Derek Austin Heating Limited
Terms and Conditions of Business

These Terms and Conditions apply to the supply of Services and/or Goods (as defined below) by Derek Austin Heating Ltd t/a Austin Heating and Cooling Services, registered in England and Wales, company n° 01353017 with a registered office at First Floor Suite, 2 Hillside Business Park, Bury St. Edmunds, IP32 7EA. In these Terms and Conditions, the company making the supply is referred to as 'Austin Heating & Cooling Services'. The Customer's attention is drawn in particular to clause 9 (Limitation of Liability).

1. Interpretation
1.1 The following definitions apply in these Conditions.
Business Day: a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.
Charges: the charges payable by the Customer for the supply of the Services and/or Goods in accordance with clause 6.
Commencement Date: has the meaning given in clause 2.2.
Conditions: these terms and conditions as amended from time to time in accordance with clause 13.5.
Contract: the contract between Austin Heating & Cooling Services and the Customer for the supply of Services and/or Goods in accordance with these Conditions.
Customer: the person or firm who or which purchases Services from Austin Heating & Cooling Services.
Customer Default: has the meaning set out in clause 5.2.
Deliverables: appliances, equipment, machinery or other deliverable items to be transferred to the Customer by Austin Heating & Cooling Services as part of the Services.
Force Majeure Event: has the meaning given in clause 13.1.
Goods: appliances, equipment, machinery or other deliverable items to be supplied to the Customer by Austin Heating & Cooling Services not in connection with any Services.
Order: the Customer's order for Services and/or Goods from Austin Heating & Cooling Services.
Group: in relation to a company, that company, any subsidiary or holding company from time to time of that company, and any subsidiary from time to time of a holding company of that company. Each company in a Group is a member of the Group.
Marine Premises: any boat, yacht or other water craft or floating platform or other floating premises.
Austin Heating & Cooling Services Materials: any materials, equipment, documents or other property belonging to Austin Heating & Cooling Services, including any Deliverables where risk has not yet passed to the Customer under clause 7.1;
Services: services, including the Deliverables, to be supplied by Austin Heating & Cooling Services to the Customer as set out in the Specification.
Specification: the description or specification of the Services and/or Goods provided in writing by Austin Heating & Cooling Services to the Customer, whether in a quotation or otherwise.
1.2 A reference to a statute or statutory provision is a reference to it as amended or re-enacted.
1.3 A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.
1.4 Any words following the terms including, include, in particular, for example or any similar expression, shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
1.5 A reference to a person includes a company or other corporate entity.
1.6 A reference to writing or written includes email but not fax.

2. Basis of Contract
2.1 The Order constitutes an offer by the Customer to purchase Services and/or Goods in accordance with these Conditions.
2.2 The Order shall be deemed to be accepted only when Austin Heating & Cooling Services issues written acceptance of the Order at which point and on which date the Contract shall come into existence (**Commencement Date**).
2.3 For the avoidance of doubt, any quotation given by Austin Heating & Cooling Services shall not constitute an offer, and is only valid for a period of 20 Business Days from its date of issue.
2.4 Any samples, drawings, descriptive matter or advertising issued by Austin Heating & Cooling Services, and any descriptions or illustrations contained in Austin Heating & Cooling Services' catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.
2.5 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course
of dealing.

3. Supply of Services
3.1 Austin Heating & Cooling Services shall supply the Services to the Customer in accordance with the Specification in all material respects.
3.2 Austin Heating & Cooling Services shall use all reasonable endeavours to meet any performance dates specified by Austin Heating & Cooling Services, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.
3.3 Austin Heating & Cooling Services reserves the right to amend the Specification if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and Austin Heating & Cooling Services shall notify the Customer in any such event.
3.4 Austin Heating & Cooling Services warrants to the Customer that the Services will be provided using reasonable care and skill.
3.5 Austin Heating & Cooling Services may arrange for Austin Heating & Cooling Services Materials to be delivered to the Customer's premises in advance of or in connection with its performance of the Services. In such cases, Austin Heating & Cooling Services and the Customer shall agree a date for delivery and the Customer shall ensure they are received on such date, and clause 5.1.10 shall apply.

4. Warranty on Deliverables
4.1 Subject to the provisions of this clause 4, Austin Heating & Cooling Services warrants that where it completes an installation of any Deliverables, the Deliverables shall on installation be of satisfactory quality and fit for purpose (within the meaning of section 4 of the Supply of Goods and Services Act 1982) and that, subject to clause 4.5, the Deliverables shall for a period of twelve months from such installation (the warranty period) function to a reasonable standard.
4.2 If the Customer considers there to be a breach of the warranty at clause 4.1, the Customer must give notice in writing to Austin Heating & Cooling Services during the warranty period within a reasonable time of discovery, and in any event within 30 days, and give Austin Heating & Cooling Services reasonable opportunity and access to assess the Deliverables.
4.3 Where there is a breach of the warranty at clause 4.1, Austin Heating & Cooling Services shall, at its option, repair or replace the defective Deliverables, subject to the Customer complying with the obligations set out under clause 5, which shall also apply in respect of any repair or replacement.
4.4 In respect of any supply to any Marine Premises the following provisions apply:
4.4.1 The Customer, when giving notice in writing to Austin Heating & Cooling Services under clause 4.2, must:
4.4.1.1.1 provide the location of the Marine Premises and information if that location will change;
4.4.1.1.2 give the name and contact telephone number of an individual who can be contacted for technical information about the failure;
4.4.1.1.3 send by post to Austin Heating & Cooling Services a warranty form if one is supplied, stating clearly that the order is for a warranty replacement; and
4.4.1.1.4 provide the details of the shipyard to which any replacement should be despatched, should Austin Heating & Cooling Services determine at its sole discretion that despatch to the Marine Premises is not possible and the notice shall not be valid until all such information is received by Austin Heating & Cooling Services.
4.4.2 Replacement Deliverables may be despatched by Austin Heating & Cooling Services to the Customer before investigation of the defect can be carried out or completed.
In such cases, Austin Heating & Cooling Services shall charge the Customer for the replacement Deliverables, which shall be refunded only if the claim is successful.
4.4.3 Despatch of replacement items shall not be an admission of liability by Austin Heating & Cooling Services.
4.4.4 Austin Heating & Cooling Services shall have no responsibility for re-installing replacement Deliverables where the Marine Premises have moved from the location of the original installation.
4.4.5 The warranty in clause 4.1 does not apply to any defective compressor unless it is returned to Austin Heating & Cooling Services with all pipes closed/brazed and the compressor sealed.
4.5 The warranty period for any replacement or repaired items supplied under this clause 4 shall be the period of time remaining of the warranty period on the original installation.
4.6 The warranty in clause 4.1 shall not apply, and Austin Heating & Cooling Services shall not be liable under this clause 4, if:
4.6.1 the Customer failed to follow Austin Heating & Cooling Services' oral or written instructions as to the use or maintenance of the Deliverables or (if there are none) good trade practice or the defect otherwise arises through fair wear and tear;
4.6.2 a defect has arisen as a result of Austin Heating & Cooling Services following any drawing, design or specification supplied by the Customer; and/or
4.6.3 the Customer has sought to alter or repair such Deliverables without the written consent of Austin Heating & Cooling Services.
4.7 Except as provided in this clause 4, Austin Heating & Cooling Services shall have no liability to the Customer in respect of any breach of the warranty set out in clause 4.1.

5. Customer's Obligations in connection with supply of Services
5.1 The Customer shall:
5.1.1 ensure that the terms of its Order and any information it provides for the Specification are complete and accurate;
5.1.2 co-operate with Austin Heating & Cooling Services in all matters relating to the Services; 5.1.3 authorise (and hereby authorises) Austin Heating & Cooling Services to undertake any work required to the Customer's premises (including Marine Premises, if applicable) in order to supply the Services;
5.1.4 provide Austin Heating & Cooling Services, its employees, agents, consultants and subcontractors (personnel), with safe access to the Customer's premises (including Marine Premises, if applicable), office accommodation and other facilities as reasonably required by Austin Heating & Cooling Services;
5.1.5 provide Austin Heating & Cooling Services with such information and materials as Austin Heating & Cooling Services may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
5.1.6 prepare the Customer's premises (including Marine Premises, if applicable) for the supply of the Services;
5.1.7 obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;
5.1.8 comply with all applicable laws, including health and safety laws;
5.1.9 ensure that there is a safe working environment, compliant with all health and safety laws, for Austin Heating & Cooling Services personnel at the Customer's premises (including Marine Premises, if applicable) on the dates and times at which any Services will provided;
5.1.10 if during the provision of the Services any Austin Heating & Cooling Services Materials are left at the Customer's premises, keep the Austin Heating & Cooling Services Materials in safe custody at the Customer's own risk and not dispose of or them other than in accordance with Austin Heating & Cooling Services' written instructions or authorisation; and
5.1.11 comply with any additional obligations specified by Austin Heating & Cooling Services prior to its acceptance of the Contract, whether in the quotation or Specification or otherwise, if applicable.
5.2 If Austin Heating & Cooling Services' performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (Customer Default):
5.2.1 without limiting or affecting any other right or remedy available to it, Austin Heating & Cooling Services shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays Austin Heating & Cooling Services' performance of any of its obligations;
5.2.2 Austin Heating & Cooling Services shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from Austin Heating & Cooling Services' failure or delay to perform any of its obligations as set out in this clause 5.2; and
5.2.3 the Customer shall reimburse Austin Heating & Cooling Services on written demand for any costs or losses sustained or incurred by Austin Heating & Cooling Services arising directly or indirectly from the Customer Default.

6. Standalone supply of Goods
The provisions in this clause 6 apply in the event that Goods are supplied otherwise than in connection with any Services. In such cases:
6.1 Subject to clause 6.2, the Customer shall collect the Goods from Austin Heating & Cooling Services' premises (Delivery Location) within ten Business Days of Austin Heating & Cooling Services notifying the Customer that the Goods are ready.
6.2 Austin Heating & Cooling Services may by specific agreement agree to arrange for the Goods to be sent to an address specified by the Customer, at the Customer's risk and expense.
6.3 Delivery of the Goods shall be deemed completed on completion of loading of the Goods at the Delivery Location.
6.4 Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. Austin Heating & Cooling Services shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide Austin Heating & Cooling Services with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
6.5 If Austin Heating & Cooling Services fails to deliver the Goods, it shall refund the costs of the Goods. Austin Heating & Cooling Services shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide Austin Heating & Cooling Services with adequate delivery instructions for the Goods or any relevant instruction related to the supply of the Goods.
6.6 If the Customer fails to take delivery of the Goods within ten Business Days of Austin Heating & Cooling Services notifying the Customer that the Goods are ready, then except where such failure or delay is caused by a Force Majeure Event or by Austin Heating & Cooling Services' failure to comply with its obligations under the Contract in respect of the Goods, and unless agreed otherwise:
6.6.1 delivery of the Goods shall be deemed to have been completed at 9.00 am on the tenth Business Day following the day on which Austin Heating & Cooling Services notified the Customer that the Goods were ready; and
6.6.2 Austin Heating & Cooling Services shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
6.7 If fifteen Business Days after the day on which Austin Heating & Cooling Services notified the Customer that the Goods were ready for delivery the Customer has not collected/accepted delivery of them, Austin Heating & Cooling Services may resell or otherwise dispose of part or all of the Goods.
6.8 Austin Heating & Cooling Services may deliver Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.
6.9 Austin Heating & Cooling Services warrants that on delivery, Goods shall:
6.9.1 conform in all material respects with the Specification;
6.9.2 be free from material defects in design, material and workmanship; and
6.9.3 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).
6.10 Subject to clause 6.11, Austin Heating & Cooling Services shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full if:
6.10.1 the Customer gives notice in writing within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 6.9;
6.10.2 Austin Heating & Cooling Services is given a reasonable opportunity of examining such Goods; and
6.10.3 the Customer (if asked to do so by Austin Heating & Cooling Services) returns such Goods to Austin Heating & Cooling Services' place of business at the Customer's cost.
6.11 Austin Heating & Cooling Services shall not be liable for the Goods' failure to comply with the warranty in clause 6.9 if:
6.11.1 the Customer makes any further use of such Goods after giving a notice in accordance with clause 6.10;
6.11.2 the defect arises because the Customer failed to follow Austin Heating & Cooling Services' oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice;
6.11.3 the defect arises as a result of Austin Heating & Cooling Services following any drawing, design or specification supplied by the Customer;
6.11.4 the Customer alters or repairs such Goods without the written consent of Austin Heating & Cooling Services;
6.11.5 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; or
6.11.6 the Goods differ from the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards.
6.12 Except as provided in this clause Austin Heating & Cooling Services shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause
6.13 The terms of these Conditions shall apply to any repaired or replacement Goods supplied by Austin Heating & Cooling Services.

7. Title and Risk
7.1 The risk in Deliverables shall pass to the Customer when fitted to the Customer's premises or, if no installation is required, delivered to the Customer's premises.
7.2 The risk in Goods shall pass to the Customer at delivery/collection.
7.3 Title to Deliverables or Goods shall not pass to the Customer until Austin Heating & Cooling Services receives payment in full (in cash or cleared funds) for the Deliverables/Goods and any other Deliverables/Goods that Austin Heating & Cooling Services has supplied to the Customer in respect of which payment has become due, in which case title to the Deliverables/Goods shall pass at the time of payment of all such sums.
7.4 Until title to Deliverables/Goods has passed to the Customer, the Customer shall:
7.4.1 maintain the Deliverables/Goods in satisfactory condition and keep them insured against all risks for their full price on Austin Heating & Cooling Services' behalf from the date of delivery;
7.4.2 notify Austin Heating & Cooling Services immediately if it becomes subject to any of the events listed in clause 10.1.3; and
7.4.3 give Austin Heating & Cooling Services such information relating to the Deliverables/Goods as Austin Heating & Cooling Services may require from time to time.
7.5 Subject to clauses 7.4 and 7.6, the Customer may use the Deliverables/Goods in the ordinary course of its business (but not otherwise) before Austin Heating & Cooling Services receives payment for them. The Customer may not resell the Deliverables/Goods before Austin Heating & Cooling Services receives payment for them.
7.6 If before title to the Deliverables/Goods passes to the Customer the Customer becomes subject to any of the events listed in 10.1.3, or if 10.1.2 applies and Austin Heating & Cooling Services give notice of termination, then, without limiting any other right or remedy Austin Heating & Cooling Services may have, Austin Heating & Cooling Services may at any time:
7.6.1 require the Customer to deliver up all Deliverables/Goods in its possession; and/or
7.6.2 upon three Business Days' notice to the Customer, enter any premises of the Customer or any third party where the Deliverables/Goods are stored, located or fitted in order to recover them.
7.7 Upon receiving a notice under clause 7.6.2, the Customer for this purpose:
7.7.1 shall prepare the Customer's premises for the collection of the Deliverables/Goods;
7.7.2 authorises Austin Heating & Cooling Services to undertake any work required to the Customer's premises in order to extract the Deliverables/Goods;
7.7.3 shall provide Austin Heating & Cooling Services, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities;
7.7.4 shall obtain and maintain all necessary licences, permissions and consents which may be required in order for Austin Heating & Cooling Services to take such Deliverables/Goods; and
7.7.5 shall ensure that there is a safe working environment, compliant with all health and safety laws, at the Customer's premises on the dates and times at which the Deliverables/Goods will be taken.

8. Charges and Payment
8.1 Subject to clause 8.2, Charges for the Services or Goods shall be calculated and charged in accordance with the Specification.
8.2 In cases where the Services comprise a service plan for the maintenance of the Customer's equipment, Charges shall be calculated with reference to: (1) the time spent by Austin Heating & Cooling Services personnel; and (2) the equipment or materials used during Austin Heating & Cooling Services' supply of the Services during the specified period of time.
8.3 Without prejudice to clause 5.2, Austin Heating & Cooling Services may vary its charges from those given in the Specification if the cost of materials, fuel or labour varies from that specified in the Specification due to a breach by the Customer of clause 5.1. In such cases Austin Heating & Cooling Services shall inform the Customer as soon as reasonably possible of any charges higher than that given in the Specification, and the Customer shall be liable for the higher Charges specified.
8.4 Austin Heating & Cooling Services shall invoice the Customer on completion of the Services or as otherwise specified.
8.5 The Customer shall pay each invoice submitted by Austin Heating & Cooling Services:
8.5.1 within 30 days of the date of the invoice; and
8.5.2 in full and in cleared funds to a bank account nominated in writing by Austin Heating & Cooling Services, and time for payment shall be of the essence of the Contract.
8.6 Unless specifically agreed otherwise, all amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (VAT). Where any taxable supply for VAT purposes is made under the Contract by Austin Heating & Cooling Services to the Customer, the Customer shall, on receipt of a valid VAT invoice from Austin Heating & Cooling Services, pay to Austin Heating & Cooling Services such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.
8.7 If the Customer fails to make a payment due to Austin Heating & Cooling Services under the Contract by the due date, then, without limiting Austin Heating & Cooling Services' remedies under clause 10, the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 8.7 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.
8.8 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

9. Limitation of Liability
The Customer's Attention Is Particularly Drawn to this Clause.
9.1 The restrictions on liability in this clause 9 apply to every liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
9.2 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:
9.2.1 death or personal injury caused by negligence;
9.2.2 fraud or fraudulent misrepresentation;
9.2.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession); or
9.2.4 breach of the terms implied by section 12 of the Sale of Goods Act 1979.
9.3 Subject to clause 9.2, the total liability to the Customer of Austin Heating & Cooling Services and any other member of its Group shall not exceed the total Charges paid by the Customer under the Contract.
9.4 Subject to clause 9.2, the following types of loss are wholly excluded by the parties.
9.4.1 loss of profits;
9.4.2 loss of sales or business;
9.4.3 loss of agreements or contracts;
9.4.4 loss of anticipated savings;
9.4.5 loss of use or corruption of software, data or information;
9.4.6 loss of or damage to goodwill; and
9.4.7 indirect or consequential loss.
9.5 Austin Heating & Cooling Services has given commitments as to compliance of Services and Goods with relevant specifications in clause 3, 4 and 6. In view of these commitments, the terms implied by sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
9.6 Unless the Customer notifies Austin Heating & Cooling Services that it intends to make a claim in respect of an event within the notice period, Austin Heating & Cooling Services and any member of its Group shall have no liability for that event. The notice period for an event shall start on the day on which the Customer became, or ought reasonably to have become, aware of the event having occurred and shall expire three months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.
9.7 This clause 9 shall survive termination of the Contract.

10. Termination
10.1 Without affecting any other right or remedy available to it, Austin Heating & Cooling Services may terminate the Contract with immediate effect on written notice to the Customer:
10.1.1 within three days of it being entered into, provided that no Services or Goods have yet been delivered/collected; or
10.1.2 if the Customer fails to pay any amount due under the Contract on the due date for payment, or is otherwise in breach of its obligations under clause 5, and has not remedied the breach within 10 Business Days;
10.1.3 if the Customer becomes subject to any of the events listed in this clause 10.1.3, or Austin Heating & Cooling Services reasonably believes that the Customer is about to become subject to any of them:
10.1.3.1 the Customer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business;
10.1.3.2 the Customer suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; and/or
10.1.3.3 the Customer's financial position deteriorates to such an extent that in Austin Heating & Cooling Services' opinion its capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
10.2 Austin Heating & Cooling Services may also suspend the supply of Services under the Contract or any other contract between the Customer and Austin Heating & Cooling Services if the Customer fails to pay any amount due under the Contract on the due date for payment, the Customer becomes subject to any of the events listed in clause 10.1.3 to clause 10.1.3.3, and/ or Austin Heating & Cooling Services reasonably believes that the Customer is about to become subject to any of them.
10.3 For the avoidance of doubt, unless the Specification states otherwise, the Customer cannot terminate a Contract or otherwise seek to cancel an Order which has been accepted by Austin Heating & Cooling Services without the consent of Austin Heating & Cooling Services.

11. Consequences of Termination
11.1 On termination of the Contract:
11.1.1 the Customer shall immediately pay to Austin Heating & Cooling Services all of Austin Heating & Cooling Services' outstanding unpaid invoices and interest and, in respect of Services or Goods supplied but for which no invoice has been submitted, Austin Heating & Cooling Services shall submit an invoice, which shall be payable by the Customer immediately on receipt; and
11.1.2 the Customer shall return all of Austin Heating & Cooling Services Materials and any Goods which have not been fully paid for. If the Customer fails to do so, then clauses 7.6 and 7.7 apply. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract.
11.2 Termination or expiry of the Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.
11.3 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

12. Non-Solicitation
12.1 During the Term and for a period of 12 months after termination or expiry of this Contract, the Customer shall not (and shall procure that none of its Group members shall), without the prior written consent of Austin Heating & Cooling Services:
12.1.1 solicit or entice away (or attempt to solicit or entice away) any Restricted Person from the employment or service of Austin Heating & Cooling Services (or any of its Group members), other than by means of a public recruitment campaign open to all-comers and not specifically targeted at the staff of Austin Heating & Cooling Services or any of its Group members; or
12.1.2 employ or engage any Restricted Person.
12.2 If the Customer commits any breach of clause 12.1, the Customer shall, on demand, pay to Austin Heating & Cooling Services a sum equal to 20% of one year's basic salary, or 20% of the annual fee, that was payable by Austin Heating & Cooling Services to the Restricted Person, plus the recruitment costs incurred by Austin Heating & Cooling Services in replacing that person.
12.3 For the purposes of this clause 12, **Restricted Person** means any person employed or engaged by Austin Heating & Cooling Services or any of its Group members during the term of the Contract who is or has been involved in the provision of the Services or the management of this Contract.

13. General
13.1 **Force majeure**. Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control, (a Force Majeure Event).
13.2 **Assignment and other dealings.**
13.2.1 Austin Heating & Cooling Services may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.
13.2.2 The Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare
a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of Austin Heating & Cooling Services.
13.3 Confidentiality.
13.3.1 Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 13.3.2.
13.3.2 Each party may disclose the other party's confidential information:
13.3.2.1 to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 13.3; and
13.3.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
13.3.3 Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.
13.4 Entire agreement.
13.4.1 The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
13.4.2 Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.
13.4.3 Nothing in this clause shall limit or exclude any liability for fraud.
13.5 **Variation**. Except as set out in these Conditions, no variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
13.6 **Waiver**. A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.
13.7 **Severance**. If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause 13.7 shall not affect the validity and enforceability of the rest of the Contract.
13.8 **Notices**.
13.8.1 Any notice given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case), and also copied by email to a contact email address previously used by the recipient party.
13.8.2 Any notice or communication shall be deemed to have been received:
13.8.2.1 if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; and
13.8.2.2 if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service.
13.8.3 This clause 13.8 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.
13.9 **Third party rights**. Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
13.10 **Governing law**. The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by, and construed in accordance with the law of England and Wales.
13.11 **Jurisdiction**. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.