

# ASK Plumbing and Heating Centre Limited

## Terms and Conditions of Sale

### 1: GENERAL

- a) In these conditions "we" or "us" means ASK Plumbing and Heating Centre Limited specified in the contract for the sale of goods to you, and "you" means the buyer, and "our" and "your" shall be construed accordingly.
- b) These conditions apply to all sales of goods by us and shall prevail over any other terms or conditions contained or referred to in your order or in correspondence or elsewhere implied by trade customer practice or course of dealing unless other terms or conditions are specifically agreed in writing by one of our Directors. No variation or exclusion of these conditions shall be effective unless specifically agreed in writing by one of our Directors.
- c) A person who is not party to a contract with us has no rights under the contracts (Right of Third Parties) Act 1999 to enforce any term of the contract but this does not affect any right or remedy of a third party that exists or is available apart from that Act. You may not assign the contract or any written part of it without our prior written consent.
- d) No terms or conditions of any main contract or sub-contract shall affect these conditions whether or not we have notice of them.
- e) If any provision or part of a provision of the contract is found by any court, or other body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, or unenforceable it shall to the extent of such illegality, invalidity, voidness, voidability or unenforceability be deemed severable and the remaining provisions of the contract and the remainder of such provision shall continue in force and effect.
- f) The headings appearing above each condition are included for reference purposes only and shall not affect the limitation or effect of these conditions.

### 2: QUOTATIONS

A Quotation by us shall constitute an invitation to treat and not an offer. We may withdraw or amend any quotation at any time prior to our acceptance of your order. Acceptance of your order will occur when we issue a written acknowledgement or when we begin to process your order, whichever is the earlier.

### 3: ESTIMATES OF QUANTITIES AND ADVICE TO FITNESS FOR PURPOSE

You acknowledge that you do not rely on, and waive any claim for breach of, any representations made by our employees or agents. Any estimate of quantities needed or advice or recommendation as to the suitability or fitness of any goods for any particular purpose given by our employees or agents is given without liability on our part. You will be entirely responsible for ascertaining the quantities required for the suitability and fitness of the goods for their purpose.

### 4: PRICE

- a) Subject to sub-clause 4(d), the price payable for the goods sold shall be that contained in our current price system at the time of despatch, notwithstanding that this may differ from the price stated in any quotation given by us, unless the price quoted was not a list price current at the time of quotation.
- b) Any topographical error clerical omission in any sales literature, quotation, price list, acceptance to offer, invoice or other document or information issued by us shall be subject to correction without liability on our part.
- c) Subject to clause 4(d), if there is no list price for the goods sold, or if the price quoted was not a list price current at the time of quotation, then the price to be paid shall be the price specified in the quotation, provided that the order has been accepted by us within the period specified in the quotation.
- d) We reserve the right to make such alterations to our price list as we think fit. In particular we may at any time and without notice to you revise the price payable for the goods sold to take account of increase in costs including (without limitation) costs of any goods, materials, carriage, labour or overheads, the increase or imposition of any tax duty or any other levy and any variation in exchange rate since the date of preparation of the current price list or (in cases falling within clause 4(c)) acceptance of the order.
- e) Unless we otherwise agree in writing all prices shall be deemed to be exclusive of value Added Tax (VAT) which shall be payable in addition by you at the rate prevailing at the tax point.
- f) Unless we otherwise agree in writing we reserve the right to charge you the cost of transportation of the goods to the destination requested by you.

### 5: TERMS OF PAYMENT

- a) Credit accounts may be opened, subject to satisfactory credit references being obtained, at our sole discretion. Payment for goods supplied on a credit account shall be due and payable not later than the last day of the month following the date of invoice. If you default in making payment as aforesaid the entire balance of your account shall be payable forthwith and we shall be entitled to charge interest on the account, together with costs and expenses, in accordance with clause 5(d).
- b) For all other transactions payment shall be made in full with the order. If payment is not made at the time of the order being placed, we require payment in full before delivery.
- c) Invoice and Statement queries must be made to our Aylesford office within 15 working days from the date of invoice or statement. No claims for query will be entertained once this time has elapsed, whatever the reason or nature of query. In all instances the invoice number and date must be detailed, if possible, in writing, with the query itself.
- d) You may not withhold or set off payment of any amount due to us whether in respect of any claim by you relating to goods supplied by us or for any reason which is contested or for which we do not admit liability.
- e) If you fail to make any payment on the due date then, without prejudice to any other right or remedy available to us, we shall be entitled to:
  - i. Cancel the contract or suspend any further supplies to you
  - ii. Amend your discount structure
  - iii. Appropriate any payment made by you to such of the goods (or the goods supplied under any other contract between you and us) as we may think fit (notwithstanding any purported appropriation by you) and:
  - iv. Charge interest to you at the rate of 4% above the base rate from time to time of NatWest PLC on the unpaid balance; this interest shall accrue on a day to day basis from the due date for payment until receipt by us of the full amount (whether before or after any judgement); and
  - v. Be indemnified by you against all costs and expenses (including legal costs and expenses on a full indemnity basis) incurred by us in recovering sums due or in exercising our rights pursuant to Clause 5.
- f) Interest costs and expenses shall be due and payable pursuant to the foregoing clauses notwithstanding the fact that a portion of the account is subject to any dispute or query.
- g) If at any time you are an existing account credit account customer and intend, being a company, to alter your constitution or, being a sole trader or partnership, to become incorporated or amalgamated with others, it shall be your duty to give prior written notice to us of the intended change if you wish to continue credit account facilities following the intended change. Continuance of trading with the amalgamated entity or commencement of trading with a new entity shall be in our sole discretion and only deemed undertaken by us if our credit controller or one of our Directors issues a written acknowledgement. You agree that we may obtain, retain, and provide to third parties, references as to your financial standing.
- h) In the event that a Limited Company is unable to meet its liability in respect of outstanding payments on their account/s held with us as and when they fall due, then the company's directors are personally, jointly and severally liable in respect of any outstanding account balance, fees and associated charges.

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### **6: DELIVERY**

- a) Delivery will occur when the goods are ready for unloading at the delivery address, or when you take possession of the goods at our premises, whichever is the earlier. Delivery dates or times mentioned in any quotation or acknowledgement of order or elsewhere are approximate and not of contractual effect and we shall not be liable to you for any failure to deliver at any particular time, nor shall time be the essence of any contract.
- b) Where we deliver to site it is on the understanding that there is a suitable road prior to the point on the site where the delivery is requested. If no such road exists, delivery will be made to the nearest point to which, in the opinion of the driver, the vehicle can safely proceed and unload.
- c) Unless our vehicle is equipped with a suitable crane/forklift, all necessary labour and equipment required to unload materials promptly shall be supplied by you and our driver shall not be responsible for unloading.
- d) If you refuse or fail to take delivery of goods tendered in accordance with the contract we shall be entitled to immediate payment in full for the goods so tendered. We shall be entitled to store at your risk any goods of which you refuse or fail to take delivery and you shall in addition to the purchase price pay all costs of such storage and any additional costs or carriage incurred as a result of your refusal or failure.
- e) On your request, we will within 3 months of delivery, provide evidence of delivery of goods ordered, such as a copy of a delivery note, or courier's proof of delivery. If you do not raise any query about delivery within such a period, the goods shall be deemed to have been delivered in accordance with your order.

### **7: RISK**

The risk in goods shall pass to you upon delivery

### **8: TITLE TO GOODS**

- a) Until we have been paid in full the price of the goods and all other goods agreed to be sold by us to you for which payment is then due together (where applicable) with the costs of packaging and delivery plus any interest and charges thereon:-
  - i. We shall retain ownership to goods.
  - ii. You may sell and deliver the goods to third parties in the ordinary course of your business, acting towards such third parties as a principal and not as your agent, but you shall hold all proceeds of sale on trust for us in a separate bank account, you hereby assigning us to all rights and claims for which you may have against your customers arising from such sales until full payment is made as aforesaid.
  - iii. You shall if required by us, store the goods in such a way as clearly to show our ownership of them.
  - iv. You shall notify us immediately upon our demand, of the place or places where the goods are situated.
  - v. You shall afford to us access to the goods during all normal business hours whether they are on land occupied by you or your customers and you shall deliver the goods up to us at our request and allow us to remove the same. For this purpose you hereby grant an irrevocable right and licence to our employees or agents to enter upon the said land with or without vehicles during normal business hours.
- b) The authority given to you pursuant to clause 8(a)(ii) will continue until otherwise notified to you by us or until the happening of any of the following events (whichever is earlier):-
  - i. any notice given to you that an administrative receiver or other receiver or manager is to be or has been appointed in respect of your undertaking or a material part thereof or other property or assets;
  - ii. and any notice to you that a petition to wind you up is to be or has been presented to you under Section 124 of the Insolvency Act 1996 or otherwise or any notice to you of a proposal to pass a resolution to you wind you up (including any proposal by you to do);
  - iii. A decision by you to make a voluntary arrangement or composition with your creditors that a proposal for the same is to be or has been made;
  - iv. You becoming unable to pay your debts as such expression is defined by the Insolvency Act 1986; or
  - v. Any notice to you that you are to be the subject of a petition for an administration order; or the making of any administration order in respect of you; and you shall immediately notify us in writing upon the happening of such an event.
- c) On receipt of written notice from us or on the happening of any events set out in clause 8(b), your authority to sell our goods shall immediately be withdrawn and all such goods and products made therefrom shall immediately be delivered to us at your cost and risk.

### **9: LIABILITY**

- a) You shall inspect the goods upon delivery. We will make good at our option by repair or replacement any defects in the goods due solely to defective workmanship or materials which are notified in writing to us and, in the case of any defect discoverable upon reasonable examination, such notification must be made within 24 hours of the date of delivery provided that:
  - i. Our above obligations shall not extend to defects caused by wilful damage, negligence (other than by our employees or agents), fair wear and tear, alteration or repair of the goods without our prior written approval, or incorrect storage, application, movement or installation;
  - ii. We shall not be responsible either for the cost of removing any defect goods from any place where they are installed or affixed (or making good the place after removal) or for the cost of installing or affixing in such a place any repaired or replacement goods unless the same shall have been previously agreed in writing by one of the Directors; and
  - iii. Our above obligations shall in any event only apply for a period of twelve months from the date of delivery..
- b) We will not accept liability for shortages in quantities delivered unless you notify us of any claim for short delivery of the goods within 24 hours of delivery. In such circumstances our liability shall be limited to making good the shortage.
- c) Save as set out in these conditions and save for liability for death or personal injury resulting from our negligence and save for breach of our undertakings as to title implied by statute, all express or implied conditions, representations or warranties as to description, quality or fitness of the goods or otherwise are expressly excluded. We shall not be liable for any consequential, indirect or economic loss or for any loss or depletion of profits, business, revenue, goodwill or anticipated savings, (whether arising from breach of contract, tort (including breach of statutory duty and negligence), misrepresentation or otherwise).
- d) Where fine or especial tolerances are required the goods supplied beyond those generally accepted in the building trade, no liability shall attach to us unless such fine tolerances are notified in writing to us at the time of order and we have acknowledged in writing that we are prepared to accept such order.
- e) Where the goods are sold under a consumer sale (as defined by the Consumer Transactions (Restrictions on Statements) Order 1976 your statutory rights are not affected by these conditions.
- f) On request, we will provide information about any guarantee offered by a manufacturer and available to you in respect of the goods.

### **10: MEASURES**

We may supply all or any of the goods in metric or imperial sizes in the nearest equivalent measure and goods may be charged in metric measure allowing for conversion

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**11: PACKAGING AND WASTE**

- a) A charge may be made by us for any special packaging to cover the cost of labour and materials.
- b) Pallets, crates and cases will be charged for but charges will be credited in full if items are returned to us carriage paid and in good condition, within 7 days of delivery.
- c) You will be solely responsible for the disposal of any waste arising from the goods and will comply with all applicable laws, regulations and waste management licenses relating to such waste. You will indemnify us against all costs, claims, liabilities and expenses incurred by us arising from or in connection with any breach by you of this clause 11(c).
- d) We reserve the right to make a charge for any waste disposed of within our vehicles or premises which is not a direct result of our business waste, in our usual operating circumstances.

**12: CANCELLATION OF ORDERS**

- a) Subject to clause 12(b) we may at our sole discretion accept or reject the cancellation of any order, after we have accepted such order. We will not accept the cancellation of an order for goods, which are to be specially made or obtained, or which are liable to deteriorate or expire rapidly after we have accepted such an order nor will any allowance be made in respect of such goods where they are subsequently returned.
- b) Subject to clause 12(C), where you are a "consumer" under a "distance contract" both as defined in the Consumer Protection (Distance Selling) Regulations 2000, you may cancel the order within 7 working days after the goods are delivered. You must then either return the goods to the branch from which they were delivered or request us to collect the goods; in the latter case you will be liable to pay our costs of collection.
- c) You will not have a right of cancellation under clause 12(b) where the goods are made to your specification or are personalised or are liable to deteriorate or expire rapidly.
- d) Special order items must be confirmed in writing and will be charged to your account on delivery in to our warehouse, regardless of time or date of delivery to you.

**13: RETURN OF GOODS**

- a) We may at our sole discretion accept or reject the return of any goods which have been incorrectly ordered. If we decide to accept the return of such goods, such acceptance shall be upon terms as we may determine and in particular we reserve the right to charge for the carriage, handling and administration of such goods. We will not accept the return of goods which are liable to deteriorate or expire rapidly.
- b) Please read our 'Returns Policy' document for further clarification of any matter regarding return of goods.

**14: FORCE MAJEURE CLOSURE**

We shall be under no liability for any loss, damage, delay or expenses caused wholly or in part by Act of God, outbreak of war, civil commotion, governmental policies or restrictions or control, including restrictions of export or import or other licenses, trade or industrial disputes of whatever nature, whether or not such disputes involves us, our employees or agents, or by any other event whatsoever which is beyond our control, and in any such circumstances, we omit goods from, or cancel your order, or postpone delivery of the goods ordered.

**15: BANKRUPTCY OR INSOLVENCY**

If

- a) You make a proposal for or enter into a scheme of arrangement or a composition with your creditors or fail to comply with a statutory demand for the repayment of a debt within the time therein allowed; or become apparently insolvent, or
- b) (where you are an individual or, where you are a partnership, in the case of any individual partner) an application is made to the court order under part VIII of the Insolvency Act 1986 for an interim order for the purpose of a voluntary arrangement or an order is made for administration of your estate pursuant to Part VI of the County Courts Act 1984 or a bankruptcy petition relating to you is presented in the court or you are adjudged bankrupt, or
- c) (where you are a company) a petition for an administration order is presented to the court pursuant to Part II of the Insolvency Act 1986 or you pass a resolution or the court makes an order that you shall be wound up (otherwise than for the purpose of amalgamation or reconstruction) or a receiver or administrative receiver is appointed of any of your assets or undertaking or circumstances arise which entitle the court or a creditor to appoint a receiver or administrative reliver or
- d) (where you are a company or partnership) circumstances arise which entitle the court to make a winding-up order or
- e) (whether you are a company, a partnership or an individual) you take or suffer any similar action in consequence of debt, we may stop any goods in transit and suspend further deliveries and may forthwith terminate the contract without prejudice to the continuation of all our rights hereunder and to any existing claims. Where goods have been delivered but not paid for, the price shall become immediately due and payable.

**16: NON-WAIVER OF RIGHTS**

The failure by either you or us to exercise or enforce any rights conferred by the contract shall not be deemed to be a waiver of any such right nor operate so as to bar the exercise or enforcement of such right at any time thereafter.

**17: HEALTH & SAFETY**

Certain products supplied by us could if incorrectly used, give rise to risks to health and safety. Information in respect of such products is available from us. You undertake to us that you will ensure compliance so far as is reasonably practicable by your employees, agents, licensees, and customers and any instructions given by us or the manufacturer for the purpose of ensuring that the goods will be safe and without risk to health when properly used and will take other steps or precautions, having regards to the nature of the goods, as are necessary to preserve the health and safety of the person handling, using or disposing of them.

**18: NOTICES**

Any notices or mailings hereunder shall be in permanent readable form and shall be deemed properly delivered if addressed to the party concerned at its principal place of business or last known address. Any notice hereunder shall be deemed to have been delivered, if sent by post, 2 days after posting, and if sent by fax or email, on the next working day after transmission.

**19: APPLICABLE LAW**

- a) Subject to clause 19(b) the contract shall be governed by and construed in accordance with English law and each party agrees to submit to the exclusive jurisdiction of the English courts as regards any claim or matter arising under the contract
- b) If.
  - i. You are domiciled in Scotland with the meaning of Civil Jurisdiction and Judgements Act 1982 or
  - ii. The goods are delivered to your place of business or at your direction in Scotland, then the contract shall be governed by and construed in accordance with Scottish law and shall be subject to the exclusive jurisdiction of the Scottish courts as regards any claim or matter arising under the contract.

**Signature:** \_\_\_\_\_

**Print Name:** \_\_\_\_\_

**Date:** \_\_\_\_\_