



# B COOL A/S

## TERMS AND CONDITIONS

*These terms and conditions ("**Terms and Conditions**") shall, unless otherwise agreed in writing, apply to any and all offers, sales and deliveries of products ("**Products**") or services ("**Services**") provided by B Cool A/S (the "**Seller**") to a customer ("**Buyer**"). The Terms and Conditions shall prevail over any terms and conditions applied and provided by the Buyer.*

## **1. Orders**

Any offer presented by the Seller is valid for eight (8) days. Orders placed by the Buyer are not final for the Seller until the Seller delivers a written order confirmation to the Buyer ("Order Confirmation"). A final order is hereinafter referred to as an "Order". Following receipt of the Order Confirmation, the Buyer cannot cancel the Order. An Order Confirmation may be conditional of the Buyer's delivery of information and materials. If such deliveries are not made in due time, the Order is not binding for the Seller.

## **2. Terms of delivery**

If an Order includes Products or Services, delivery hereof is Ex Works (Incoterms 2010) at Viengevej 2, 8240 Risskov, Denmark. This means that the Seller delivers the Products/Services, when the Seller places the Products at the disposal of the Buyer at the named place. Thus, the Buyer is responsible for clearing the Products/Services for export, for storage and loading for transportation and insurance coverage. Means of transportation may be recommended by the Seller. Delivery times are provided by the Seller as a best estimate and no delivery time shall be considered final by the Buyer before it is confirmed by the Seller.

If an Order includes installation work, including but not limited to repairs or construction ("Installation Work"), delivery of the Installation Work takes place when the Seller has finished the Installation Work at the agreed place of installation ("Place of Installation").

Upon delivery, the Buyer must immediately and within three (3) days from receipt of the Products/Services examine the delivery as good business practice requires according to Danish law. This examination period shall not be suspended or extended by storage of Products by the Buyer.

In regards to Installation Work, a test must be performed at the time of delivery to the Buyer ("Acceptance Test"). The purpose of the Acceptance Test is to show that the Installation Work is as ordered. The Seller must give notice to the Buyer when the Installation Work is ready for testing, and the parties must then jointly fix a time for the Acceptance Test, which must be performed within a reasonable time after delivery.

The terms of delivery, including the delivery of Installation Work, determines the passing of risk. The delivery shall not be affected by the Acceptance Test, even if defects or irregularities are identified in the Acceptance Test.

The Buyer is not given the right to return any Products as any and all purchases are made without the right of return of the Buyer. The Buyer is obligated to carefully read any product and installation instruction or manual delivered with the Products, and the Buyer must strictly follow such instructions in order to maintain its right to make claims for product deficiencies.

### **3. Terms of payment**

The price stated in the Order (the "Price") includes only the content of the Order and thus, does not include rigging, dismantling, product inspection, preparation in general, additives, spare parts, oil, delivery costs, packaging, import/export charges and duties, VAT, etc. Payment is due eight (8) days from the date of any invoice.

If payment is not made in due time, notwithstanding the reason hereto, the Seller has the right to suspend any and all delivery of Products and Services until payment is made. If the Seller decides to exercise this right of postponement, the Seller shall notify the Buyer within reasonable time, and the Buyer shall be deemed to accept the postponement. In any case, the Seller is not liable for any losses or costs caused by the postponement.

If a payment is delayed, the Seller is entitled to charge interest on the outstanding payment in accordance with the Danish Interest Act. The Buyer shall not be entitled to offset any counterclaims against the Seller in payments to the Seller, nor shall the Buyer have any right to withhold any portion of the payment because of counterclaims of any kind. The Seller reserves the rights with respect to retention of title, which means that the Seller retains title to Products delivered to the Buyer until the Seller has received payment of the invoice amount together with any interest accrued and all costs incurred. The Buyer is required to keep all delivered Products individualized and holding them separate from other products until full payment is made.

With respect to Installation Work, an Order or Order Confirmation may contain a time estimate for delivery of the Installation Work based on information provided by the Buyer. The Seller may invoice excess time spent in accordance with timesheets and the Seller's standard prices, when such excess time cannot be blamed the Seller. The Seller must notify the Buyer when the expected time for the Installation Work is exceeded.

### **4. Installation Works**

The Buyer must ensure that there is access to water and power supply, including but not limited to compressed air and electricity, directly at the Place of Installation. The Buyer is responsible for ensuring that the Installation Work can be performed at the Place of Installation in compliance with applicable law and working environment regulations.

The Buyer is responsible for performing any preparatory work at its own expense and in a professional manner in order to prepare the Place of Installation for the Seller. Such preparatory work must be completed before the Seller's employees arrive at the Place of Installation.

## **5. Defects**

Claims for defects that are not visible as part of the examination and identified at a later point in time, and where such defects are attributable to errors in the manufacturing or processing of the materials and thereby caused by the Seller, can be made in a period of 12 months from the time of delivery. Further, the Seller is liable for parts of the Products/Services that have been repaired or replaced due to defects from the date of completion of the remedial work and for a period of six (6) months hereafter. If the Products/Services are defective in whole or in part, the Seller has the right to remedy the defects, by replacement or reparation.

The Buyer must give the Seller notice of any defects without undue delay when the Buyer has established such defects. If it is suspected that a defect may cause greater damage such notice must be given immediately. The Seller is not liable for defects caused by materials, which have been provided by the Buyer, or for defects caused by insufficient maintenance by the Buyer. Also, the Seller is not liable for fair wear and tear.

## **6. Liability**

The Seller's liability, including product liability claims, can never exceed the amount invoiced for the Products/Services to which the claim relates. Further, the Seller shall not be liable for loss of profits, loss of earnings, loss of data or other indirect losses arising from the Order of Products/Services, including indirect losses arising as a result of delays or defects in the sold Products/Services.

The Seller shall only be liable for product liability damage to the extent required under the mandatory rules of Danish law applicable at all relevant times. The Buyer shall fully indemnify the Seller from and against any and all claims arising out of or in connection with product liability claims made by third parties. The Buyer must give notice to the Seller without undue delay, where a product liability claim has been made, or where the Buyer determines that there is a risk that such a claim will be made. The said limitations shall, however, not apply in case the Seller has acted with gross negligence or wilful misconduct.

## **7. General conditions**

The parties must observe secrecy in relation to confidential information about the other party. The Buyer may not transfer its rights and obligations in whole or in part to another company unless having received the Seller's prior written consent. If the Seller uses sub-contractors with respect to Installation Work, the Buyer cannot refuse to give such sub-contractors access to the Place of Installation.

Force majeure situations, such as acts of god, war, civil war, insurrections, strikes, fires, floods, earthquakes, labour disputes, epidemics, pandemics, scarcity of goods, shortage of transport, general shortage of materials, restrictions in the use of power, shall exempt the parties from liability if they prevent delivery of the Order. This also applies to any defect in or delay of Products or Services supplied by sub-contractors, which is attributable to any of the above events, in which case the party must in writing notify the other party of the occurrence and termination of the force majeure event. Notwithstanding any provision to the contrary in these Terms and Conditions, the Seller is not bound by an Order if such an event prevents performance of the Order for a period of more than six (6) months.

Covid-19. The Parties acknowledge that the Covid-19 pandemic is currently causing global disruption, and while neither Party is aware of any cause as at the Effective Date that would prevent or delay such Party in the performance of the Products and/or Services, the Parties acknowledge that a Force Majeure event could arise as a consequence of future impacts of the Covid-19 pandemic.

## **8. Governing law and venue**

Any dispute between the parties shall be settled in accordance with Danish law, not including the CISG and the Danish choice of law rules. Aarhus city court shall be the court of first instance.

\* \* \*

Acknowledged and accepted

Company stamp

Name and date