



Heating Appliances & Spares Ltd

Terms and Conditions of Sale

1. Definitions

In these Conditions:-

- (a) "the Company" means Heating Appliances & Spares Ltd, registered in Scotland under number 78742;
- (b) "the Customer" means the person, firm, company or other entity supplied or to be supplied with Goods by the Company;
- (c) "Goods" means the goods, materials, services and/or other items (whether original or substituted) supplied or to be supplied by the Company to the Customer pursuant to any contract made under these Conditions (subject to any amendment or alteration thereto agreed in writing by the Company);
- (d) "the contract" means the contract for the supply of Goods by the Company to the Customer to which these Conditions (subject to any amendment or alteration thereto agreed in writing by the Company) apply; and
- (e) "industrial property right" means any patent, trade mark, registered design, copyright or any other right or asset registered or protected under statute or any regulations there under.

2. General

- (a) The contract between the Company and the Customer shall be governed by these Conditions which shall apply to the contract notwithstanding any conditions to the contrary in the Customer's conditions of trading (which so far as inconsistent with these Conditions shall not apply and shall be deemed to be waived).
- (b) All quotations are submitted, all orders are accepted, and all Goods are supplied by the Company subject to these Conditions and all other conditions, warranties and representations, express or implied and statutory or otherwise, except as to title, are hereby excluded. No amendment or alteration to these Conditions shall apply unless specifically agreed to in writing by the Company.
- (c) To the extent that these Conditions do not provide consumers (as defined in Section 25(1) of the Unfair Contract Terms Act 1977) with the statutory protections conferred upon them from time to time by United Kingdom consumer and/or sale of goods legislation, these Conditions will be deemed to be varied or amended to confer such statutory protection upon consumers as so defined who are Customers and these Conditions shall be read and construed accordingly.

3. Quotation

No quotation made by the Company shall be valid beyond the period stipulated for acceptance thereof and the Company shall be entitled to refuse to accept any order placed as a result of any quotation made by the Company, which is received out with such period.

4. Orders

- (a) No order made or given by the Customer to the Company shall be accepted or be deemed to have been accepted by the Company and the contract shall not be made or be deemed to have been made until an acknowledgement of such order has been given in writing by the Company to the Customer.
- (b) The Customer shall be responsible to the Company for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Customer, and for giving the Company any necessary information relating to the Goods within a sufficient time to enable the Company to perform the contract in accordance with its terms.
- (c) The right is reserved to the Company (without prejudice to any other remedy competent to the Company) to cancel without penalty to the Company any uncompleted order or the contract or to suspend delivery on the failure of the Customer to fulfil any of the commitments or obligations of the Customer to the Company howsoever arising whether such commitment or obligation arises pursuant to the contract or otherwise. Upon such cancellation or suspension by the Company or in the event of any cancellation of the contract or of any order made or given by the Customer to the Company, the Customer shall, on the demand in writing of the Company to the Customer, indemnify and so free and relieve the Company from and against any loss, cost, charge, expense or damage to, or incurred by, the Company resulting from such cancellation or suspension.

5. Extra Costs

- (a) Any price quoted by the Company shall be subject to increase to cover the expenses incurred by the Company as a result of any delay arising from the Customer's instructions or lack thereof.
- (b) Unless the Company has agreed in writing that the price of the Goods shall be fixed, the Company reserves the right to invoice the Goods at the price or prices thereof prevailing at the date of supply or despatch thereof to the Customer or to a nominee of the Customer and, without prejudice to the generality but subject as aforesaid, the Company reserves the right to increase the price of the Goods to cover any increase in the cost of production or supply of the Goods howsoever arising.
- (c) All prices are quoted exclusive of all present or future government or local taxes of whatever nature.

Where applicable, such taxes shall be added to the invoice as a separate charge and shall be payable by the Customer at the time of payment of the price.

6. Delivery

- (a) The Company accepts no liability for failure to meet quoted delivery times which shall be treated as estimates only and any such failure shall not entitle the Customer to cancel or terminate any order or the contract.
- (b) Any claim by the Customer in respect of the non- delivery or non-supply of the Goods must be notified in writing by the Customer to the Company not later than seven days after the receipt of the Customer of the advice or delivery note or invoice in respect of the Goods, whichever shall be the later.
- (c) Unless the Company shall otherwise agree in writing, the Company shall not be bound to deliver or supply the Goods in one lot or consignment and the Customer shall be bound to accept split deliveries or delivery or supply of the Goods by instalments.
- (d) If the Company fails to deliver the Goods (or any instalment) for any reason other than any cause beyond the Company's reasonable control or the Customer's fault and the Company is accordingly liable to the Customer, the Company's liability shall be limited to the excess (if any) of the cost to the Customer (in the cheapest available market) of similar goods to replace those not delivered over the price of the Goods.
- (e) Where the Customer requests that delivery or supply of the Goods be delayed beyond the quoted delivery or supply date, then the Company shall be entitled to invoice the Customer for payment of the Goods as if the Goods had been delivered or supplied to the Customer on the quoted delivery or supply date and the Customer shall reimburse to the Company, on the demand in writing of the Company, all costs and expenses (including storage and insurance costs) incurred by the Company in connection with the Goods from the quoted delivery or supply date of the Goods to the date of actual delivery or supply thereof to the Customer or to a nominee of the Customer.

7. Title

- (a) Notwithstanding any other provision of these Conditions, risk in the Goods shall pass to the Customer when the Goods are delivered to the Customer or its agent.
- (b) Notwithstanding delivery of the Goods, title thereto shall remain with the Company and shall not pass to the Customer until such time as payment is made in full to the Company of all amounts howsoever arising due to the Company by the Customer and, where applicable, by any holding or subsidiary company (as those terms are defined by the Companies Act 1985) of the Customer in any manner or way whatsoever.
- (c) Until such time as payment in full is made to the Company in accordance with these Conditions and title to the Goods has passed to the Customer, the Customer shall hold the Goods as trustee, but not as agent, for the Company and shall ensure that the Goods shall be stored separately from any other property of the Customer or from any property belonging to a third party and held by the Customer and shall be clearly identifiable as the property of the Company. At any time prior to title to the Goods passing from the Company in accordance with these Conditions the Company shall be entitled on demand to recover possession of the Goods or any of them (without prejudice to any of its other rights) and, for this purpose, shall be entitled to enter upon the

Customer's premises (or any other premises where the Goods are stored) during normal business hours for the purpose of removing such Goods and to remove such Goods from such premises. These conditions constitute an authority for any third party authorised by the Company to exercise the Company's rights hereunder.

- (d) Until payment in full of all sums due to the Company has been made, the Customer shall hold in trust for the Company to the extent of such sums all rights under any contract of resale or any other contract in pursuance of which the Goods or any part thereof are disposed of or any contract by which property comprising the said Goods or any part thereof is or is to be disposed of and any monies or other consideration received by the Customer there under.

8. Price and Payment

- (a) Subject to Condition 5 hereof, the price payable by the Customer to the Company for the Goods shall be the price thereof specified by the Company in the quotation made by the Company for the supply of the Goods or, if different, the price for the Goods specified in the order acknowledgement given by the Company to the Customer.
- (b) Value Added Tax at the applicable rate and any other applicable charges shall be paid by the Customer to the Company on the price of the Goods at the time of the payment of the price.
- (c) If the quotation made by the Company for the supply of the Goods or the order acknowledgement given by the Company to the Customer does not provide that the price includes the costs of packaging, insuring or delivering the Goods to the Customer, then unless otherwise stated in writing, the costs of packaging insuring and delivering the Goods (as the case may be), together with Value Added Tax thereon at the applicable rate, shall be added to the price of the Goods and be paid by the Customer to the Company as part of the price of the Goods in accordance with paragraph (d) of this Condition.
- (d) Unless otherwise provided in the quotation made by the Company for the supply of the Goods or in the order acknowledgement given by the Company to the Customer, payment for the Goods shall be made by the Customer to the Company thirty days from the date of the invoice rendered to the Customer by the Company in respect of the supply of the Goods and, in either event, time for payment shall be of the essence of the contract.
- (e) Unless otherwise specifically provided in the quotation made by the Company for the supply of the Goods or in the order acknowledgement given by the Company to the Customer, accounts are strictly net.
- (f) Interest at the rate of five per centum per annum above the base lending rate from time to time and for the time being of the Bank of Scotland shall be payable on any sum payable by the Customer to the Company and not paid on the due date from the due date for payment thereof until the date of actual payment thereof to the Company and that whether or not after judgement or decree. Such interest shall be calculated on the basis of the actual number of days elapsed.

9. Description

- (a) The descriptions, illustrations and material contained in any catalogues, price lists, brochures, leaflets or other descriptive matter prepared, issued or circulated by or on behalf of the Company represent the general nature of the items described therein but neither they nor any verbal statement shall form any part of any order or of the contract or amount to any representation or warranty.
- (b) The Customer shall be deemed to have satisfied itself that the Goods are suitable for the Customer's purpose.

10. Warranties

- (a) Save as provided in Section 12 of the Sale of Goods Act 1979, the Company gives no warranty and makes no representation whether express or implied as to any matter whatsoever including (without limitation) condition, quality, merchantability or fitness for any purpose.
- (b) The Company accepts no liability for any loss or damage suffered by the Customer or any third party as a result of or caused by the use of the Goods for a use or purpose for which the Goods were not designed.
- (c) The Company shall incur no liability in respect of any defect or fault in the Goods unless:-
 - (i) the defect or fault in the Goods is discovered within 12 months of the date of delivery of the Goods to the Customer and details of the defect or fault in the Goods are notified in writing by the Customer to the Company forthwith (and not later than fourteen days) following discovery of the defect or fault;
 - (ii) the Customer gives the Company such opportunity as the Company may reasonably require to examine or inspect the defective or faulty Goods at the premises of the Customer; and
 - (iii) the Customer forthwith upon the discovery of such defect or fault by the Customer ceases to use the defective or faulty Goods unless otherwise authorised by the Company in writing.
- (d) The liability of the Company under this Condition shall be limited to replacing, repairing or making good defects or faults which in the Company's opinion arise solely from faulty design, materials or workmanship and are not attributable in whole or part to any error on the part of the Customer or any third party or, at the option of the Company, giving credit or reimbursing to the Customer the price (whether in whole or in part) paid by the Customer to the Company for the defective or faulty Goods.

11. Customer's Specification

- (a) If the Customer requires the Goods to be manufactured or supplied to the Customer's design, the Customer must provide to the Company a detailed design and/or specification of the Customer's requirements when the Customer orders the Goods. The Company shall not be liable for any defect or fault in the Goods resulting from the Goods being manufactured or supplied in accordance with the Customer's design and/or specification of the Goods.

- (b) The Customer shall indemnify and so free and relieve the Company from and against any claim, cost, charge or expense in respect of the infringement or breach or claimed infringement or breach of any industrial property right as a result of or caused by the manufacture or supply of the Goods by the Company in accordance with the Customer's design and/or specification.

12. Financial Condition

- (a) If the Company shall consider that the Customer's financial condition does not at any time justify the agreed terms of payment, the Company may, having given notice in writing to the customer, cancel any unfulfilled order or the contract unless the Customer shall forthwith make payment to the Company for the Goods already delivered or supplied by the Company to the Customer or shall make prior payment for the Goods ordered but not delivered or supplied, or both, at the Company's option.
- (b) If any monies due to the Company are overdue or if the Customer should enter into a composition or other arrangement with or for the benefit of its creditors or becomes apparently insolvent within the meaning of the Bankruptcy (Scotland) Act 1985 or a petition for a bankruptcy order to be made against the Customer is presented to a Court or, being a body corporate, a receiver is appointed over the whole or part of the Customer's property or undertaking or a petition is presented for the making of an administration order or a winding-up order in respect of the Customer or the Customer passes a resolution for the winding-up of the Customer or a proposal is made for the making of a voluntary arrangement in respect of the Customer then, the Company shall be entitled, without prejudice to any other right against the Customer, to suspend performance of any contract then pertaining between the Company and the Customer and/or upon the giving of notice in writing to treat any such contract as at an end. Finished and undelivered or partly manufactured Goods shall be chargeable to the Customer or may be disposed of by the Company at its option and any shortfall in price obtained shall be chargeable to the Customer.

13. Cancellation

No cancellation of orders or return of Goods supplied will be accepted by the Company without its prior written consent and no retention by the Company of Goods ordered or supplied shall be deemed to constitute an approval or cancellation or return nor prejudice any rights of the Company in respect of any order or contract relating thereto.

14. Force Majeure

The Company shall not be liable or responsible for any failure to perform in whole or in part or for any delay in performing any of its obligations under these Conditions caused by act of God, war, insurrection, government regulations, embargoes, strikes or walk-outs, illness, flood, fire, equipment breakdown or any other cause beyond the control of the Company. Should any such event occur, the Company at its option may cancel or suspend (or both) the contract without incurring any liability whatsoever for any loss or damage thereby occasioned.

15. Frustration

If the contract shall become impossible of performance or otherwise frustrated the Company shall be entitled to reasonable remuneration for work done until the date of such frustration.

16. Remedies

No right, power or remedy conferred upon or reserved to the Company in these Conditions is exclusive of any other right, power or remedy in these Conditions or by law provided, permitted or conferred to or upon the Company but each such right, power or remedy shall be cumulative of every other right, power or remedy permitted or conferred to or upon the Company.

17. Legal Construction

These Conditions and the contract and the validity and performance thereof shall in all respects be governed by and interpreted in accordance with the law of Scotland and the Company and the Customer prorogate the non-exclusive jurisdiction of the Scottish Courts.