

STANDARD CONDITIONS OF SALE FOR MASKELL HEATING SERVICES LTD.

BASIS OF SALE

1. These conditions shall apply to all contracts for the sale of Goods by the Seller to the Buyer
2. The Seller intends to rely upon the written terms set out here. If you require any changes, please make sure you ask for these to be put in writing. In that way we can avoid any problems surrounding what the Seller and you the Buyer is expected to do.
3. All orders for Goods shall be deemed to be an offer by the Buyer to purchase Goods pursuant to these Conditions.
4. Acceptance of delivery of the Goods shall be deemed conclusive evidence of the Buyer's acceptance of these Conditions.
5. To protect your own interests please read these terms and consider carefully before agreeing to them. If you are uncertain as to your rights under them or you want an explanation about them please write to or telephone us at the address and telephone number set out below.

PRICE AND PAYMENT

1. The Price shall be the Seller's quoted price which shall be binding on the Seller provided that the Buyer shall accept the Seller's quotation within 30 days. The Seller may by giving notice to the Buyer at any time up to 7 days before delivery increase the Price of the Goods to reflect any increase in the cost to the Seller which is due to factors occurring after the making of the contract of sale which are beyond the reasonable control of the Seller (including without limitation, foreign exchange fluctuations, taxes and duties and the cost of labour, materials and other manufacturing costs) Provided That the Buyer may cancel this contract within 5 days of any such notice from the Seller.
2. Payment of the Price and VAT shall be before delivery of the Goods. Time for payment shall be of the essence. In the case of established account holders payment shall be made on the 30th of the month following date of invoice unless alternative terms shall be agreed in writing between the Seller and the Buyer. All orders for use on commercial premises will be paid for in full prior to fitting. Orders for tanks for private use will be accompanied by a 30% deposit.
3. Interest on overdue monies shall accrue from the date when payment becomes due from day to day until the date of payment at a rate of 3% above HSBC base rate from time to time in force and shall accrue at such a rate after as well as before any judgment.

RETENTION OF TITLE

1. In spite of delivery having been made property in the Goods shall not pass from the Seller until:
 - 1.1 The Buyer shall have paid the price plus VAT in full; and
 - 1.2 no other sums whatever shall be due from the Buyer to the Seller.
2. Until property in the Goods passes to the Buyer in accordance with clause 1 the Buyer shall hold the Goods and each of them on a fiduciary basis as bailee for the Seller. The Buyer shall store the Goods (at no cost to the Seller) separately from all other goods in its possession and marked in such a way that they are clearly identified as the Seller's property.
3. Notwithstanding that the Goods (or any of them) remain the property of the Seller the Buyer may sell or use the goods in the ordinary course of the Buyer's business at full market value for the account of the Seller. Any such sale or dealing shall be a sale or use of the Seller's property by the Buyer on the Buyer's own behalf and the Buyer shall deal as principal when making such sales or dealings. Until property in the Goods passes from the Seller the entire proceeds of sale or otherwise of the Goods shall be held in trust for the Seller and shall not be mixed with other money or paid into any overdrawn bank account and shall be at all material times identified as the Seller's money.
4. The Seller shall be entitled to recover the Price (plus VAT) notwithstanding that property in any of the Goods has not passed from the Seller.
5. Until such time as property in the Goods passes from the Seller the Buyer shall upon request deliver up such of the Goods as have not ceased to be in existence or resold to Seller. On the making of such request the rights of the Buyer under clause 3 shall cease. If the Buyer fails to deliver up such Goods within a reasonable period the Seller shall be entitled to take legal proceedings to recover the Goods or their value.
6. The Buyer shall not pledge or in any way charge by way of security for any indebtedness any of the Goods which are the property of the Seller. Without prejudice to the other rights of the Seller, if the Buyer does so all sums whatever owing by the Buyer to the Seller shall forthwith become due and payable.
7. The Buyer shall insure and keep insured the Goods to the full price including VAT against 'all risks' to the reasonable satisfaction of the Seller until the date that property in the Goods passes from the Seller.

DELIVERY OF GOODS

1. Delivery of the Goods shall be made on the Delivery Date agreed with the Buyer. The Buyer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery.
2. The Goods shall be delivered to the Buyer at their address or such other address as is agreed with the Seller. The risk in the Goods shall pass to the Buyer upon such delivery taking place. If the Buyer delays a delivery, the Seller's responsibility for everything other than damage due to the Seller's negligence will end on the date the Seller agreed to deliver the Goods.
3. The Seller shall arrange for the carriage of the Goods to the Buyer's address. The costs of carriage and any insurance will be borne by the Seller as part of the Price.
4. The Seller will do all that it reasonably can to meet the date given for delivery and/or installation. In the case of unforeseen circumstances, beyond the reasonable control of the Seller, the Seller will contact the Buyer and agree an alternative date. The Seller cannot be held responsible for the delays due to circumstances beyond the Seller's control and in this case the Seller will complete the works as soon as reasonably possible.
5. Neither party shall be liable for any default due to any act of God, war, strike, lockout, industrial action, fire, flood, drought, storm or any other event beyond the reasonable control of either party.

GOVERNING LAW

1. This contract is subject to the law of England and Wales
2. All disputes arising out of this contract shall be subject to the exclusive jurisdiction of the courts of England and Wales.

ASSIGNMENT

1. Without prejudice to the Buyer's rights against the Seller contained within these terms and conditions, the Seller may license or sub-contract all or any part of its rights and obligations under this contract with the Buyer's consent.

INSOLVENCY

If the Buyer fails to make payment for the Goods in accordance with this contract of sale or commits any other breach of this contract of sale or if any distress or execution shall be levied upon any of the Buyer's goods or if the Buyer offers to make any arrangement with its creditors or if any petition in bankruptcy is presented against the Buyer or the Buyer is unable to pay its debts as they fall due or if being a limited company any resolution or petition to wind up the Buyer shall be passed or presented or if a receiver administrative receiver or manager shall be appointed over the whole or any part of the Buyer's business or assets or if any petition for the appointment of an administrator is presented against the Buyer or if the Buyer shall suffer any analogous proceedings under foreign law all sums outstanding in respect of the Goods shall become payable immediately. The Seller may in its absolute discretion and without prejudice to any other rights which it may have;

1. suspend all future deliveries of Goods to the Buyer and/or terminate the contract without liability on its part and/or
2. exercise any of its rights pursuant to clauses relating to retention of title.

CANCELLATION

1. Subject to paragraph 2 below, either the Seller or the Buyer may cancel this contract at any time before the Goods are delivered by giving not less than 5 days prior written notice. Upon the giving or receipt of such notice the Seller shall promptly repay to the Buyer any sums paid in respect of the price subject to paragraph 2 below. Neither party shall be liable for any loss or damage whatsoever arising from such cancellation
2. Where any Goods need to be specifically ordered, modified, adapted or otherwise changed to the Buyer's particular specification it will be more difficult to sell these Goods to other consumers. Therefore, once the Seller has carried out any or procured the carrying out of any such changes to the standard Goods the Buyer shall not be able to cancel the contract without payment to the Seller of the reasonable and proper value of the modified product.
3. The Seller may cancel this contract at any stage where the Buyer is in material breach of the terms and conditions

EXCLUSIONS

1. Once the Goods have been delivered and installed the Buyer should only permit specialised persons to maintain and repair the Goods due to the risk of environmental contamination, health and safety, or damage to the Goods and the Seller shall not be liable for the actions of any unauthorised person in connection with the Goods. Any unauthorised tampering with the Goods may cause the manufacturer's Guarantee to become invalidated.
2. The Seller shall not be liable to the Buyer for damage or loss caused to the Buyer's property which are caused by:
 - (i) The Buyer or the Buyer's employees or agents;
 - (ii) Fair wear and tear; or
 - (iii) Factors outside the reasonable control of the Seller.
3. All Goods are sold in accordance with the manufacturer's specification (a copy of which has been provided to you) subject to any qualification or representation contained in such documentation.
4. The Buyer is asked to examine the Goods as soon as reasonably possible after delivery. If for any reason the Buyer is not satisfied with the Goods they should either be rejected upon delivery, or if a fault is found within a reasonable time subsequent to delivery the Buyer should notify the Seller as soon as possible of any such subsequent faults and the Seller will (subject to confirmation of the fault) in its reasonable discretion either repair the Goods, replace the Goods or refund the Buyer in full or part (depending upon the circumstances).
5. Where the Seller needs to connect the Goods to the Buyer's existing heating system or other such system the Seller does not accept liability for the cost of repairing or replacing parts of the existing system which subsequently become faulty unless such damage results from the way the Seller installed the Goods.
6. Where attendance of the Seller's engineers is required for any purpose other than the scheduled delivery and installation of the Goods or for the Seller to meet its liabilities under this agreement a charge for such attendance will be made.
7. The Seller shall not be liable under this contract for any loss or damage caused by the Seller or their employees or agents in circumstances where:
 - (i) there is no breach of a legal duty of care owed to the Buyer by the Seller or their employees or agents;
 - (ii) such loss or damage is not a reasonably foreseeable result of any such breach (losses are foreseeable if they could be contemplated by the Seller and the Buyer at the date the contract is entered into);
 - (iii) any increase in loss or damage results from a breach by the Buyer of any term of the contract or arises due to the Buyer's acts or omissions.
8. The Seller's liability shall not in any event include loss related to any business of the Buyer such as lost profits, business interruption, lost opportunity, business losses or losses to non-consumers.
9. The liability of the Seller shall not in any event exceed the Price of the Goods save where such increased liability would be reasonably foreseeable consequence of the Seller's breach.
10. The above exclusions do not in any way affect the Buyer's statutory rights.

WARRANTY

1. A manufacturers' guarantee relating to the Goods will be issued after completion of the delivery and installation of the Goods and after all monies due to the Seller have been paid. The manufacturer's guarantee is issued in addition to and not in substitution for the customer's statutory rights relating to the faulty or misdescribed Goods or Services.
2. Where there is a problem with the installation of the Goods within the first 12 months the Seller will, in addition to and not in substitution for the customer's statutory rights, arrange for a service engineer to attend the premises and rectify the problem free of charge.

Contact tel no: (01323) 845087

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