

# TERMS AND CONDITIONS OF SALE

## 1. DEFINITIONS

- 1.1 "Goods" shall mean all goods supplied, or to be supplied, to the Purchaser by the Supplier pursuant to the Sales Agreement form and this contract.
- 1.2 "Goods and Services" shall mean all Goods, and all products, services and advice provided by or to be provided by the Supplier to the Purchaser pursuant to this contract; and shall include without limitation the design, manufacture, development, sale, installation, repair and maintenance of equipment and the supply of componentry and parts.
- 1.3 "Price" shall mean the cost of the Goods and Services as agreed between the Supplier and the Purchaser as recorded on the Sales Agreement form or other document between the Supplier and the Purchaser, subject to clause 3 of this contract.
- 1.4 "Purchaser" shall mean the party described as such in the Sales Agreement form which forms part of this contract (or, in the absence of such Sales Agreement form, shall mean the party described as the purchaser, customer or similar in any other document(s) which form(s) part of this contract).
- 1.5 "Supplier" shall mean the party described as such in the Sales Agreement form which forms part of this contract (or, in the absence of such Sales Agreement form, shall mean the party described as the supplier, vendor or similar in any other document(s) which form(s) part of this contract).

## 2. COLLECTION AND USE OF INFORMATION

- 2.1 The Supplier may collect, retain, disclose and use any personal information about the Purchaser, in accordance with the privacy policy available on the Supplier's website.

## 3. PRICE

- 3.1 The Price may be increased by the amount of any reasonable increase in the cost of supply of the Goods and Services that is beyond the control of the Supplier between the date of this contract and delivery of the Goods and Services.
- 3.2 If a Price increase applies, the Supplier shall notify the Purchaser as soon as practicable. The Purchaser will have 5 working days from the date of notification to cancel their purchase and receive a full refund of any amounts paid.

## 4. PAYMENT

- 4.1 The Supplier may require a minimum 10% deposit (up to a maximum of 50%) to be paid immediately on signing of this contract by the Purchaser, which deposit shall be made in part payment of the Price.
- 4.2 Payment of the Price of the Goods and Services (or the balance thereof when a deposit has been paid) shall be made immediately on completion of delivery and (where applicable) installation.
- 4.3 Payment by credit card or finance arrangement will incur an additional 3% administration processing fee.
- 4.4 Default interest may be charged on any amount owing after the due date at the rate of 2.5% per month or part month.
- 4.5 Any debt collection costs incurred by the Supplier in the enforcement of any rights contained in this contract due to a default by the Purchaser shall be paid by the Purchaser.
- 4.6 Receipt of a cheque, bill of exchange, or other negotiable instrument shall not constitute payment until such negotiable instrument is paid in full.
- 4.7 For the avoidance of doubt, the Supplier and the Purchaser each acknowledge and agree that this contract is not a consumer credit contract for the purposes of the Credit Contracts and Consumer Finance Act 2003 because the whole of the Price is due and payable within 2 months of the date of this contract, namely, in accordance with clauses 4.1 and 4.2.

## 5. QUOTATION

- 5.1 Where a quotation (including a completed but unsigned sales agreement) is given by the Supplier for Goods and Services:
  - 5.1.1 Unless otherwise agreed the quotation shall be valid for 14 days from the date of issue; and
  - 5.1.2 The Supplier reserves the right to alter the quotation price because of circumstances beyond its control.
- 5.2 Where the actual cost of Services exceeds the Price (due to circumstances that could not have been anticipated at the time of agreeing the Price) or if Goods are required in addition to the Goods and Services which are included in the Price, the Purchaser agrees to pay for the additional cost of such additional Goods and Services.
- 5.3 Where the actual cost materially exceeds the Price, the Supplier will notify the Purchaser of the additional costs. The Purchaser may, within 2 working days, cancel the sales order and receive a full refund of any part of the Price paid at that time.

## 6. RISK

- 6.1 The Goods remain at the Supplier's risk until delivery to the Purchaser.
- 6.2 Delivery of Goods shall be deemed complete when the Supplier gives possession of the Goods directly to the Purchaser or possession of the Goods is given to a carrier, courier, or other bailee for purposes of transmission to the Purchaser.

## 7. TITLE AND SECURITY (PERSONAL PROPERTY SECURITIES ACT 1999)

- 7.1 Title in any Goods and Services supplied by the Supplier passes to the Purchaser only when the Purchaser has made payment in full for all Goods and Services provided by the Supplier and of all other sums due to the Supplier by the Purchaser on any account whatsoever. Until all sums due to the Supplier by the Purchaser have been paid in full, the Supplier has a security interest in all Goods and Services.
- 7.2 If the Goods and Services are attached, fixed, or incorporated into any property of the Purchaser, by way of any manufacturing, installation, or assembly process, title in the Goods and Services shall remain with the Supplier until the Purchaser has made payment for all Goods and Services.
- 7.3 The Purchaser gives irrevocable authority to the Supplier to enter any premises occupied or owned by the Purchaser, or on which Goods are situated, at any reasonable time after default by the Purchaser or before default if the Supplier believes a default is likely and to remove and repossess any Goods. The Supplier shall not be liable for any costs, damages, expenses or losses incurred by the Purchaser or any third party as a result of the Supplier taking any action that is reasonably necessary in order to exercise this right, nor liable in contract or in tort or otherwise in any way whatsoever unless by statute such liability cannot be excluded, except where any loss is caused solely and directly because the Supplier has been negligent or willfully caused damage. The Supplier may either resell any repossessed Goods and credit the Purchaser's account with the net proceeds of sale (after deduction of all repossession, storage, selling and other costs) or may retain any repossessed Goods and credit the Purchaser's account with the invoice value thereof less such sum as the Supplier reasonably determines on account of wear and tear, depreciation, obsolescence, loss of profit and costs.
- 7.4 Under sections 120 and 121 of the Personal Property Securities Act 1999, where Goods are repossessed by the Supplier pursuant to clause 7.3, the Purchaser has a statutory right to receive advance notice from the Supplier of such repossession, and to object to the repossession within 10 working days of receiving notice from the Supplier. Under these terms and conditions, the Purchaser waives the right to receive notice and to object to the repossession and agrees to give up these rights.
- 7.5 The following shall constitute defaults by the Purchaser:
  - 7.5.1 Non payment of any sum by the due date.
  - 7.5.2 Before full payment of the Price is made by the Purchaser, any Goods and Services are seized by any other creditor of the Purchaser or any other creditor intimates that it intends to seize Goods and Services, or the Purchaser is bankrupted or put into liquidation or a receiver is appointed to any of the Purchaser's assets or a landlord distrains against any of the Purchaser's assets, or a Court judgment is entered against the Purchaser and remains unsatisfied for seven (7) days.

## 8. RETURN OF GOODS

- 8.1 The Purchaser may return the Goods for change of mind up to 30 days from delivery, provided that, unless the Purchaser has rights under the Fair Trading Act 1986 or the Consumer Guarantees Act 1993:
  - 8.1.1 The Goods are in undamaged condition and are suitable for resale; and
  - 8.1.2 The Purchaser pays the Supplier a restocking fee of 10% of the purchase price paid for the Goods; and
  - 8.1.3 Where the Supplier is required to remove any Goods that have already been installed, the Supplier will not be liable for any reinstatement of the Purchaser's property.
- 8.2 Notwithstanding clause 8.1, the Purchaser may return only one of the systems described in the Sales Agreement (and retain the other), on the terms of clause 8.1, but in this case:
  - 8.2.1 The Supplier may offer a refund to the Purchaser for the fair value of the returned system to be determined at the sole discretion of the Supplier; or
  - 8.2.2 If the Purchaser does not accept the refund offered pursuant to clause 8.2.1, the Purchaser may cancel the contract and simultaneously re-enter a new contract for the retained system. In entering the new contract, the Purchaser shall be entitled to purchase the retained system for the price the Supplier would have charged for the retained system alone at the time the Sales Agreement for the bundled system was made. Any difference between the original price paid and the price paid under the new contract shall be refunded to the Purchaser.

## 9. PRODUCT WARRANTY

- 9.1 Manufacturer's product warranty applies where applicable to the Goods.
- 9.2 Any written product warranty provided by the Supplier to the Purchaser shall also form part of this contract.
- 9.3 The Purchaser shall ensure that it complies with the filter requirements including recommended timing for replacement of filters as set out in the product warranty to ensure the optimum performance of the Goods and Services purchased.

## 10. SYSTEM PERFORMANCE

- 10.1 It is possible that certain factors which are outside the control of the Supplier may reduce the performance of the Goods. Such factors could include sufficient indoor heating; the Purchaser's adherence to the published instruction manual; the features of the property where the Goods are installed such as its layout, building materials and design; climatic conditions; and other factors such as weather.
- 10.2 In addition to installing the Goods, reducing condensation requires sufficient heating, ventilation and insulation. If ventilation alone is being used to control internal temperature without additional heating or adequate insulation, moisture already present within the building envelope may result in condensation during cold periods. Even in ventilated properties, condensation can still appear during very cold periods.
- 10.3 The Goods alone may not be enough to maintain a comfortable indoor environment and additional heating may be required.
- 10.4 HRV System Specific Clauses:
  - 10.4.1 In addition to the above, if there is inadequate ventilation or dampness present in part of the home including either or both the roof cavity or sub-floor ("Factors"), performance of the Goods and/or any accessories may be negatively impacted.
  - 10.4.2 The Factors are outside the control of the Supplier and can have a negative effect on the performance of the Goods. Whether a Purchaser will be affected by the Factors will depend on the property where the Goods are installed.
  - 10.4.3 Prior to purchase, the Supplier will:
    - (a) Inspect the property to identify whether any Factors may be present;
    - (b) Discuss the Factors detected as present or possible with the Purchaser;
    - (c) Explain how the Factors could potentially reduce performance of the Goods; and
    - (d) If applicable, suggest ways to mitigate the Factors.
  - 10.4.4 Should the Purchaser purchase the Goods following notification that Factors may apply to the relevant property, the Purchaser will not hold the Supplier responsible for any reduced performance of the Goods due to these Factors unless the Purchaser has acted on any mitigation advice given by the Supplier to the Supplier's satisfaction.
  - 10.4.5 The Purchaser acknowledges that any advice given by the Supplier is based on the conditions of the property at the time of the Supplier's inspection and that property conditions can change. The Purchaser will hold harmless the Supplier from any further action, demand or responsibility in relation to the performance of the Goods to the extent that this results from changes in the condition of the property that, in the reasonable opinion of the Supplier, influence the negative effect of the Factors.

## 11. COPYRIGHT

- 11.1 The Supplier owns and has copyright in all designs, specifications, documents, work and software produced by the Supplier in connection with the Goods and Services provided pursuant to this contract. The Purchaser may use the Goods and Services only if paid for in full and only for the purpose for which they were intended and supplied by the Supplier.

## 12. CONSUMER GUARANTEES ACT

- 12.1 Where the Purchaser is 'in trade' (within the meaning of the Consumer Guarantees Act 1993 - CGA), the parties each confirm, acknowledge and agree that:
  - (a) they are each 'in trade';
  - (b) the Goods and Services are supplied to the Purchaser and acquired by the Purchaser in trade and for a business purpose; and
  - (c) the statutory guarantees and implied terms, covenants and conditions contained in the CGA are excluded to the fullest extent permitted at law, and do not apply.

## 13. MISCELLANEOUS

- 13.1 Failure by the Supplier to enforce any of the terms and conditions contained in this contract shall not be deemed to be a waiver of any of the rights or obligations the Supplier has under this contract.
- 13.2 If any provision of this contract shall be invalid, void or illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.