Airedale Standard Conditions of Sale

1. DEFINITIONS FOR THE PURPOSES OF THESE CONDITIONS “the Company” shall mean Airedale International Air Conditioning Limited; “the Purchaser” - shall mean the party by or on behalf of which the Goods are supplied; “the Goods” - shall mean the items supplied under the contract of sale by the company, including its own products and services and those supplied by the Company as agent.

2. OFFER/ACCEPTANCE Subject to any variation under Condition 3 hereof all contracts whether oral or in writing for the supply of Goods excluding erection are entered into by the Company only upon these conditions of sale the exclusion of all other terms and conditions (including any terms or conditions which the Purchaser purports to apply under any purchase order, confirmation of order, specification or other document) and no contract shall be deemed to have been concluded between the Company and the Purchaser unless and until the Company has accepted the Purchaser’s order either expressly or by necessary implication by supplying the Goods.

3. VARIATION No variation or additions to these conditions of sale shall be effective unless in writing and signed for on behalf of the Company. Such written variations shall take precedence over any conflicting term contained herein.

4. PRICE AND PRICE INCREASES The contract price of the Goods is based upon the cost to the Company at the date of its quotation for materials, labour and all other expenses and of conforming to any statutory regulation or requirements as may be in force, and is set out in such quotation. The Company reserves the right to unilaterally vary the quoted contract price by prior written notice to the Purchaser (to take account of any upward variation in the agreed costs) between the date of the quotation and the date of acceptance of the order. The Company may unilaterally increase the contract price by prior written notice to the Purchaser (to take account of any upward variation in the agreed costs) after the date of acceptance of the order, but in such circumstances the Purchaser shall be entitled to cancel the contract without liability if so wishes, as long as it does so promptly on receipt of the notice.

5. REPRESENTATIONS Any technical descriptions or drawings or whatever kind contained in any literature or advertisement published by the Company or on behalf of the Company by its agent shall not be deemed to constitute any representation or warranty of any kind whatsoever in relation to the Goods or any part thereof.

6. TECHNICAL DATA At the request of the Purchaser the Company will at reasonable additional costs to the former (payable at the same time and upon the same terms as the contract price) supply certified drawings and/or weights and dimensions relating to the Goods; and/or Vell any form or procedure connected with the contract or with the Goods.

7. UNIT PERFORMANCE Predicted product performance is determined from an advanced mathematical model calibrated to data obtained from tests conducted in accordance with the industry recognized standard BS EN 14511:2013 within Airedale’s multistandard/round/R&D/development laboratory. Performance of the product in application will not differ from the predicted figures by more than the allowable deviations specified in table 1 of section VII of the Eurovent R6/2003 – 2016 (cooling capacity, -5%, EER at full load, -5%, SEER, -5%).

8. COPYRIGHT All drawings, specifications, literature and any other materials prepared by or on behalf of the Company and the copyright therein or in any part thereof is the property of the Company. No part of any such drawing, specification or literature shall be reproduced without prior written consent of the Company; all such drawings, specifications and literature are confidential and the contents of the same shall not be disclosed to any third parties without the prior written consent of the Company.

9. COPYRIGHT INDEMNITY Insofar as the Company manufactures or supplies any Goods in accordance with any specification drawing or design provided by or on behalf of the Purchaser or the goods or their said material or supply constitute any infringement of any patent or copyright the property of any person then the Purchaser shall indemnify and keep the Company indemnified against any claim, damage, loss or expenses made against or suffered by it arising out of or in connection with such infringement.

10. DELIVERY/COLLECTION Times and dates of delivery shall not be of the essence of the contract and the Company shall not be liable for any loss, expenses, damage or claim whatsoever and howsoever arising, resulting from any failure by the Company to deliver the Goods on the agreed date or dates of delivery.

11. RISK All risk in the Goods whatsoever shall pass to the Purchaser on delivery.

12. RETENTION OF TITLE a. Goods supplied by the Company shall remain the sole and absolute property of the Company until such time as:
   i. the Goods have been paid for in full;
   ii. any monies due to the Company from the Purchaser have been paid to the Company but shall be at the Purchaser’s risk from the time of delivery to it and the Purchaser shall:
   i. until the Goods are paid for or returned to the Company be responsible for and adequately insure the Goods in the name of and for the benefit of the Company against loss or damage arising from any cause whatsoever in their full replacement value and shall produce to the Company on demand the policies of such insurance and the receipts for premiums paid thereon;
   ii. keep the Goods separate from all property of other persons in an area set aside for such purpose and stored in accordance with recommendations made from time to time by the Company;
   iii. at all times keep a separate account of the Goods and supply to the Company upon request full details of the Goods or any part thereof including details of any part of the Goods which has been used or sold by the Purchaser, its servants or agents;
   iv. keep all records of sale of the Goods or any part thereof which are sold or used by the Purchaser in trust for the Company in a separate bank account and not mix them with any other funds.
   b. The Purchaser acknowledges that it is in possession of the Goods as bailee and in a fiduciary capacity for the Company until such time as said items are paid for in full by the Purchaser.
   c. The Purchaser grants the Company an irrevocable license to enter at any time any vehicles or premises occupied or used by the Purchaser or in its possession for the purpose of repossessing and removing any Goods the property in which has remained with the Company under this Condition 11.
13. TESTS AND INSPECTION
Any tests of the Goods or any part thereof undertaken by the Company at the request or on the instructions of the Purchaser shall be at the expense of the latter who shall reimburse the Company the cost thereof at the same time and in the same manner as payments are made under the contract price.

Without prejudice to the foregoing if the Purchaser requires any such test to be witnessed by him or by any representative of his then the Company will give to the Purchaser reasonable notice in writing of the date and place thereof. If the Purchaser or his representative fails to attend the same on the date and at the place so notified the Purchaser shall be entitled to take any action in the event of the test being conducted in his absence.

14. PACKAGING
Goods to be delivered by the Company whether in or outside the United Kingdom will be packed in a manner suitable for the protection of the Goods under normal transport conditions and for dry indoor storage for up to three months from the date of such delivery. Provided that the packaging is not damaged or disturbed Goods to be delivered outside the United Kingdom may be packed in some other manner agreed in writing between the parties and will be at the extra cost of the Purchaser payable at the same time and in the same manner as the contract price. All packaging will be non-returnable.

15. PAYMENT
a. Unless otherwise provided for in the contract the Purchaser shall pay for the contract price of the Goods and any other costs, charges or expenses provided for in these conditions forthwith upon delivery of the Goods, or for approved credit accounts with the Company within 30 days from the date of the invoice. Any payment not satisfied by the end of the month following the month in which delivery is made will be liable to a surcharge of 2.5% of the invoice value for every month in which the payment is overdue.

b. The Purchaser shall not be entitled to make deduction from any amount due to the Company in respect of any offset or counter-claim unless both the validity and the amount thereof have been expressly admitted in writing by the Company.

c. Without prejudice to any other rights, failure to pay the contract price of the Goods or part thereof or of any monies payable by the Purchaser to the Company will also entitle the Company at its sole discretion either to refuse to make delivery of any further goods agreed to be supplied or to cancel any contract to which these conditions apply, either in whole or in part, on notice in writing to the Purchaser and without incurring any liability to the Purchaser for any loss caused by such a delay or cancellation.

The contract price of the Goods shall become immediately due and payable in the event that the Purchaser goes into liquidation or administration or a receiver of its assets or any part thereof is appointed or any petition is presented for winding-up or ensurance of any scheme of arrangement with its creditors.

The Company reserves the right to withhold immediate effect and at any time prior to settlement of invoice, any other credit which has made or has been implied to the Purchaser if it receives adverse information about the financial status of the purchaser or any related company in the purchasers group.

All amounts due to the Company are payable in pounds sterling unless agreed otherwise by the Company.

16. CANCELLATION
No order which has been placed with the Company may be cancelled by the Purchaser except in accordance with the writing of the Company and on the terms that the Purchaser shall indemnify the Company in full against all loss, costs, (including the cost of all labour and materials used), damages, and charges incurred by the Company as a result of cancellation.

17. WARRANTY
a. The Company warrants the Goods in the manner set out in this Condition 17 and (where attached to these terms of sale) in the warranty procedure document with the type of warranty cover set out in the quotation.

b. The warranty shall only apply when the Conditions of Sale are met and when the Goods are used, installed, commissioned and maintained in accordance with good engineering practice and/or any instructions or advice given by the Company. The warranty shall be void if the Goods are subjected to misuse or misapplication or to improper or inadequate storage of the Goods or any part thereof or storage thereof for more than three months. The Company shall not be liable to repair or replace any part of the Goods unless and until it is satisfied that the Goods have been handled, used, installed, commissioned and maintained in accordance with good engineering practice and/or any instructions or advice given by the Company. The Company shall not be liable to repair or replace any part of the Goods unless and until it is satisfied that the Goods have been handled, used, installed, commissioned and maintained in accordance with good engineering practice and/or any instructions or advice given by the Company.

c. Without prejudice to any other rights, failure to pay the contract price of the Goods or part thereof or of any monies payable by the Purchaser to the Company will also entitle the Company at its sole discretion either to refuse to make delivery of any further goods agreed to be supplied or to cancel any contract to which these conditions apply, either in whole or in part, on notice in writing to the Purchaser and without incurring any liability to the Purchaser for any loss caused by such a delay or cancellation.

18. LIMITATION OF LIABILITY
a. Nothing in these conditions of sale shall exclude either party’s liability for death or personal injury caused by negligence or for fraud or fraudulent misrepresentation or where liability cannot be limited or excluded by law. Subject to Condition 18(a), the Company’s total liability in contract, tort, misrepresentation or otherwise arising in connection with the performance or contemplated performance of any contract to which these terms and conditions apply shall be limited to the greater of the price of Goods under the order which has given rise to it or, in the case of services, the amount that the Company may reasonably recover from its insurers under any policy of insurance that it has in force.

b. Subject to Condition 18(a) and 18(b), the Company shall not be liable for

i. any indirect or consequential loss or damage;
ii. any loss of profit; loss of business; or depletion of goodwill;
iii. any costs, expenses or other claims for consequential compensation;
iv. any defect which may occur in any prior installation to which the Company’s equipment may be connected;

v. any defect to the extent that it is caused by incorrect installation (where not installed by the Company) or lack of proper maintenance of the Goods.

19. INDEMNITY
The Purchaser shall indemnify the Company in respect of any loss, injury, damage, expense or claim of whatsoever nature and howsoever arising out of the contract or the Goods or their storage, installation, use, operation or maintenance where the same is caused solely by the negligence of the Company.

20. DETERMINATION
If the Company is prevented from performing the contract by any cause beyond its control whatsoever and wheresoever arising then it may by notice in writing to the Purchaser determine this contract and upon receipt thereof by the Purchaser the contract shall forthwith be determined. In such event the Purchaser shall pay to the Company all reasonable costs incurred by it up to the date of the said determination and the attempted performance of its obligations hereunder but subject thereto neither the Company nor the Purchaser shall be under any other liability to the other in connection with the contract.

21. SEVERABILITY
Insofar as any provision of this contract or any part thereof be found to be declared void, invalid, voidable, ineffective or unenforceable, such defect shall not affect the remainder of the contract which shall be construed as if the defective part or parts had been excluded there from at the time when the contract was entered into.

22. NOTICE
Where under any terms and conditions contained herein notice is required to be given by either party to the other such provision shall be satisfied by a written, typed or printed notice signed by a person authorised by the relevant party and transmitted either by post, facsimile or email to the Registered Office of such party where it is a company and to the address notified to the Company where the Purchaser is unincorporated.

23. TRADEMARKS
a. The Purchaser shall ensure that any trademarks or other words or marks affixed to or used in relation to the Goods are not obliterated, obscured or omitted without the Company’s prior written consent.

b. The Purchaser shall not affix, affix or use any additional words or marks to or in relation to the Goods without the Company’s prior written consent.

24. GOVERNING LAW
The contract shall be governed by English Law and any dispute shall be heard by the English courts.