions and exclusions of such policies and Buyer shall not be entitled any recovery of any nature therefrom.

13. CONFIDENTIALITY

13.1 Seller may use any information in the course of performing the Contract.

14. TERMINATION

14.1 Seller may immediately terminate the Contract for any cause without any liability on Seller’s part.

15. ASSIGNMENT

15.1 Seller may assign its rights under the Contract to any third party.

16. LEGAL FORM

16.1 The Scheme and these Conditions shall take into account costs and expenses incurred, and purchases or contract commitments made by Seller and all liabilities and obligations due to Seller as a result of modifications, correction errors and unenforceability for causes beyond their reasonable control.

17. TERMINATION

17.1 Seller will use its reasonable efforts to obtain and maintain insurance in respect of the Equipment delivered to Buyer, the Equipment in transit and Seller’s liability in respect of delivery to Buyer. All such insurance policies shall be subject to the terms, conditions and exclusions of such policies and Buyer shall not be entitled any recovery of any nature therefrom.

Toshiba Air Conditioning offering total HVAC solutions
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;

12.3 If any other change to the business or economic environment in which Seller operates that may be unforeseen at the date of this Agreement results in one or more of the foregoing events, Buyer agrees to submit to the exclusive jurisdiction of the English Courts.

13. DISPUTE RESOLUTION
13.1 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.

13.2 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 such notice 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 1990, as amended.

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

14.2 The waiver by either 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 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 partially illegal, void, unreasonable, invalidity or unenforceability it shall to the extent of such illegality, voidness, unreasonable, invalidity or unenforceability be deemed severable and the remaining provisions of the Contract and of the other clauses and sub-clauses of this Condition shall not be affected and they shall remain in full force and effect.

14.8 Buyer represents and warrants that it will not do or permit or 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 Seller 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.

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” means (whether intentional, unintentional or accidental) that involves 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.
- “Personal Information” means information that is related to any identifiable natural person or, to the extent of a conflict with applicable law, which is related to a specific identifiable natural person. Personal Information includes (i) information that directly identifies an individual, (ii) information that could directly identify an individual, and (iii) information that could reasonably be linked to an individual when combined with other information that is available to or known by the controller.
- “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 The parties agree that (i) if the Seller processes or transfers the Personal Information to the Buyer, the Buyer is the Controller of the Personal Information and is responsible for ensuring (with respect to data, including, without limitation, providing notice for the individuals for whom it provides personal information) to Seller that it has provided Personal Information to Seller. Once the Buyer has provided Personal Information to Seller, Seller and Buyer are Co-Controllers.

17.3 Shared Rights and Obligations.
- If a party Processes Personal Information for any purpose beyond the scope of this Contract, then that party assumes the notice obligations.
- 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 contact the other party to allow for input into the content of a notification before it is made.
- 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, delete Personal Information; or (iii) inquiry or complaint from one or more individuals relating 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 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
- 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 a buyer to distribute for this purpose with the content of the notice being applicable to products and services that Seller provides under this Contract.
- If the Buyer uses other sources of data, including without limitation geolocation information, to process Personal Information, the parties shall determine that it is necessary and/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 the appropriate retention.