

Conditions of Sale

1 Definitions

"Buyer" means the person who accepts a quotation of the Company for the sale of the Goods or whose order for the Goods is accepted by the Company

"Company" means Kingspan Hot Water Systems Limited.

"Conditions" means the terms and conditions of sale set out in this document and any special terms and conditions agreed in writing by the Company and the Buyer

"Contract" means the contract for the purchase and sale of the Goods

"Goods" means the goods which the Company is to supply and which the Buyer agrees to buy in accordance with these Conditions

"Price" means the price for the Goods including transport and insurance (if any)

1.2 Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended re-enacted or extended at the relevant time

1.3 The headings in these Conditions are for convenience only and shall not affect their interpretation

2 Basis of sale

2.1 The Company shall sell and the Buyer shall purchase the Goods in accordance with:-
2.1.1 the Company's quotation (if provided by the Company and accepted by the Buyer); or
2.1.2 if the Company does not submit a quotation and following a request or purported order from the Buyer for Goods) in accordance with the Company's offer to the Buyer (if accepted by the Buyer).

subject in either case to these Conditions, which shall govern the Contract to the exclusion of any other terms, subject to which any such quotation or offer is accepted, or purported to be accepted.

2.2 Any variation to these Conditions (including any special terms and conditions agreed between the parties) shall be inapplicable unless agreed in writing by the Company

2.3 Any advice or recommendation given by the Company or its employees or agents to the Buyer or its employees or agents as to the storage application or use of the Goods which is not confirmed in writing by the Company is followed or acted upon entirely at the Buyer's own risk and accordingly the Company shall not be liable for any such advice or recommendation which is not so confirmed

2.4 Any typographical clerical or other error or omission in any sales literature quotation price list acceptance of offer invoice or other document or information issued by the Company shall be subject to correction without any liability on the part of the Company

2.5 All specifications, drawings, particulars of weight and dimension and performance data contained in any of the Company's literature are approximate only

2.6 The Company reserves the right to improve and/or modify any specifications, designs and dimensions without notice

2.7 For the avoidance of doubt nothing in these Conditions or any Contract shall confer on any third party any benefit nor the right to enforce any term of these Conditions or any Contract whether pursuant to the Contracts (Rights of Third Parties) Act 1999 or otherwise

3 The Price and payment

3.1 The Price shall be either:-

3.1.1 the Company's quoted price which shall only be valid for 30 days from its date after which time the Price may be altered by the Company and shall be subject to the Company requesting; or

3.1.2 where no price has been quoted the Price listed in the then current price list of the Company sent by the Company to the Buyer from time to time.

3.2 Except as otherwise stated in the Company's quotation or in any price list of the Company or otherwise agreed in writing between the Buyer and the Company, all prices are given by the Company to include the Company's charges for transport and insurance. In all cases the Company will charge the Buyer for returnable packages and/or packaging materials which charges will be credited in full if such returnable packages and/or packaging materials are returned carriage paid to the Company's premises in good condition.

3.3 The Price and any other sums payable by the Buyer to the Company is exclusive of any applicable Value Added Tax, which the Buyer shall be additionally liable to pay to the Company.

3.4 [Subject to any special terms agreed in writing between the Buyer and the Company,] the Company may invoice the Buyer for the Price of the Goods on or at any time after delivery of the Goods, (or any instalment of the Goods) unless the Goods are to be collected by the Buyer or the Buyer wrongfully fails to take delivery of the Goods, in which event the Company shall be entitled to invoice the Buyer for the Price at any time after the Company has notified the Buyer that the Goods are ready for collection or (as the case may be) the Company has tendered delivery of the Goods.

3.5 Save as otherwise agreed in writing payment of the Price and VAT shall be due within 30 days of the date of the invoice without deduction or set off. Time for payment shall be of the essence

3.6 If the Buyer fails to make any payment on the due date then without prejudice to any other right or remedy available to the Company the Company shall be entitled to:

3.6.1 cancel the contract or suspend any further deliveries to the Buyer

3.6.2 appropriate any payment made by the Buyer to such of the Goods (or the Goods supplied under any other contract between the Buyer and the Company) as the Company may think fit (notwithstanding any purported appropriation by the Buyer) and

3.6.3 charge the Buyer interest (both before and after any judgement) on the amount unpaid at the rate of 8% per cent per annum above Barclays Bank plc base rate from time to time until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest)

4 The Goods

4.1.1 The quantity and description of the Goods shall be as set out in the Company's quotation or in the Company's offer (as the case may be); and

4.1.2 the quality and specification for the Goods shall be as set out in the Company's quotation or (where there is no quotation) in the Company's literature and brochure for the Goods in question.

4.2 The Buyer shall be responsible to the Company for ensuring the accuracy of the terms of any order and any information supplied for the Company as to its requirements (including but without limitation the use to which the Goods will be put and any applicable specification) submitted by the Buyer 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

4.3 If the Goods are to be manufactured or any process is to be applied to the Goods by the Company in accordance with a specification submitted by the Buyer the Buyer shall indemnify the Company against all losses damages costs, claims, demands, liabilities and expenses awarded against or incurred by the Company in connection with or paid or agreed to be paid by the Company in settlement of any claim for infringement of any patent copyright design trade mark or other industrial or intellectual property rights of any other person which results from the Company's use of the Buyer's specification or from compliance by the Company with the Buyer's instructions whether express or implied.

4.4 No order which has been accepted by the Company may be cancelled by the Buyer except with the agreement in writing of the Company and on terms that any deposit paid shall not be repayable and that the Buyer shall indemnify the Company in full against all loss (including loss of profit) costs (including the cost of all labour and materials used) damages charges and expenses incurred by the Company in carrying out any work in respect of the Goods or otherwise as a result of cancellation

4.5 All designs, sketches, stones, plates, blocks, engravings or similar articles supplied by or submitted in confidence by the Company shall remain the property of the Company and may not be disclosed by nor used by nor copied or otherwise reproduced by the Buyer without the prior written consent of the Company.

5 Delivery of Goods

5.1 Unless otherwise agreed in writing the Company shall deliver the Goods to such delivery address as is specified by the Buyer to the Company at such time as the Goods or part thereof (as the case may be) are ready for delivery.

5.2 The Buyer shall be responsible for offloading the Goods at the delivery address and shall advise the Company of any local or internal laws, byelaws or rules relating to parking or loading of vehicles at the delivery address.

5.3 The Buyer shall be responsible for ensuring that access to the delivery address is wholly by a road with a surface capable of withstanding the weight and size of a vehicle carrying the Goods.

5.4 Any dates quoted for delivery of the Goods are approximate only and the Company shall not be liable for any delay in delivery of the Goods whatsoever caused. Time for delivery shall not be of the essence unless previously agreed by the Company in writing. The Goods may be delivered by the Company in advance of the Delivery Date upon giving reasonable notice to the Buyer

5.5 Where the Goods are to be delivered in instalments each delivery shall constitute a separate contract and failure by the Company to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated

5.6 If the Buyer fails for any reason whatsoever to take delivery of the Goods or fails to give the Company adequate delivery instructions at the time stated for delivery (otherwise than by reason any cause beyond the Buyer's reasonable control or by reason of the Company's fault) then without prejudice to any other right or remedy available to the Company the Company may:

5.6.1 store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of returning the Goods to the Company's premises, storage and for transport, packaging and insurance for redelivery of the Goods; or

5.6.2 sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the Price or charge the Buyer for any shortfall below the Price

5.7 The Buyer shall at its expense return all packaging of the Goods to the Company's premises.

6 Risk and Title

6.1 Risk of damage to or loss of the Goods shall pass to the Buyer

6.1.1 in the case of Goods to be delivered at the Company's premises at the time when the Company notifies the Buyer that the Goods are available for collection or

6.1.2 in the case of Goods to be delivered otherwise than at the Company's premises at the time of delivery or if the Buyer wrongfully fails to take delivery of the Goods the time when the Company has tendered delivery of the Goods

6.2 Notwithstanding delivery and the passing of risk in the Goods or any other provision of these Conditions the property in the Goods shall not pass to the Buyer until the Company has received in cash or cleared funds payment in full of the Price of the Goods and all other goods agreed to be sold by the Company to the Buyer for which payment is then due

6.3 Until such time as the property in the Goods passes to the Buyer the Buyer shall hold the Goods as the Company's fiduciary agent and bailee and shall keep the Goods separate from those of the Buyer and third parties and properly stored protected and insured and identified as the Company's property. Until that time the Buyer shall be entitled to resell or use the Goods in the ordinary course of its business

6.4 Until such time as the property in the Goods passes to the Buyer (and provided the Goods are still in existence and have not been resold) the Company shall be entitled at any time to require the Buyer to deliver up the Goods to the Company and if the Buyer fails to do so forthwith to enter upon any premises of the Buyer or any third party where the Goods are stored and repossess the Goods

6.5 The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Company but if the Buyer does so all moneys owing by the Buyer to the Company shall without prejudice to any other right or remedy of the Company) forthwith become due and payable

7 Warranties and liability

7.1 Subject to the following provisions, the Company warrants that the Goods will be free from defects in material and workmanship for a period of 24 months from their delivery to the Buyer, unless a period of different duration is specified in the product installation instructions in respect of that product, or specified components thereof.

7.2 The warranty in clause 7.1 is given by the Company subject to the following conditions:

7.2.1 The Company shall be under no liability in respect of any defect in the Goods arising from any information drawing design or specification supplied by the Buyer

7.2.2 The Company shall be under no liability in respect of any defect arising from fair wear and tear willful damage negligence abnormal working conditions failure to follow the Company's instructions (whether oral or in writing) misuse or alteration or repair of the Goods without the Company's approval

7.2.3 The Company shall be under no liability under the above warranty (or any other warranty condition or guarantee) if the Price and value added tax for the Goods has not been paid by the due date for payment

7.2.4 The above warranty does not extend to parts materials equipment not manufactured by the Company in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Company.

7.3 The Buyer shall not make any statement or representation or give any warranty to any third party in respect of any Goods other than in the terms made or given by the Company to the Buyer in these Conditions nor shall the Buyer have any authority to commit the Company to provide any service in relation to the Goods. The Buyer shall indemnify the Company against all losses, damages, costs, claims, demands, liabilities and expenses incurred or suffered by the Company in respect of or arising out of any such statement, representation or warranty made or given by the Buyer in contravention of this clause.

7.4 The Company's liability to the Buyer for -

7.4.1 death or injury resulting from its own or that of its employees' agents' or sub-contractors' negligence; and

7.4.2 damage suffered by the Buyer as a result of any breach of the obligations implied by Section 12 of The Sale of Goods Act 1979 shall not be limited

7.5 Subject as expressly provided in these Conditions all other warranties conditions or terms whether implied by statute or common law or otherwise are hereby excluded

7.6 If the Company fails to deliver the Goods for any reason other than any cause beyond the Company's reasonable control or the Buyer's fault then the Company shall only be liable to the Buyer for and the Company's liability shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest available market) of similar goods to replace those not delivered over the Price of the Goods

7.7 The Buyer shall examine all Goods delivered forthwith following delivery. Any claim by the Buyer which is based on any defect in the quality or condition of the Goods or their failure to correspond with specification shall (whether or not delivery is refused by the Buyer) be notified to the Company within 7 days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure. If delivery is not refused and the Buyer does not notify the Company accordingly the Buyer shall not be entitled to reject the Goods and the Company shall have no liability for such defect or failure and the Buyer shall be bound to pay the Price as if the Goods had been delivered in accordance with the Contract. In no event shall the Buyer be entitled to reject the Goods on the basis of any defect or failure which is so slight that it would be unreasonable for the Buyer to reject them

7.8 The Company shall be entitled to examine any Goods which are the subject of any claim by the Buyer and to remove such Goods or any part thereof for testing. No tests carried out by the Buyer will be recognised by the Company unless carried out strictly in accordance with a method previously agreed by the Company as being suitable for the purpose.

7.9 Where any valid claim in respect of any of the Goods which is based on any defect in the quality or condition of the Goods or their failure to meet specification is notified to the Company in accordance with these Conditions the Company shall be entitled to repair or replace the Goods (or the part in question) free of charge or at the Company's sole discretion refund to the Buyer the Price (or a proportionate part of the Price) but the Company shall have no further liability to the Buyer.

7.10 The Company shall not be liable to the Buyer by reason of any representation (unless fraudulent) or any implied warranty condition or other term or any duty at common law (including but without limitation the negligence of the Company its employees agents or otherwise) or under the express terms of the Contract for any loss of production loss of profits or anticipated profits loss of contracts operation time or anticipated savings loss of business or of expected further business loss of or corruption to data damage to the Buyer's reputation or goodwill damages costs or expenses payable by the Buyer to any third party or any other indirect special or consequential loss or damage or claim (whether caused by the negligence of the Company its employees agents or otherwise) which arise out of or in connection with the supply of the Goods or their use or resale by the Buyer

7.11 Without prejudice to the provisions of clauses 7.5, 7.6, 7.7, 7.9 and 7.10 the entire liability of the Buyer under or in connection with the Contract shall not exceed the Price of the Goods.

7.12 The Company shall not be liable to the Buyer or be deemed to be in breach of the contract by reason of any delay in performing or any failure to perform any of the Company's obligations in relation to the Goods if the delay or failure was due to any cause beyond the Company's reasonable control. Without limiting the foregoing, the following shall be regarded as causes beyond the Company's reasonable control:

7.12.1 act of god, explosion, flood, tempest, or inclement weather, fire or accident;

7.12.2 war or threat of war, sabotage, insurrection, civil disturbance or requisition;

7.12.3 acts, restrictions, regulations, by-laws, prohibitions or measures of any kind on the part of any Governmental, Parliamentary or Local Authority;

7.12.4 imports or exports, regulations or embargos;

7.12.5 strikes, lockouts or other industrial action or trade disputes (whether employees of the Company or of a third party);

7.12.6 difficulties in obtaining raw materials, labour, fuel, parts or machinery;

7.12.7 power failure, failure of tele-communications lines, failure or breakdown of plant, machinery or vehicles;

7.12.8 theft or malicious damage;

7.12.9 defaults for any reason whatsoever of suppliers or sub-contractors of the Company;

7.12.10 incompleteness or inaccuracy of any technical information which it is the responsibility of the Buyer to provide

8 Insolvency of the Buyer

8.1 This clause applies if:

8.1.1 the Buyer makes any composition or voluntary arrangement with its creditors (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or seeks an out of court route into administration or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction) or a moratorium comes into force in respect of the Buyer (within the meaning of the Insolvency Act 1986); or

8.1.2 an encumbrancer takes possession or a receiver or manager or administrative receiver or administrator is appointed of any of the property or assets of the buyer; or

8.1.3 the Buyer ceases or threatens to cease to carry on business or

8.1.4 the Company reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly

8.2 If this clause applies then without prejudice to any other right or remedy available to the Company the Company shall be entitled to stop any Goods in transit, cancel the Contract or suspend any further deliveries under the Contract without any liability to the Buyer and if the Goods have been delivered but not paid for the Price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary

9 Health and Safety Information

The Buyer agrees and undertakes with the Company to ensure that the provisions of all instruction manuals including health and safety instructions and any other information or document relating to the use of the Goods provided by the Company with the Goods are fully implemented so as to ensure so far as is reasonably practicable that the Goods will be safe and without risk to health at all times, when it is being installed, used, cleaned or maintained by a person at work and that all such manuals instructions or documents remain with the Goods.

10 General

10.1 The Contract is personal to the Buyer which may not assign or dispose of any of its rights or obligations or otherwise delegate any of its obligations under the Contract without the written consent of the Company.

10.2 The Company shall be entitled to assign its rights and obligations under the Contract and to sub-contract or otherwise delegate any of its obligations under the Contract.

10.3 Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing including a facsimile addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice and shall be deemed to have been received by the party to whom it was addressed, if sent by facsimile upon its transmission if during a normal business day and otherwise on the next business day and if sent by post, 72 hours after posting.

10.4 No waiver by the Company of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision

10.5 If any provision of these Conditions is held by a Court or other competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby

10.6 The Contract and these Conditions shall be governed by the laws of England

10.7 The parties hereby submit to the non-exclusive jurisdiction of the English courts

11 Information

The Company will provide the Buyer on request with information as to the proper and safe use of the Goods and the Buyer shall at all times obey and comply with the Company's instructions or other information relating to the use of the Goods