

TUV SUD Limited
By email

DencoHappel

Matthew Thompson
Area Sales Engineer

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For the attention of: Mr Spalding

Quotation Ref.: SQ-1062852
Project Ref.: BT Tower – Free Cooling DMF (F version) Solution

14.03.17

Dear Sirs,

We thank you for your recent enquiry and have pleasure in submitting our proposal and associated quotation for your consideration.

As per your email, I have selected for 8 No. DMF065D systems each providing 52kW based on 34 °C return air and 21°C target supply air condition.

As requested, I have now included 4 no. condensate pumps and allowed for an ATS for each unit. Note ATS cannot be located inside the unit and needs to be located locally to unit. ATS will come in a 500x500x210 enclosure.

The schemes have been designed around the DencoHappel UK Ltd Close Control Air Conditioning range of units, which have been specifically designed for close control applications.

We sincerely hope that the enclosed meets with your approval; however should you require any further information, please do not hesitate to contact the undersigned.

Assuring you of our best attention at all times.

Yours faithfully
DencoHappel UK Ltd

Matthew Thompson
Area Sales Engineer



DencoHappel UK Ltd
Regional Office: Innovation House, Maylands Avenue, Hemel Hempstead, Hertfordshire HP2 7DE
Registered Office: Dolphin House, Moreton Business Park, Hereford, HR4 8DS
Registered in England No.: 9859894
VAT Registration No.: 228 0784 01

Form: DQA 417 Rev DH2

Prepared For:	TUV SUD Limited
Project Reference:	BT Tower
Quotation Reference:	SQ-1062852
Date :	14.03.17

Equipment Summary

To supply only Ex-works 8 No. DMF065D close control, cooling only, air conditioning units, complete with ancillaries and air cooled hybrid drycooler/condensers. The equipment would generally be as the attached technical submittal.

£200,680.00 Nett + VAT

Transport

To provide 3 No. consignment from our manufacturing plant for delivery UK kerbside.

£1,500.00 Nett + VAT

Commissioning

To commission the above package based on 1 No. Engineer for a maximum of 8 days, excluding supply of R410A refrigerant and hydraulic commissioning, alarm/BMS interfacing where required.

£4,000.00 Nett + VAT

Total

£206,180.00 Nett + VAT

Delivery and Programme

At the time of this Quotation our current delivery lead time is 8 to 10 weeks. Lead times are subject to change depending on our on-going order volumes. We will advise you of estimated actual delivery at the time of order.

Unless stated elsewhere, our delivery price is based on a single consignment to site (kerbside) during normal working hours. Additional costs for out of hours, weekend or multiple deliveries, off load and position, are available upon request.

Where an order includes provision of our site services, such as installation or commissioning, a programme for these works shall be agreed by DencoHappel UK Ltd before acceptance of the order or terms. In the event that a programme is not agreed, we accept no liability in the performance of any programme or schedule subsequently introduced.

Installation

We can offer a full installation service for the equipment proposed should we be contracted to install the equipment ("Supply and Install") then the equipment will be installed to our rigorous Code of Practice – CP12 (copy available upon request).

Where our equipment is sold on a 'Supply Only' basis, the equipment should be installed to our Code of Practice – CP16 (copy available upon request). Failure to comply with the requirements of CP16 may result in cancellation of warranty cover.

Our offer has made no allowance for the supply of and temporary services such as temporary cooling facilities during the works. If you would like us to arrange this, we would be pleased to discuss your requirements and provide a further quotation.

Where our offer includes connecting to or using existing services such as, but not limited to, pipework, cabling, drains, brackets, etc. we accept no responsibility for the condition of these existing services, the performance of them, nor any consequential occurrence which may result.

Pipework Design Liability

For supply only contracts we exclude any pipework design liabilities. Any 'indicative' pipework designs or advice provided by us, either to the Customer or their Installation Sub-contractor will be on an advisory basis only and will not form a part of our warranty or offer. It is essential that the pipework designs are checked by a suitably qualified engineer with full knowledge of the site and project.

Commissioning

Our cost for commissioning assumes all units are fully installed and connected to all relevant services by the installers such that commissioning can be carried out as a continuous exercise.

Where the units are not installed by us, the refrigeration systems and interconnecting pipework should be fully pressure and leak tested and partially charged with refrigerant (by the installers), prior to the Commissioning Engineer attending site. 'F Gas' regulations require that charging of refrigerant gas is completed by a single party. Therefore we require the installer's representative (if not ourselves), is in attendance, with adequate refrigerant, to complete charging under the direction of our Commissioning Engineer.

Please provide 20 working days' notice prior to commissioning. Commissioning cancelled within 24 hours, delays or return visits will be charged at our standard rate of £ 500.00 per man, per day.

Quality Assurance

DencoHappel UK Ltd equipment is manufactured using a Quality Management System that complies with the ISO9001- 2008 Quality Assurance Standard.

Warranty Validation Requirements

The routine maintenance requirement of equipment supplied by us is specified in the relevant maker's Operation and Maintenance manuals. To ensure that full warranty cover is maintained the owner should ensure that a competent and trained engineer inspects the installed equipment at regular intervals and in compliance with manufactures recommendations. We reserve the right to request sight of the maintenance records when considering the validity of any warranty claim.

Warranty Cover and Maintenance Extension Option

DencoHappel UK Ltd will cover the equipment offered manufactured by them against manufacturing defects from date of delivery for the period specified below. This is based strictly on the receipt of a completed commissioning record sheet / book by DencoHappel UK Ltd.

Type Of Contract	Extent Of Cover	Duration Of Cover
Supply Only contracts Installed and commissioned by Others.	Parts only cover	12 months from date of delivery of equipment to site.
Supply Only contracts commissioned by DencoHappel UK Ltd	Parts & labour cover	12 months from date of commissioning of equipment or 15 months of delivery to site whichever is the least duration.
Supply and Install contracts commissioned by DencoHappel UK Ltd	Parts & labour over	12 months from date of commissioning of equipment or 15 months of delivery to site whichever is the least duration.

Supply Only contracts that have been commissioned by DencoHappel UK Ltd and maintained under a contract with our Service Department which has been entered into within 3 months of the date of commissioning.	Parts & labour cover	24 months from commissioning of the equipment
Supply and Install contracts commissioned by DencoHappel UK Ltd and maintained under a contract our Service Department which has entered into within 3 months of the date of commissioning.	Parts & labour cover	24 months from commissioning of the equipment

Where the equipment is not manufactured by DencoHappel UK Ltd we offer the manufacturer's standard warranty.

Warranty Definitions

Parts and Labour Definition:	The labour and materials to replace any defective part.
Parts Only Definition:	The issue of replacement parts against an official order which will not be charged for if the defective parts are returned to DencoHappel UK Ltd (prepaid) within 21 days of the date of supply together with a completed warranty return form and the returned parts are found to be faulty. If the defective parts are not returned in the specified period and /or the returned goods are not faulty, DencoHappel UK Ltd list price will become payable for the items supplied.

The above cover excludes the cost of consumable items and any repairs or replacements required following incorrect operation of the equipment by reference to the manufacturers Operation and Maintenance manuals. Such work will be re-charged to the customer at current DencoHappel UK Ltd Service Department rates and terms.

For the purpose of this warranty statement the following items are considered to be consumables:

- Any BMS or cabling works
- Humidifier Cylinders
- Plastic external trims
- Vee Belts
- Indicators e.g. bulbs
- Air filters pre, main, or high efficiency

Exclusions

Unless noted elsewhere the following items are specifically excluded from this quotation:

- Any BMS configuration, connection or cabling works.
- Any installation or site work.
- Any cranes, scaffolding or lifting equipment.
- Any builder's works.
- Provision of Mains power supply.
- Certified testing of any electrical installations.
- Condensate pumps unless stated.
- Positioning of water detection tape.
- Offload and positioning.
- Pipework design liability (supply only Contracts)
- Any literature, drawings, manuals etc. other than manufacturer's standard.
- Spare parts.
- Any service / maintenance.
- Heat load or performance testing.
- Value Added Tax, charged at the current rate.
- Liquidated Damages.
- Performance Bonds.
- Any item not mentioned.
- Out of hours working including pressure testing.

Permissions, Consents, Approvals

DencoHappel UK Ltd offer excludes any knowledge of, applying for, or obtaining permissions, consents or approvals, or achieving design or performance criteria of any kind other than detailed herein. The responsibility of compliance with 'Part L' or any other building regulation remains with the purchaser.

Conditions of Sale

Our offer is based on our terms and conditions of sale, a copy of which is attached. This offer is open for acceptance for a period of 30 days and supersedes any previous quotation. By placing an order with us you expressly agree that your order is subject to our terms and conditions and that we cannot accept any orders otherwise regardless of any subsequent terms and conditions expressed to be in effect unless we agree to these in writing. In the event that alternative terms and conditions are agreed we reserve the right to amend our offer to reflect changes to our risk as a result of different terms and conditions being in place.

All offers are qualified offers subject to us obtaining, at the time of receipt of a Customer's order, a satisfactory credit reference in relation to the Customer. No order will be considered binding until the customer has confirmed the order in writing and satisfactory credit references are obtained.

In the absence of satisfactory credit references we further reserve the right to amend our Terms and Conditions of Sale to exclude extending credit to the Customer. Any order subsequently accepted will be subject to this amendment.

If delivery of equipment is postponed or cancelled at the Customer's request, DencoHappel UK Ltd reserves the right to invoice as 'goods off site' on the initially agreed / requested dispatch date. Storage charges will also apply until the postponed consignment is dispatched.

In the event of an order cancellation, all related costs incurred by us including but not limited to engineering, management, production, profit and loss of earning opportunities shall be fully recoverable from the Customer.

Letters of Intent

Letters of Intent will be accepted as an intention to agree formal terms and conditions between us prior to delivering goods and/or services. Until such terms are agreed, we will not provide firm confirmation of delivery dates, unless DencoHappel UK Ltd Terms and Conditions are exclusively used in the letter and the letter wording is agreed by DencoHappel UK Ltd's commercial department.

Payment Terms

All consignments/deliveries of equipment will be invoiced on the day of delivery, or in the event of postponed delivery, on the original due date of delivery.

Other site based works will be valued monthly and invoiced at month end or upon completion of the works, whichever is sooner. Our payment terms are 30 days from date of invoice.

We trust that we have interpreted your requirements correctly. If you require any further clarification or assistance please do not hesitate to contact us.

Yours faithfully,
DencoHappel UK Limited

Matthew Thompson
Area Sales Engineer

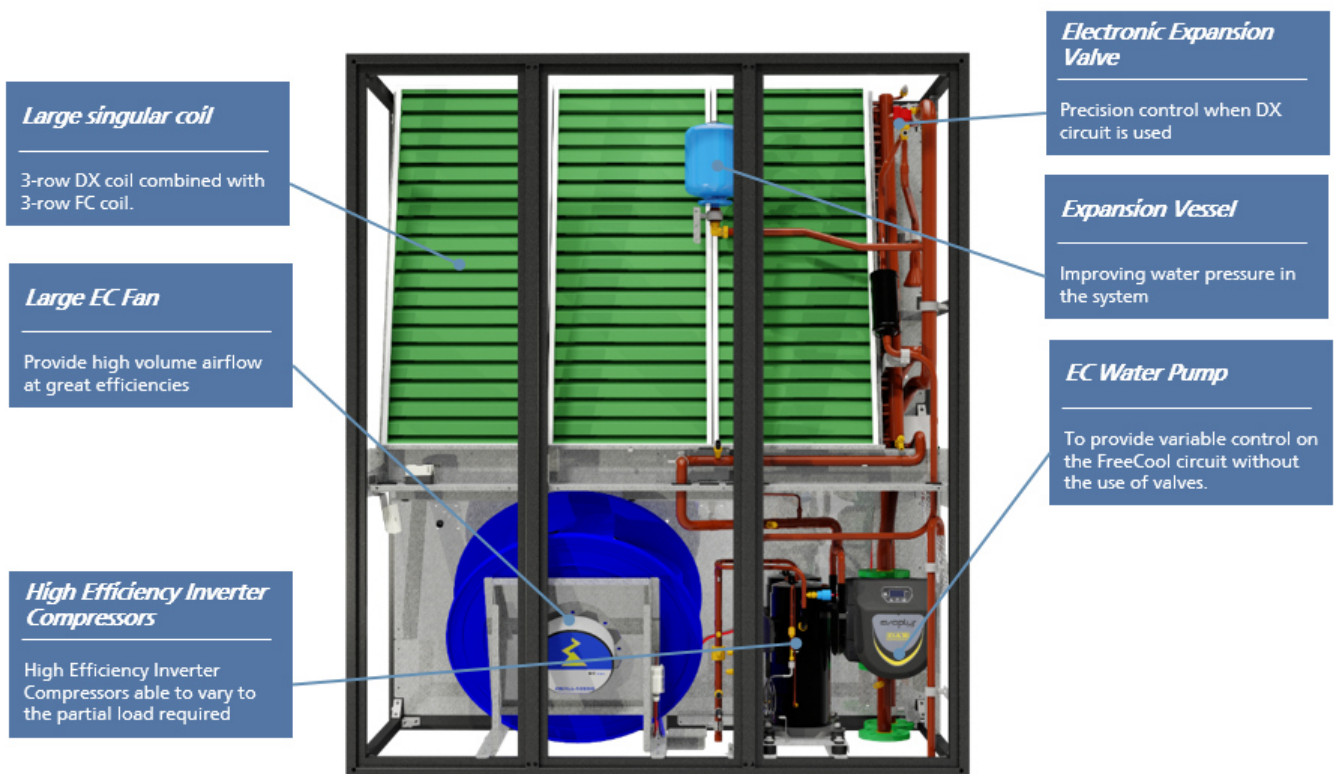
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Prepared By:	Matthew Thompson
Revision Level:	A
Date:	14.03.17



What is the Multi-Denco F Version (DMF)?

The Multi-Denco F Version has TWO separate circuits. One is the robust R410A inverter DX system, whilst the second circulates glycol, as a run around coil, to provide freecooling. This allows for the direct expansion circuit to be reserved until it is essential and this is all designed within the familiar shape and size of a Multi-Denco.

The control strategy is designed to use the FreeCool circuit for as long as possible to minimise the amount of mechanical cooling required. The FreeCool circuit can provide 100% cooling, in suitable conditions, and partial cooling up to 5K below your temperature set point. If ever required, the direct expansion circuit can supply some or all the cooling, but the FreeCool circuit will continue as long as the outdoor temperature is below an ambient set point. This could mean free cooling every day of the year!



DMF045D shown above

Item No.:	1
Project Reference:	BT Tower
Quotation Reference:	SQ-1062852
Area :	Data Centre
Model :	DMF065D
Quantity :	8

Equipment Selection

Denco model DMF065D vertical downflow FreeCool and air cooled direct expansion air conditioning unit matched to 1 No. DMHOUHM075E air cooled Hybrid condenser/Dry cooler(s), incorporating the following:-

Close Control Unit

- Open top return air inlet, open bottom supply air outlet (downflow).
- Disposable pleated panel filter with moisture resistant cardboard frame EN 779 efficiency rating G4. Filter maintenance condition is monitored by a differential pressure switch.

Free Cooling Circuit:

- Inclined 3 row high performance chilled water cooling coil with rippled aluminium fins spaced at 1.8mm and smooth bore copper tubes.
- EC Water pump to provide variable control of FreeCool circuit.
- Expansion vessel to improve water pressure within the system.

DX Cooling Circuit:

- 2 No. high efficiency, fully hermetic, discharge gas cooled scroll compressors operating on R410A, connected in tandem and on a single circuit and mounted on neoprene anti-vibration mounts. Each compressor has an integral inverter driven, variable speed, permanent magnet, brushless DC motor with EMC filter and 20rps minimum turn down speed.
- Compressor speed control via cooling demand. Control philosophy includes oil reclaim cycle and operational thresholds to avoid coil freeze up and high pressure trips.
- Inclined 3 row high performance direct expansion cooling coil with rippled aluminium fins spaced at 1.8mm and internally grooved copper tubes.
- Stainless steel condensate drain tray with U trap
- Single circuit, internal refrigeration pipework complete with liquid line shut off ball valve with Schrader, filter drier, electronic expansion valve with sight glass and filter, Schrader charging valve.
- High pressure safety switch with manual reset.
- 2 No. direct driven, plug fan(s) with 7 backward curved three dimensional profiled blades, made from high performance composite material and optimised energy efficiency. Each fan has a high efficiency, EC permanent magnet variable speed motor with efficiency class according IE4.
- Extruded aluminium profile frame. Frame anodized colour: RAL 9005 (black).
- Pre coated scratch and dirt resistant front service access panels with key entry compression locks and quick release hinges. Flat, flush fitting rear and side panels with screwed fixings. All panels lined with 25 mm thick, non-eroding, non- combustible insulation with thermal and acoustic properties. Panel colour: RAL 9002 (white).
- 4.3" colour touch screen display mounted on unit front access panel featuring constant readout of operational status and control air conditions
- C5-12 microprocessor based control/alarm system incorporating integral 'DencoNet' networking facility for run/standby and auto rotation control.
- Unit mounted return air temperature and humidity sensor.
- Remote supply air temperature sensor. Comes with 10m lead for remote mounting.
- 0 to 10 volt control signal for condenser fan speed control with optimised control strategy to provide high efficiency head pressure control.
- Door interlocked mains isolator.
- Inbuilt Modbus (RS485) connectivity.
- Water leak detection module with high level condensate sensor and 2 No. spot sensors.

- pCOWeb interface plug in card with BACnet I/P SNMP connectivity. Providing webpage interface and e-mail alarm facility.

Ancillaries

- Welded steel angle base stand fitted with 100mm diameter feet with +/-25 mm height adjustment. 3 mm thick semi hard gasket supplied loose with frame for on-site fitting between mating faces. The height of the base stand (slab to top of raise floor tile) to be specified. Frame will be finished in black powder coat.
- Galvanized drip tray with 25mm lip to be installed on the floor beneath the base stand.
- Water condensate pump with stainless steel tank, float activation switch and high level switches. Supplied loose with non-return valve. **(FOR 4 NUMBER UNITS ONLY; OTHER 4 SYSTEMS GRAVITY DRAIN)**
- Dual power supply auto change over switch with manual override facility, provided within a 500Wx500Hx210D enclosure, supplied loose and to fitted and wired locally to unit by others.

Hybrid Air Cooled Condenser/DryCooler (1 No. per indoor unit)

- Engineered for outdoor installation with Aluzinc frame and panels and suitable for vertical or horizontal air flow.
- High performance heat rejection coil with rippled aluminium fins and internally grooved copper tubes.
- 3 No. direct driven axial fan(s) with 7 aero-foil 'owl-wing' profiled blades made from high performance composite material and optimised for low noise and energy efficiency operation. Each fan has a high efficiency, EC permanent magnet variable speed motor supported on a powder coated wire guard. Efficiency class according IE4.
- Side mounted, weather proof, interlocked mains isolator. 3 phase and earth terminals are fed from a circuit breaker in the indoor unit.
- Side mounted, weatherproof control enclosure. 0 to 10 Volt control is fed from terminals in the indoor unit.

Unit Performance

Air Condition

Air Inlet Dry Bulb Temperature - °C :	34
Air Inlet Relative Humidity - %:	24
Air Off Unit Dry Bulb Temperature - °C :	21.2
Fan Speed Utilised – rpm :	Variable
External Static Allowed – Pa :	50
Airflow Over Coil – m ³ /sec :	3.6
Type of Filter Fitted to Unit :	Standard (G4)

Direct Expansion Coil & Compressors

GROSS Total Duty - kW :	55.0
GROSS Sensible Duty - kW :	55.0
GROSS Latent Duty - kW :	0
Sensible Heat Ratio (S.H.R.) :	1
Fan Motor Heat absorbed – kW :	1.8
NET Total Duty – kW :	53.2
NET Sensible Duty – kW :	53.2
Refrigerant Type:	R410A
Compressor Sat Suction Temp (Mid) - °C :	16.1
Refrigerant Circuits :	1 No.
Compressor Configuration :	Tandem
Compressor Type :	2 No. Inverter
Compressor Power Input – kW :	14.1
Ambient Temperature - °C :	40

FreeCooling Circuit

AchievableFreeCooling Capacity - kW :	See report
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Coolant Type:	20% Glycol
Coolant Flowrate – ltr/sec :	3.0

Heater Section

Electric Heating Capacity – kW :	N/A
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Humidifier

Humidifier Capacity - kg/hr :	N/A
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CRAC Unit Dimensions and Weights

Unit Width – mm :	1992
Unit Depth – mm :	780
Unit Height – mm :	1972
Unit Weight – kgs :	635

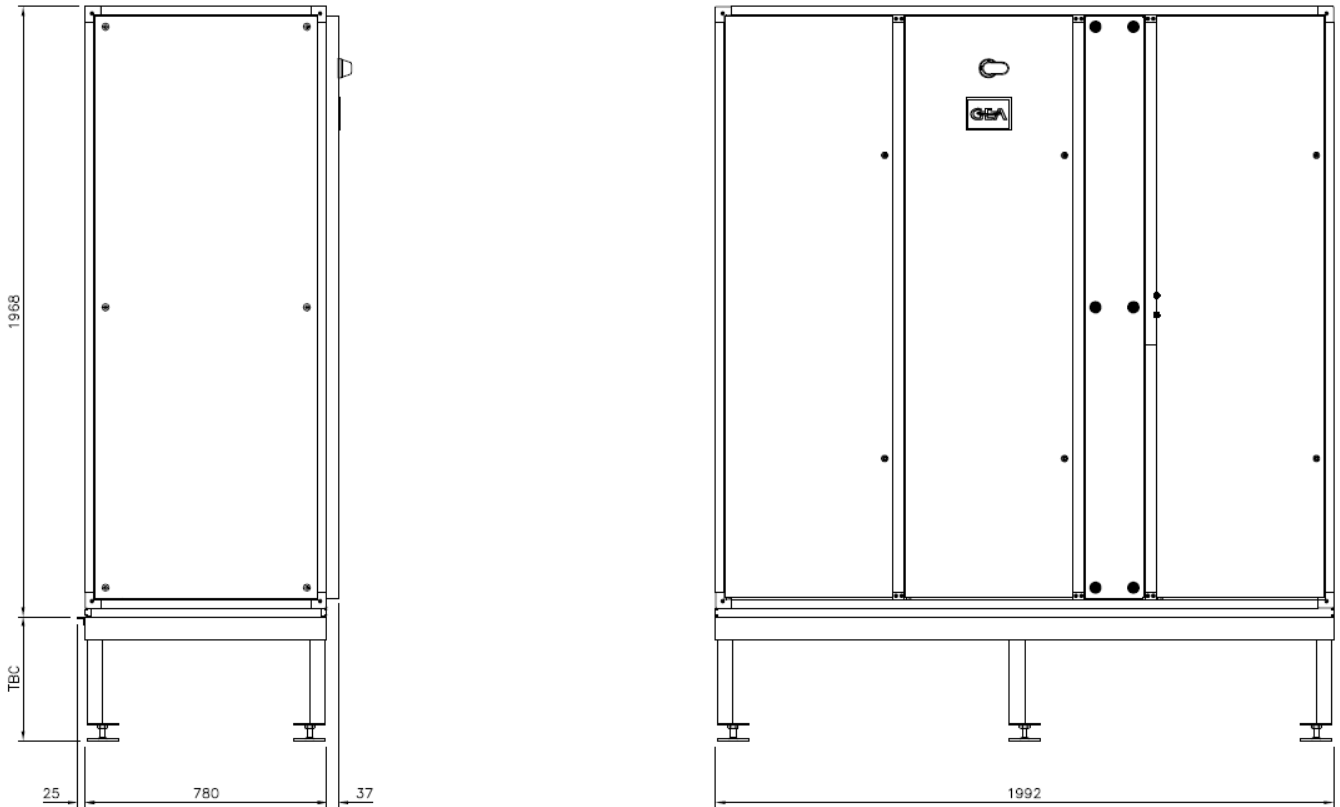
Air Cooled Condenser/Drycooler

Condenser Orientation :	Vertical Airflow (assumed)
Unit Width – mm :	2850
Unit Depth – mm :	1150
Unit Height – mm :	1370
Unit Weight – kgs :	270

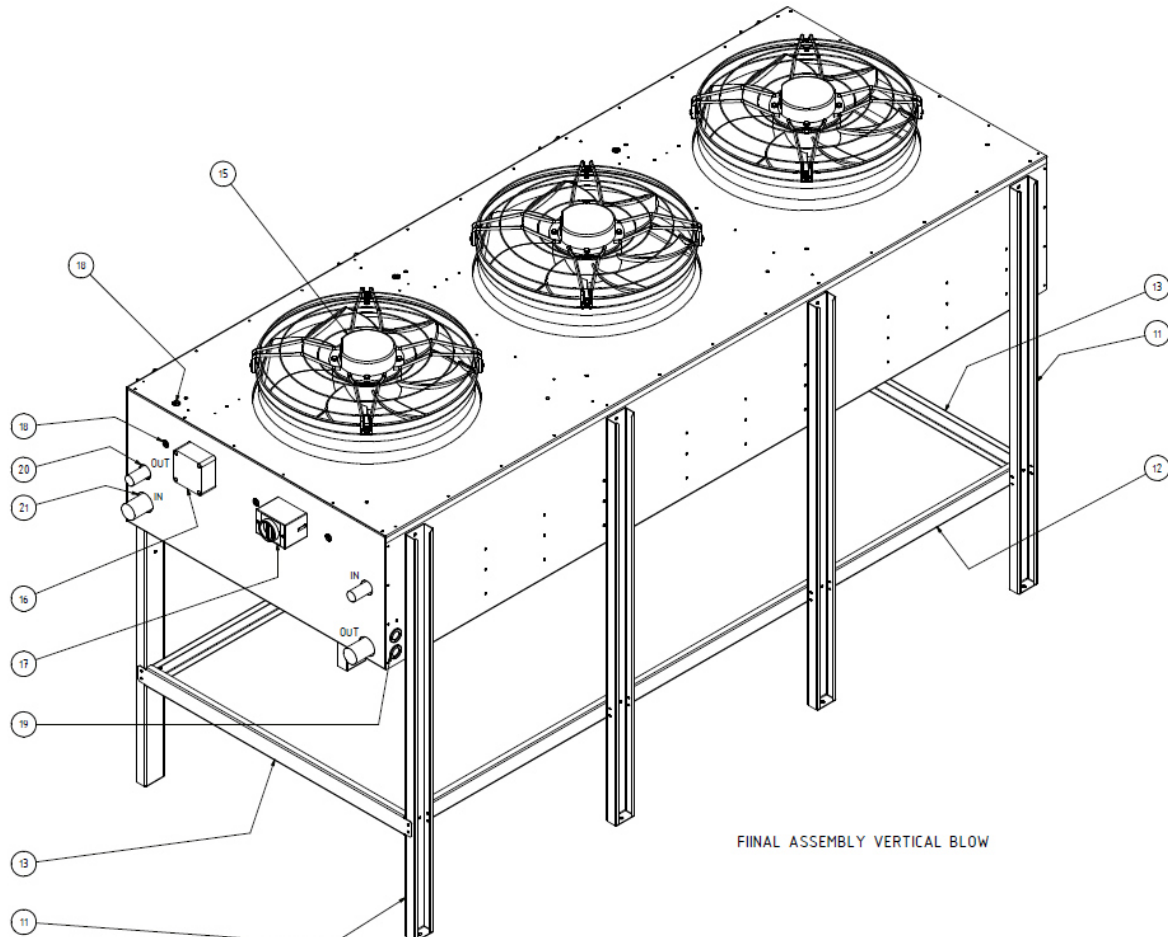
Electrical

Power Supply :	400 Volt/3 ph+N/50 Hz
Maximum Full Load Current – Amps :	58
Recommended Fuse Type :	Type D (Motor Rated)
Recommended Fuse Size – Amps :	63

Indoor Unit



Vertical Blow Hybrid Condenser Drycooler (note horizontal blow available)



DencoHappel UK Ltd

Terms and Conditions of Sale



TERMS AND CONDITIONS

IT IS AGREED as follows:

1. INTERPRETATION

1.1 In this Agreement unless the context otherwise requires the following words and expressions shall have the following meanings:

"**Agreement**" means our Offer/Quotation, our acceptance of an order ("Order Acknowledgement") and these terms and conditions, any Annexes to the Offer/Quotation;
"**Construction Act**" means Part II of the Housing Grants, Construction & Regeneration Act 1996 as amended by the Local Democracy, Economic Development and Construction Act 2009.

"**Delivery and Installation Schedule**" means the schedule agreed between the Parties, setting out the dates for delivery by the Supplier of the Goods to the Site and the dates for their installation in the Offer/Quotation;

"**Effective Date**" means the date of the Acknowledgment of the Order by the Supplier;

"**Force Majeure Event**" means any circumstance beyond the affected Party's reasonable control including, but not limited to, the following:

- (a) an act of God
- (b) nuclear, chemical or biological contamination;
- (c) strike, lockout or other industrial disturbance;
- (d) act of war whether declared or undeclared, civil war, armed conflict or terrorism;
- (e) blockade, revolution, riot, insurrection, civil commotion, public demonstration;
- (f) sabotage or act of vandalism;
- (g) lightning, fire, storm, flood, earthquake, accumulation of snow or ice or other extreme weather conditions;
- (h) lack of water arising from weather or environmental issues; or
- (i) pressure waves caused by devices travelling at supersonic speeds,

whether (without limitation) at the Site, the location of the Parties, transport routes, the place of manufacture of the Goods or otherwise and regardless of whether it affects a Party directly or affects any supplier, agent, subcontractor, consultant or other third party on whom the Party relies in the performance of its obligations under this Agreement, which results in or causes failure by the affected Party to perform its obligations under this Agreement to the extent that the event or circumstance could not have been prevented by the exercise of reasonable skill and care by the affected Party;

"**Goods**" means the goods and/or services specified or provided in the Specification;

"**Installation Services**" means the services to be provided by the Supplier in accordance with clause 5;

"**Last Actual Delivery Date**" means the actual date of delivery by the Supplier of the last Unit to be delivered in respect of this Agreement;

"**Last Delivery Date**" means the date identifiable from the Delivery and Installation Schedule as being the date for delivery of the last Unit to be delivered in respect of this Agreement;

"**Material Defect**" means a defect in the design or manufacture of Goods such that the Goods as installed:

- (a) does not meet the Specification; and
- (b) has been rejected by the Purchaser, but excluding defects caused or contributed to by the Purchaser or anyone for whom the Purchaser is responsible;

"**Offer/Quotation**" means the document so titled to which these terms and conditions are attached containing specific details in relation to the Project;

"**Price**" means the sum set out in the Offer/Quotation payable by the Purchaser to the Supplier in accordance with this Agreement;

"**Project**" means the Purchaser's project in respect of which the Goods are being supplied by the Supplier under this Agreement, the details of which are set out in the Offer/Quotation;

"**Purchaser's Agent**" has the meaning given to it in clause 2.3;

"**Purchaser Design**" means the design and configuration of the Project excluding the design of the Goods and including any integration of the design of the Goods into the Project.

"**Relevant Event**" has the meaning given to it in clause 6.2;

"**Relevant Matter**" has the meaning given to it in clause 6.1;

"**Scheduled Dates**" means the Scheduled Delivery Dates and/or the Scheduled Installation Dates as the context so requires;

"**Scheduled Delivery Dates**" means the dates, as specified in the Delivery and Installation Schedule, for delivery by the Supplier of the Goods to the Site as adjusted from time to time in accordance with this Agreement;

"**Scheduled Installation Dates**" means the dates, as specified in the Delivery and Installation Schedule, for installation of the Goods on the Site by the Supplier as adjusted from time to time in accordance with this Agreement;

"**Site**" means the site or location as specified in the Offer/Quotation to which the Goods are to be delivered by the Supplier in accordance with this Agreement;

"**Specification**" means the specifications and all other data sheets as set out in the Technical Submittal or Schedule of Information or Equipment set out in the Supplier's Offer/Quotation;

"**Variation Offer**" has the meaning given to it in clause 6.3;

"**Working Day**" means any day (other than a Saturday or a Sunday) on which banks are open for business in the City of London excluding any day which under the Banking and Financial Dealings Act 1971 is a bank holiday.

1.2 In this Agreement words importing:

- 1.2.1 any particular gender include all other genders; and
- 1.2.2 the singular shall include the plural and vice versa.

1.3 To the extent that there is any conflict or ambiguity in the terms of this Agreement the following descending order of precedence shall apply:

- 1.3.1 the Offer/Quotation (excluding any annexes and special terms);
- 1.3.2 annexes to the Offer/Quotation; and
- 1.3.3 these terms and conditions.

2. GENERAL

2.1 The Supplier will procure, manufacture, supply and install Goods on behalf of the Purchaser in accordance with this Agreement.

2.2 The Supplier shall:

2.2.1 supply Goods to the Purchaser and, where included in the Order Acknowledgement, install those Goods at the Site in accordance with the Specification;

2.2.2 keep, or procure that its sub-consultants and subcontractors keep all facilities used in the manufacture and storage of the Goods in a state and condition necessary to enable it or them to comply with its obligations under this Agreement;

2.2.3 not make any change to the Specification or the manufacturing process in relation to the Goods which is detrimental to or compromises the ability of the Supplier to comply with its obligations under this Agreement without:

- (a) first notifying the Purchaser of its intention to implement such change and in such notification reporting to the Purchaser as to any consequences which will follow such change being implemented;
- (b) giving the Purchaser the opportunity to make representations to the Supplier within 10 (ten) Working Days of receipt by the Purchaser of

such notice; and
(c) obtaining written approval for such change from the Purchaser (such approval not to be unreasonably withheld or delayed and deemed to have been given if no representations are received from the Purchaser within the period specified in clause 2.2.3(b)).

2.2.4 operate and maintain a quality control monitoring system;

2.2.5 use its reasonable endeavours to ensure that the Goods are free from Material Defects in:

- (a) materials and workmanship; and
- (b) any design for which the Supplier is responsible under this Agreement;

and

2.2.6 provide all documentation and assistance reasonably required by the Purchaser, taking into account the role of the Supplier, in order to incorporate the Goods into the Project and for the ongoing operation and maintenance of the Project.

2.3 Where a Purchaser's Agent is stated in the Offer/Quotation as having been appointed by the Purchaser then, subject to any instruction to the contrary in the Offer/Quotation, the Supplier shall be entitled to treat any exercise or discharge of the Purchaser's rights and obligations under this Agreement by the Purchaser's Agent as an exercise or discharge of those rights and obligations by the Purchaser. The Purchaser may remove or vary the extent of the Purchaser's Agent's authority at any time by giving written notice to the Supplier.

3. EFFECTIVE DATE

This Agreement shall be effective from the Effective Date.

4. DELIVERY

4.1 The Supplier shall use its reasonable endeavours to ensure that Goods are delivered by the Scheduled Delivery Dates in accordance with this Agreement.

4.2 The location for delivery of the Goods for each Project shall be the Site as specified in the Offer/Quotation.

4.3 Subject to the terms of this Agreement:

4.3.1 The Supplier shall, and the Purchaser shall permit the Supplier to, deliver the Goods to the Site in such manner as necessary to ensure that they are:

- (a) delivered free from Material Defects; and
- (b) where installed by the Supplier be capable of being installed on the Scheduled Installation Dates.

4.3.2 If the Supplier is unable for any reason to fulfil delivery of any of the Goods by the relevant Scheduled Delivery Date then:

- (a) where the reason for the Supplier being unable to fulfil delivery of the Goods by the Scheduled Delivery Date relates to a matter which is the responsibility of the Supplier under this Agreement, the Parties shall, acting reasonably, seek to agree amendments to the Delivery and Installation Schedule provided always that the Supplier shall not be treated as being in breach of this Agreement nor to have any liability to the Purchaser unless and until the Purchaser has given 21 Working Days' written notice to the Supplier following the Last Delivery Date, requiring that the delivery be made and the Supplier has not fulfilled the delivery within that period; and
- (b) in all other cases, the provisions of clause 6 shall apply.

4.3.3 The Purchaser shall be responsible for unloading and craneage of the Goods on Site.

4.3.4 The Purchaser shall ensure that the Supplier is given:

- (a) sufficient rights of access to the Site (and any adjoining areas) to fulfil its obligations under this Agreement; and
- (b) an appropriate hard-standing on or adjacent to the Site (as applicable), from 2 (two) Working Days prior to the first of the Scheduled Delivery Dates until the Last Actual Delivery Date and that:
- (c) sufficient space is made available at the Site for the delivery of the relevant Goods; and
- (d) each of the Supplier's delivery vehicles will be unloaded within one (1) hour of its arrival at the Site.

The Purchaser shall reimburse the Supplier for any additional costs reasonably incurred as a result of a failure to comply with the requirements of this clause 4.3.4 including (but not limited to) any increased or additional storage, delivery costs or the costs of any resulting delay, to be assessed as a Relevant Matter to which the provisions of clause 6 shall apply.

4.3.5 Should the Supplier request, the Purchaser shall grant the Supplier access to the Site prior to the first Scheduled Delivery Date for the purpose of inspecting the Site and ensuring that the Site layout and any associated or existing works conform to the information provided to the Supplier and are suitable to enable the Supplier to comply with its obligations under this Agreement. The Purchaser shall ensure that suitably qualified and authorised personnel are available on Site to accompany the Supplier during any such inspection.

4.3.6 If, as a result of the Supplier's inspection, discrepancies are identified which prevent or have potential to impede or delay the Supplier's performance of its obligations under this Agreement which cannot be rectified by the date falling 15 Working Days prior to the first Scheduled Delivery Date:

- (a) the dates in the Delivery and Installation Schedule will be postponed until such time as the discrepancies have been rectified and the Supplier has been given not less than 5 (five) Working Days' notice that the discrepancies have been so rectified; and
- (b) the matter shall be assessed in accordance with clause 6.

4.3.7 No inspection of the Site (or decision not to inspect) by the Supplier shall:

- (a) relieve the Purchaser from its obligation to ensure that the information provided with this Agreement is complete and accurate; or
- (b) result in the Supplier bearing responsibility for the condition of the Site.

5. INSTALLATION

5.1 The Supplier shall install the Goods on the Scheduled Installation Dates.

5.2 The Purchaser shall grant the Supplier unrestricted access to the Site both during and after the installation of the Goods for the purpose of installing the Goods and for enabling the Supplier to comply with its obligations under this Agreement.

5.3 Without prejudice to clauses 4.3.5 and 4.3.6, the Purchaser shall be responsible for ensuring that the Site and any existing works are sufficiently complete and otherwise suitable for the installation of the Goods.

6. RELEVANT MATTERS AND RELEVANT EVENTS

6.1 If the Supplier incurs loss and/or expense for which it would not be reimbursed by the Price as a result of any of the following:

6.1.1 failure by the Purchaser to provide access to the Site as required under this

- Agreement;
- 6.1.2 an instruction from the Purchaser to stop or not to start work after the Effective Date (other than any reasonable instruction arising out of any failure on the part of the Supplier);
- 6.1.3 failure by the Purchaser to provide something which the Purchaser is required to provide under this Agreement;
- 6.1.4 failure by the Purchaser to respond to a communication or notice from the Supplier within the period required under this Agreement;
- 6.1.5 change by the Purchaser of a decision which it has previously communicated to the Supplier;
- 6.1.6 changes to the Offer/Quotation, this Agreement or the Purchaser's requirements or instructions after the Effective Date;
- 6.1.7 withholding of any acceptance by the Purchaser for reasons other than as set out in this Agreement;
- 6.1.8 damage to any Goods caused on or after the date on which the risk in the Goods passed to the Purchaser pursuant to clause 9.1, save to the extent that such damage is caused or contributed to by the Supplier;
- 6.1.9 an instruction from the Purchaser to search for or rectify a Material Defect where no Material Defect is found;
- 6.1.10 any test, inspection or other intervention by the Purchaser unless required as a result of the Supplier's breach of this Agreement;
- 6.1.11 the Supplier encountering physical conditions on the Site which:
- were not notified to it in the Offer/Quotation; or
 - do not correspond with the information provided to the Supplier in the Offer/Quotation;
- 6.1.12 failure by the Purchaser to comply with any of its obligations under this Agreement;
- 6.1.13 any impediment, prevention or default, whether by act of omission of the Purchaser or any Purchaser's Agent or any other third Party employed by or working on behalf of the Purchaser or for whom the Purchaser is responsible; or
- 6.1.14 the circumstances described in clauses 4.3.4 or 4.3.6 apply. (a "Relevant Matter")
- then the Price shall be adjusted to compensate the Supplier for any additional costs and expenses incurred as a result of the Relevant Matter provided always that the Supplier has taken reasonable steps to mitigate or minimise the loss and expense; and
- 6.2 If the Supplier is delayed, prevented or impeded in the performance of its obligations under this Agreement as a result of circumstances that are outside the control of the Supplier including, but not limited to, the following:
- any Relevant Matter;
 - adverse weather conditions;
 - damage to the Goods except to the extent caused or contributed to by any default of the Supplier;
 - civil commotion or the threat or use of terrorism and / or the activities of the relevant authorities in dealing with such event or threat;
 - strike, lock out or local combination of workmen affecting any of the trades employed by the Supplier in the manufacture or delivery of the Goods; and
 - the exercise after the Effective Date by the United Kingdom Government or any other legislative or other body having the force of law in the local jurisdiction in which:
 - the Site is located;
 - the Goods are manufactured; or
 - the Goods are transported,
or which otherwise affects the performance by the Supplier of its obligations under this Agreement, (a "Relevant Event")
- then the affected Scheduled Dates shall be extended by the amount of time of any period of delay so caused provided always that the Supplier has taken reasonable steps to mitigate or minimise the delay.
- 6.3 The Supplier shall notify the Purchaser as soon as reasonably practicable after becoming aware of the occurrence of a Relevant Matter and/or a Relevant Event, describing the event or circumstance concerned, the likely effect of the event and steps being taken in mitigation thereof. As soon as reasonably practicable thereafter, the Supplier shall submit to the Purchaser its assessment of the extension to the Scheduled Dates and any adjustment to the Price (as applicable) required as a result of the Relevant Matter and/or Relevant Event (as applicable) (a "Variation Offer").
- 6.4 On receiving a Variation Offer, as soon as reasonably practicable and in any event within 2 (two) Working Days of receipt, the Purchaser shall either:
- accept the Variation Offer, in which case the Supplier's assessment of the effect of the Relevant Matter and/or Relevant Event (as applicable) on the matters referred to in clauses 6.1 and/or 6.2 shall become binding on the Parties; or
 - issue a notice of objection stating the reasons for the objection and the Purchaser's alternative assessment of the Relevant Matter and/or Relevant Event (as applicable) on the matters referred to in clauses 6.1 and/or 6.2, in which case the Parties shall meet and seek to agree the assessment within 10 (ten) Working Days of the notice of objection.
- 6.5 If the Purchaser fails to respond to the Variation Offer within the period required under clause 6.4 then the Purchaser shall be deemed to have accepted the Variation Offer and clause 6.4.1 shall apply as if the Variation Offer had been accepted by the Purchaser.
7. **PRICE AND PAYMENT**
- 7.1 **Where the Construction Act applies to a contract clause 7.1 shall apply.**
- The Price shall be the amount stated in the Offer/Quotation.
 - The dates for payment of instalments of the Price shall be as agreed between the Parties.
 - The Supplier shall submit to the Purchaser an invoice for each instalment of the Price, together with any supporting documents that are reasonably necessary to check the invoice. The invoice and supporting documents (if any) shall specify the sum that the Supplier considers will become due on the payment due date in respect of the instalment of the Price, and the basis on which that sum is calculated.
 - Payment shall be due on the date the Purchaser receives each invoice.
 - No later than 5 (five) days after payment becomes due, the Purchaser shall notify the Supplier of the sum that the payer considers to have been due at the payment due date in respect of the payment and the basis on which that sum is calculated (a "Payment Notice").
 - The final date for payment shall be 30 (thirty) days after the date on which payment becomes due. If a Payment Notice in Default is served, in accordance with 7.1.7 below, the final date for payment shall be postponed by the number of days between the date on which a Payment Notice should have been issued and the date on which a Payment Notice in Default is issued.
- 7.1.7 Unless the Purchaser has served a pay less notice, it shall pay the Supplier the Notified Sum on or before the final date for payment of each invoice. The Notified Sum shall be either (i) a Payment Notice; (ii) if a Payment Notice has not been served, the sum referred to in the relevant invoice referred to in paragraph 7.1.3 (a "Default Payment Notice"; or (iii) if a Default Payment Notice has not been issued the Supplier may at any time serve a payment notice in default stating the amount that it considers to be due at the relevant due date and the basis upon which that sum is calculated (the "Payment Notice in Default").
- 7.1.8 Not less than 7 (seven) days before the final date for payment (the "prescribed period"), the Purchaser may give the Supplier notice that it intends to pay less than the notified sum (a "pay less notice"). Any pay less notice shall specify:
- the sum that the Purchaser considers to be due on the date the pay less notice is served; and
 - the basis on which that sum is calculated.
- 7.2 **Where the Construction Act does not apply to a contract clause 7.2 shall apply.**
- The Price shall be the amount stated in the Offer/Quotation.
 - Unless otherwise agreed between the Parties the dates for payment of instalments of the Price shall be the date of delivery of the Goods.
 - The Supplier shall submit to the Purchaser an invoice for each instalment of Price, together with any supporting documents that are reasonably necessary to check the invoice. The invoice and supporting documents (if any) shall specify the sum that the Supplier considers will become due, and the basis on which that sum is calculated.
 - The final date for payment of any undisputed element of the Supplier's invoice shall be 30 days after the date on which the Purchaser receives each invoice.
- 7.3 In the event that any payment from the Purchaser under this Agreement is not made by the final date for payment of such sum as determined in accordance with clauses 7.1 or 7.2 (other than any part of a sum in respect of which the Purchaser has provided the Supplier with a pay less notice and has given notice to the Supplier of, a bona fide dispute on substantial grounds) then the Supplier may (without prejudice to any other right or remedy) suspend performance of any or all of its obligations under this Agreement. The Scheduled Dates and the contractual time limits for completion by the Supplier of any work directly or indirectly affected by the exercise of this right shall be extended by the period during which performance is suspended in pursuance of, or in consequence of the exercise of the right conferred by this clause 7.3.
- 7.4 The Supplier's right to suspend performance in accordance with (i) clause 7.1 shall cease on the date the Purchaser makes payment in full of the amount due together with the Supplier's reasonable costs of demobilisation and remobilisation; and (ii) clause 7.2 shall cease 20 Working Days after the Purchaser makes payment in full of the amount due together with the Supplier's reasonable costs of demobilisation and remobilisation.
8. **INSPECTION AND DEFECT RECTIFICATION**
- 8.1 The Purchaser shall inspect the Goods immediately on delivery and shall within 5 (five) days from such delivery give notice to the Supplier of any matter or thing by reason thereof the Purchaser may allege that the Goods are not in accordance with the Specification or are defective in material or workmanship. If the Purchaser fails to give such notice the Goods shall be conclusively presumed to be in all respects in accordance with the Specification and this Agreement and free from any defect which would be apparent on reasonable examination of the Goods and the Purchaser shall, as between the Purchaser and the Supplier, be deemed to have accepted the Goods accordingly.
- 8.2 Should a Material Defect be identified during the inspection carried out pursuant to clause 8.1, the Supplier shall:
- wherever possible immediately rectify the Material Defect; or
 - otherwise rectify any Material Defect as soon as reasonably practicable thereafter.
- 8.3 Without prejudice to the Supplier's other obligations the Supplier shall unless otherwise agreed, at its own cost, make good any Material Defects in the Goods which become apparent:
- from the Last Actual Delivery Date; and
 - until the end of the period detailed in the Offer/Quotation, following receipt of written notice of such Material Defect from the Purchaser.
- 8.4 If the Purchaser gives written notice to the Supplier of a Material Defect in any Goods pursuant to clause 8.3, the Supplier shall (subject to clause 6.1.9) at its own cost investigate and rectify any Material Defects as soon as reasonably practicable in all the circumstances (including, without limitation, availability of materials or labour and lead times in procurement of the same).
- 8.5 If the Material Defect is notified to the Supplier by the Purchaser and it has not been rectified within the period established in accordance with clause 8.4, the Purchaser may have that Material Defect rectified by others and the reasonable and demonstrable costs of doing so shall be reimbursed by the Supplier.
- 8.6 The Purchaser shall provide the Supplier (or any third party appointed by the Supplier) with sufficient rights of occupation of the Site to enable the Supplier to carry out its right to investigate and its obligation to rectify any Material Defects in accordance with clause 8.
9. **RISK AND PROPERTY**
- 9.1 Risk in each Unit shall pass to the Purchaser (so that the Purchaser is then responsible for all loss or deterioration of the Goods or for any damage occurring thereto) from the date of delivery of such Unit to Site.
- 9.2 The Supplier will have the right to maintain an action against the Purchaser for any unpaid element of the Price for the Goods irrespective of whether property in the same has passed to the Purchaser.
10. **CONSENTS**
- Unless otherwise agreed between the Parties, the Purchaser shall be responsible for procuring all necessary consents, permission or other authorisations required to enable the Purchaser to construct the Project and to permit the Supplier to deliver the Goods, save in respect of any relevant import and export licences for the Goods which shall be procured by the Supplier.
11. **DESIGN**
- The Supplier shall be responsible only for the design of the Goods (excluding any Purchaser Design) where the Goods are manufactured and supplied by the Supplier and where the Supplier has been contracted for design services.
 - The Purchaser shall be responsible for the Purchaser Design.
 - The Supplier warrants that the design of the Goods and any design information

- provided by the Supplier in relation thereto has been carried out using the standard of reasonable skill and care to be expected of a designer experienced in designing works of a similar size, scope, nature and complexity as the Goods.
- 11.4 The Supplier shall not by any act or omission be considered to have accepted the Purchaser's Design as being suitable for the Purchaser's requirements, nor shall the Supplier take responsibility for the adequacy or otherwise of the Purchaser's Design or the consequences of any deficiency therein including any delay, costs or defects that arise as a result.
12. **POST COMPLETION**
The Purchaser shall not modify the Goods at any time without the prior knowledge and written consent of the Supplier. If the Supplier consents to such modification, the modification shall be entirely at the Purchaser's risk and the Supplier's consent shall not be deemed to be an approval or endorsement of the proposed modifications nor does the Supplier warrant that the proposed modifications will not be detrimental to the Goods or the Project.
13. **INSURANCE**
- 13.1 The Supplier confirms that it maintains and shall maintain professional indemnity insurance cover until 6 years from the last Actual Delivery Date provided such insurance remains generally available to members of the Supplier's profession in the UK insurance market at commercially reasonable rates and terms.
- 13.2 The Supplier shall as and when reasonably required by the Purchaser provide satisfactory documentary evidence to the Purchaser that the insurance referred to in this clause 13 is being maintained.
14. **COMPLIANCE WITH LAWS**
- 14.1 The Purchaser shall satisfy itself that:
14.1.1 the Purchaser Design; and
14.1.2 the design of the Goods supplied under this Agreement, complies with any applicable European Directives and most recent editions of applicable British, European, worldwide or local laws, regulations and standards.
- 14.2 Without prejudice to clause 14.1, the Supplier and the Purchaser shall each comply with any other of their respective obligations pursuant to any applicable law including (where relevant and without limitation):
14.2.1 the Construction, Design and Management Regulations 2007;
14.2.2 the Health and Safety at Work etc Act 1974; and
14.2.3 all statutory provisions by-laws or regulations relating to this Agreement and to the manufacture and supply of the Goods whether in the United Kingdom or the local jurisdiction in which the Site is located.
- 14.3 Nothing contained in this Agreement shall in any way detract from the Supplier's or the Purchaser's rights and obligations under common law or statute.
15. **INTELLECTUAL PROPERTY**
- 15.1 As between the Parties, the Supplier agrees that all copyright, design rights, patents and other forms of intellectual property rights in the Purchaser Design as contained in any drawings, plans, specifications and other data created by or for the Purchaser supplied by or on behalf of the Purchaser to the Supplier shall at all times be and remain the exclusive property of the Purchaser. The Supplier shall have, and is hereby granted free of charge, a perpetual, non-exclusive right to use such copyright and other intellectual property rights solely for the purpose of and in connection with the performance of its obligations under this Agreement.
- 15.2 As between the Parties, the Purchaser agrees that all copyright, design rights, patents and other forms of intellectual property rights in the Goods including all drawings, method statements, plans, specifications and data concerning the same, shall at all times be and remain the exclusive property of the Supplier and no rights, interest or licence in respect thereof is given to the Purchaser for any purpose.
16. **CONFIDENTIALITY**
- 16.1 Each Party shall keep in strict confidence all technical and commercial know how, specifications, processes, or initiatives which are of a confidential nature and have been disclosed to the such Party (the receiving Party) by the other Party (the disclosing Party) or its agents and any other confidential information concerning the disclosing Party's business or its products which the receiving Party may obtain from the disclosing Party or its agents.
- 16.2 The receiving Party shall restrict disclosure of such confidential material to such of its employees, agents or sub-contractors as need to know the same for the purpose of discharging the receiving Party's obligations to the disclosing Party and shall ensure that such employees, agents and sub-contractors are subject to like obligations of confidentiality as bind the receiving Party.
17. **SUBCONTRACTING**
The Supplier shall be entitled to carry out its obligations under this Agreement through any agents or subcontractors appointed by it in its absolute discretion provided always that the Supplier shall remain liable for any acts or omissions of any agent or subcontractor as if such acts or omissions were acts or omissions of the Supplier.
18. **FORCE MAJEURE**
- 18.1 For so long as such circumstances prevail, neither Party shall be liable for:
18.1.1 any failure, suspension, or delay in the performance of its obligations under this Agreement; and
18.1.2 any claims for loss and expense whether as a result of delay or otherwise, to the extent that such failure or delay is caused by a Force Majeure Event.
- 18.2 If a Force Majeure Event continues for a period of more than 60 days, then the Supplier may terminate this Agreement by giving 30 days written notice to that effect provided that the Force Majeure Event is continuing at the date of expiry of such notice.
19. **DISPUTES**
- 19.1 In pursuance of the objective of collaborative working and closest co-operation, any question or difference which may arise concerning the construction, meaning or effect of this Agreement, or any matter arising out of or in connection with this Agreement should in the first instance be referred to authorised representatives of each Party at senior management level for discussion and resolution and those senior managers shall use all reasonable endeavours to resolve the dispute.
- 19.2 If the authorised representatives notified in accordance with clause 19.1 are unable themselves to reach agreement within a reasonable period, those authorised representatives may recommend that the dispute is referred to mediation by a suitably qualified mediator to be appointed by the mutual agreement of the Parties.
- 19.3 The Parties shall have the right to refer any dispute to adjudication in accordance with the Scheme for Construction Contracts (England and Wales) Regulations 1998 (SI 1998 No: 649) (as amended) at any time, and nothing in this clause 19 shall prejudice such right.
20. **LIMITATIONS ON LIABILITY**
- 20.1 The Supplier's liability to the Purchaser under this Agreement shall be limited to the direct costs resulting from the Supplier's breach. Under no circumstances shall the Supplier be liable for damages for loss of profit, loss of production, loss of contracts or for any financial loss or for any special, indirect or consequential loss or damages including without limitation; damages for loss of profit, loss of production, loss of contracts or for any financial loss howsoever caused.
- 20.2 In any event, the Supplier's liability to the Purchaser under this agreement shall not exceed 100% (one hundred per cent) of the Price.
- 20.3 Without prejudice to clauses 20.1 and 20.2, the Supplier's liability under this Agreement shall be limited to that proportion of the Purchaser's losses which it would be just and equitable to require the Supplier to pay having regard to the extent of the Purchaser's responsibility for the same and on the basis that:
20.3.1 all other consultants, contractors, suppliers and sub-contractors working on or around the Project shall be deemed to have provided contractual undertakings to the Purchaser on terms no less onerous than this clause;
20.3.2 there are no limitations on liability nor joint insurance or co-insurance provisions between the Purchaser and any other Party referred to in this clause; and
20.3.3 all such Parties as referred to in this clause shall be deemed to have paid to the Purchaser such proportion which it would be just and equitable for them to pay having regard to the extent of their responsibility.
- 20.4 Provided always that this clause 20 shall not exclude or limit the Supplier's liability for death or personal injury, fraud or fraudulent misrepresentation.
21. **TERMINATION**
- 21.1 **Termination for material breach**
21.1.1 Subject to clause 21.1.2, either Party may terminate this Agreement following a material breach by the other of any of the terms of the Agreement by giving not less than 30 Working Days' written notice to the other.
21.1.2 Where the breach is capable of being remedied, provided that the breach is remedied within the period referred to in clause 21.1.1 then the notice of termination of the Agreement shall no longer be effective and the Agreement shall remain valid and binding on the Parties.
- 21.2 **Termination for Insolvency**
In the event that either Party:
21.2.1 enters into an arrangement, compromise or composition in satisfaction of its debts (excluding a scheme of arrangement as a solvent company for the purposes of amalgamation of restructuring);
21.2.2 without a declaration of solvency, passes a resolution or makes a determination to be wound up;
21.2.3 has a winding up order or bankruptcy order made against it;
21.2.4 has appointed to it an administrator or administrative receiver; or
21.2.5 is the subject of any analogous arrangement, event or proceedings in any other jurisdiction,
this Agreement shall automatically terminate immediately on written notice from the other Party to this effect.
22. **SET-OFF**
Neither Party shall have the right to set-off any sums due or payable under this Agreement against sums which are due or payable under any other agreement between the Parties.
23. **FURTHER ASSURANCE**
Each Party shall from time to time upon the request of the other Party, execute any additional documents and do any other acts or things which may reasonably be required to implement the provisions or the purpose of this Agreement.
24. **SEVERANCE**
If any provision of this Agreement is prohibited by law or judged to be unlawful or otherwise void and cannot be modified to give effect to the intentions of the Parties, the provision shall be ineffective to the extent of such invalidity or unenforceability and shall, to the extent required, be severed from this Agreement (as far as possible without modifying the remaining provisions of this Agreement) without affecting the validity or enforcement of the remaining provisions of this Agreement.
25. **THIRD PARTY RIGHTS**
No term of this Agreement is enforceable, whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise, by a person who is not a Party to this Contract.
26. **ENTIRE AGREEMENT**
- 26.1 This Agreement, together with the documents referred to in it, constitutes the entire agreement and understanding between the Parties in respect of the matters dealt with in it and supersedes, cancels and nullifies any previous agreement between the Parties relating to such matters notwithstanding the terms of any previous agreement or arrangement expressed to survive termination.
- 26.2 Unless otherwise agreed in writing by both Parties:
26.2.1 the terms and conditions of this Agreement are the only terms and conditions upon which the Purchaser shall purchase the Goods to the exclusion of all other terms and conditions; and
26.2.2 no terms or conditions submitted or referred to by either Party in any documentation or orally shall change, modify, supplement, explain or form part of this Agreement.
- 26.3 Implied terms, conditions or warranties whether under the Sale of Goods Act 1979, the Supply of Goods and Services Act 1982 or otherwise are excluded to the fullest extent permitted by law.
- 26.4 Each of the Parties acknowledges and agrees that in entering into this Agreement, and the documents referred to in it, it does not rely on, and will have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether Party to this Agreement or not) other than as expressly set out in this Agreement.