

### 1. Terms

- 1.1. An order will be deemed to be an offer to purchase the system on the terms of this proposal.
- 1.2. Orders are not binding until accepted by ADM in writing
- 1.3. Marketing and other descriptive matter relating to the system is illustrative only and does not form part of the proposal. The customer agrees that, in placing an order, it has not relied on any representation or statement by ADM not set out within the proposal.
- 1.4. The terms of an order and this agreement alone will apply to the sale of the system and any other services by ADM to the customer (as identified in the order) – where a conflict arises between the terms of an order and the terms of this agreement, the terms of the relevant order will take precedence. All other terms, including any:
  - 1.4.1. Which the customer seeks to incorporate, or
  - 1.4.2. Implied by course of dealing or by custom or practice will not apply.

### 2. Price and Payment

- 2.1. All prices quoted in the order are fixed for 90 days from the date of the order. These prices are estimated and will be confirmed once an order is placed and the final specification and schematic layout is agreed.
- 2.2. The price for the system will be as set out in the order and is fixed for 90 days from the date of that order. Thereafter the price will be the actual cost of the system plus the percentage stated in the order representing our additional costs and profit.
- 2.3. The price:
  - 2.3.1. Payment of £350.00 + VAT at the applicable rate for any schematic layout, survey, buddy, services and standard service options as identified in the order must be made as a condition precedent before we will commence any system based work specified in the order.
  - 2.3.2. On a supply only contract includes:
    - 2.3.2.1. Standard delivery within 3 working days if in stock, between 7am and 6pm, Monday to Friday. If delivery on any other basis is required a surcharge may apply.
    - 2.3.2.2. Delivery of Ground-Air Heat Exchanger components within 15 working days.
  - 2.3.3. On a supply and install contract includes:
    - 2.3.3.1. The erection of all ducting and ancillaries, consumables, connection of all necessary control wiring and testing/commissioning upon completion. This is subject to continuity of access to undertake the work during the normal working hours of 7.30am and 5pm, Monday to Friday, and the availability of other trades.
  - 2.3.4. Does not include Value Added Tax (VAT). VAT will be zero rated on Supply and Installation for new build projects only. Written confirmation from HMRC or the relevant Local Authority may be required prior to the issue of reduced or zero rated VAT invoices
- 2.4. The price is payable by instalments as set out below:
  - 2.4.1. Payment under clause 2.3.1 for any design, survey, buddy, services and standard service options as identified in the order must be made as a condition precedent before we will commence any other work specified in the order.

#### Supply & Installation

- 2.4.2. Stage payment one – 10% order value. The schematic layout (*where applicable*) will be issued and final price confirmed;
- 2.4.3. Stage payment two – 65% order value prior to release of 1<sup>st</sup> fix parts
- 2.4.4. Stage payment three – 25% order value prior to release of 2<sup>nd</sup> fix parts

#### Supply Only:-

- 2.4.5. Stage payment one – 10% order value. The schematic layout (*where applicable*) will be issued and final price confirmed;
- 2.4.6. Stage payment two – 80% order value prior to release of 1<sup>st</sup> fix parts and labour;
- 2.4.7. Stage payment three – 10% order value prior to release of 2<sup>nd</sup> fix parts and labour;

If any additional parts or services are requested, invoices will be raised and payment will be due in accordance with these terms prior to release. ADM reserves the right to provide interim invoices and to split the values accordingly to cover parts, materials or labour as required.

- 2.5. Upon receipt of stage payment one, all prices will be held for period of up to 90 days. Goods taken after this time will be charged at the prevailing rate. Where possible, ADM will endeavour to give the customer 30 days' notice of any pending price increases.
- 2.6. The customer will pay all invoices in full, without deduction, retention or set-off other than in accordance with these terms or as required by law, prior to the release of any goods or site attendances. In any event the due date for payment of any invoice will be on receipt.
- 2.7. Payment may be made by credit/debit card or direct to ADM's nominated bank account specified on our invoice. Enquiries regarding any alternative methods of payment should be made to ADM's accounts department.
- 2.8. By making payment of ADM's pro-forma invoices, and/or returning a purchase order, the customer is deemed to:
  - 2.8.1. Accept ADM's terms and conditions in full; and
  - 2.8.2. Approve the final system layout.
- 2.9. Where sums due hereunder are not paid in full within 7 days of the due date ADM may, without limiting its other rights:
  - 2.9.1. Charge an administration fee of £100.00 in respect of ADM's costs in recovering the same together with interest at 5 per cent above the base rate of the Bank of England from time to time in force; or

- 2.9.2. In respect of commercial customers, recover compensation for late payment and charge interest on such sums under the Late Payment of Commercial Debts (interest) Act 1998  
Interest will accrue on a daily basis, and apply from the due date for payment until receipt of payment in full, whether before or after judgment.
- 2.10. Due to the bespoke nature of the package, contingency items are provided with ventilation and vacuum systems and a small surplus of materials is to be expected. All items are supplied as part of the package. ADM will not accept returns or provide refunds for any such surplus material.
- 2.11. If the work detailed in ADM's scope of works section is not completed prior to ADM's arrival on site, ADM reserves the right to charge standing time at £300.00 plus VAT per person per day or part thereof to cover ADM's installation, commissioning or maintenance engineer(s).
- 2.12. Subject only to receipt of written confirmation from ADM the customer shall not be entitled to deduct any amount from the price in respect of retention.

### 3. Title and Risk

- 3.1. Risk in the goods will pass to the customer on delivery in accordance with clause 4.
  - 3.2. Title to the goods will remain with ADM until payment in full is received.
  - 3.3. Until title to the goods has passed to the customer, the customer shall:
    - 3.3.1. Hold the goods for ADM;
    - 3.3.2. Store the goods separately from all other material in the customer's possession;
    - 3.3.3. Provide secure storage for, and take reasonable care of, the goods;
    - 3.3.4. Ensure that the goods are clearly identifiable as belonging to ADM;
    - 3.3.5. Not remove or alter any mark on or packaging of the goods; and
    - 3.3.6. Insure the goods with a reputable insurer from delivery for an amount at least equal to the price noting ADM's interest on the policy.
- The customer accepts responsibility for the security and protection of, and any loss or damage to, the goods upon delivery irrespective of whether title to the goods has been transferred.

### 4. Delivery

- 4.1. The goods will be delivered directly from the supplier(s) to the customer's address specified in the proposal unless otherwise advised in writing.
- 4.2. The goods are deemed delivered on upon arrival of the delivery vehicle at the customer's address.
- 4.3. ADM will not be liable for any delay in or failure of delivery caused by:
  - 4.3.1. The customer's failure to make the delivery location available or to provide ADM with adequate instructions, for delivery or otherwise relating to the goods;
  - 4.3.2. An event of force majeure
- 4.4. The customer or its authorised representative must promptly inspect the goods and in any event:
  - 4.4.1. Goods which are clearly damaged or in an unfit state on delivery should be rejected, the accompanying delivery note should be marked 'GOODS UNCHECKED' and 'DAMAGED', and the goods returned to the point of origin immediately;
  - 4.4.2. ADM must be notified in writing within 3 working days of delivery of any defects or damage that would be discoverable by an ordinary and reasonable examination or the customer will be deemed to have accepted and approved of the goods;
  - 4.4.3. ADM must be notified in writing within 3 working days of the discovery of any latent defects
- 4.5. If the customer rejects any of the goods pursuant to this clause ADM may at its sole discretion:
  - 4.5.1. Repair or replace the defective or damaged goods as soon as reasonably practicable and due delivery shall not be deemed to have taken place until such repair or replacement has occurred; or
  - 4.5.2. Refund the price of the defective or damaged goods.
- 4.6. ADM must be advised in writing of any shortages within 3 working days of delivery. The customer shall not be entitled to reject the goods or any part thereof by reason only of short delivery.
- 4.7. Where paid overnight carriage or a timed delivery has been requested ADM must be advised in writing of late delivery within 2 working days of the expected delivery date.
- 4.8. For the avoidance of doubt, the customer is deemed to accept the goods if they expressly state the same in writing or fail to reject the goods or notify ADM in accordance with this clause 4.

### 5. Design Intent

- 5.1. The purpose of the system is to satisfy the requirements of either:
  - 5.1.1. Part F of the current Building Regulations for England and Wales 2010 Edition under the System 4 approach together with the relevant sections of the associated document Domestic Ventilation Compliance Guide 2010; or
  - 5.1.2. The Scottish Domestic Technical Handbook section 3.14, together with the relevant recommendations of BRE Digest 398 as mentioned therein.
- 5.2. A remotely-switched boost facility is provided for rapid ventilation purposes.
- 5.3. For foil faced bubble wrap, insulation materials are provided separately, where specified or ordered, to be fitted on site for steel components and rectangular uPVC ducts and corresponding fittings as these are not supplied in pre-insulated form.
- 5.4. If:
  - 5.4.1. The system layout is amended without advising, and receiving the written agreement of, ADM; or

# proposal

- 5.4.2. Substitute or additional equipment is sourced other than from ADM or their approved suppliers  
the overall performance of the system will not be guaranteed by ADM to comply with any regulatory requirements.

## 6. Considerations

- 6.1. When provided, the schematic layout illustrates the scope and extent of the proposed system.
- 6.2. Where possible the plant unit should be located within the heated envelope of the building. All ventilation ducting and heat recovery units installed in cold roof voids must be insulated. If the ventilation is to be used with any supplementary heating or cooling element, thermal duct insulation must be used.
- 6.3. Any requirement for combustion air for appliances must be considered independently of ADM's proposal.
- 6.4. ADM is responsible for ensuring that the contractual works comply with applicable Building Regulations. However liability for ensuring that the contractual works comply with Part B of the Building Regulations for England and Wales is excluded. The customer should seek independent advice as to any requirements of the Building Control/Fire Officer.
- 6.5. Purge ventilation is excluded from ADM's proposal and should be considered by others. Please refer to the regulations specified in 5.1.1 in England and Wales and 5.1.2 in Scotland.
- 6.6. Adequate provision must be made to enable access to the plant unit for future maintenance and/or replacement of parts or products. ADM accepts no responsibility for remedial works, including any associated costs, required to gain access.
- 6.7. If ADM are to install the system, the customer must provide ADM with the details of any known potential health and safety risks including but not limited to:
- 6.7.1. The location of any known asbestos;
- 6.7.2. Any available method statements or risk assessments relevant to the site;
- 6.7.3. Any known access restrictions or requirements relevant to the installation of the system.

**If no such notification is received ADM will assume that there are no special health and safety requirements at the site. ADM's costs incurred in dealing with health and safety requirements where these are not notified in advance will be borne by the customer.**

- 6.8. All ventilation systems should be commissioned and balanced by a BPEC accredited engineer, failure to do so may invalidate any relevant manufacturer's warranty.
- 6.9. In the event of any claim:
- 6.9.1. a valid commissioning certificate;
- 6.9.2. as fitted drawings; and
- 6.9.3. proof of purchase
- must be presented to ADM for inspection and assessment of any such claim. Details of any relevant warranties will be supplied on the product data sheet provided with the proposal.

## 7. Obligations of the Customer

- 7.1. The customer will:
- 7.1.1. Place all orders on the terms of this proposal and ensure that the contents are complete and accurate;
- 7.1.2. Ensure that any part of the specification which it provides is complete and accurate and contains all information that ADM may require;
- 7.1.3. Co-operate fully with ADM in relation to delivery or collection of the products; and
- 7.1.4. Ensure ADM are supplied with revisions to any drawings and/or plans.

## 8. Termination

- 8.1. The agreement may be terminated forthwith at any time by either party on written notice to the other if:
- 8.1.1. The other commits a material breach, or series of breaches resulting in a material breach, of the agreement and such breach is not remediable or is not remedied within 7 days of written notice to do so
- 8.1.2. The other: (i) suspends or threatens to suspend payment of its debts, (ii) is unable to pay its debts as they fall due or (iii) is unable to pay its debts (being a company) within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) there is any partner to whom any of the foregoing applies
- 8.1.3. The other: (i) negotiates with its creditors for rescheduling of its debts, (ii) makes a proposal to or compounds with its creditors in respect of its debts other than solely by way of solvent amalgamation or reconstruction or (iii) makes an application to court for protection from its creditors generally
- 8.1.4. The other passes a resolution for winding-up or for the appointment of an administrator, or a liquidator or administrator is appointed in relation to the other, or a winding-up order is made in relation to the other, other than solely in relation to a solvent amalgamation or reconstruction
- 8.1.5. A receiver or administrative receiver may be or is appointed in relation to the other or any of its assets

- 8.1.6. Any creditor of the other attaches, takes possession of, or any distress, execution or similar process is levied or enforced against, all or any part of the other's assets, and such attachment or process is not discharged within 14 days
- 8.1.7. The other takes or suffers any action similar to any of the above in any jurisdiction
- 8.1.8. The other suspends trading, ceases to carry on business, or threatens to do either
- 8.1.9. The other (being an individual) dies or ceases to be capable of managing his own affairs
- 8.2. In addition to its rights under clause 8.1, ADM may terminate the agreement at any time:
- 8.2.1. On 14 days' written notice to the customer;
- 8.2.2. Immediately on written notice to the customer if the customer has failed to pay any amount due under this agreement within 7 days of the due date
- 8.3. On termination of this agreement for any reason:
- 8.3.1. The customer will within 3 working days pay all invoices of ADM then outstanding and not disputed in good faith
- 8.3.2. ADM will, within 7 working days, invoice the customer for all goods and services delivered or provided but not yet invoiced and the customer will pay such invoice within a further 3 working days (unless the invoice is disputed in good faith)
- 8.3.3. Each party will within 7 working days return any materials of the other then in its possession or control. Pending such return or taking possession, the first party will be responsible for such materials and will not use them for any purpose not connected with this agreement
- 8.3.4. The accrued rights and liabilities of the parties will not be affected, and
- 8.3.5. Clauses which expressly or by implication are to survive termination will do so.

## 9. Liability

- 9.1. ADM does not exclude its liability:
- 9.1.1. For death or personal injury caused by its negligence; or
- 9.1.2. For breach of the terms implied by section 12 of the Sale of Goods Act 1979 and by section 2 of the Supply of Goods and Services Act 1982; or
- 9.1.3. For defective products under the Consumer Protection Act 1987; or
- 9.1.4. For fraud or fraudulent misrepresentation.
- 9.2. ADM will be liable to the customer for direct damage to tangible property in an amount which will not exceed 100 per cent of the price for the instalment of the goods concerned per incident or series of related incidents caused by the failure of any goods in that instalment, as supplied by ADM to the customer, to comply with applicable product liability laws or regulations in force at the date of delivery.
- 9.3. Neither party will be liable for:
- 9.3.1. Loss of data or use
- 9.3.2. Any form of indirect, consequential or special loss, or
- 9.3.3. Any loss of or failure to realise expected profit, revenue or savings or any other form of pure economic loss, whether any such loss is direct or indirect,
- and, in each case, however arising.
- 9.4. Subject to approval of the schematic layout, ADM shall not be liable for imperfect work caused by any inaccuracies in any drawing, plan or specification supplied to ADM. Additional parts, materials and/or labour required as a result of a variation of the layout from the approved schematic layout will be charged for. Please refer to the attached Scope of Works.
- 9.5. Other than as set out above, ADM limits its liability (however arising) in respect of or in connection with the goods and/or services, and otherwise in connection with this agreement, to 100 per cent of the total price of goods and/or services.
- 9.6. Please refer to our scope of works document for details of all exclusions.

## 10. Notices

- 10.1. Notices under this agreement will be in writing and sent to the persons and addresses set out in the proposal. They may be given, and will be deemed received:
- 10.1.1. By e-mail: on receipt of a delivery or read return mail from the correct address;
- 10.1.2. By first-class post: two working days after posting;
- 10.1.3. By airmail: seven working days after posting;
- 10.1.4. By hand: on delivery and
- 10.1.5. By facsimile: on receipt of a successful transmission report from the correct number.

## 11. Rights of Third Parties

- 11.1. This agreement is not enforceable by any third party under the Contracts (Rights of Third Parties) Act 1999 or otherwise.

## 12. Entire Agreement

- 12.1. This agreement constitutes the entire agreement between the parties in relation to its subject matter. No other terms apply.

## 13. Governing Law & Jurisdiction

- 13.1. This agreement will be governed by the law of England and Wales and any disputes will be submitted to the exclusive jurisdiction of the courts of England and Wales