

1. DEFINITIONS

In these terms and conditions of sale, the following meanings shall apply:

“**Company Signatory**” means a person authorised by Us.

“**Contract**” means the contract between Us and You for the supply of Goods incorporating these Terms.

“**Defect**” means the condition and/or any attribute of the Goods and/or any other circumstances which, but for the effect of these Terms would have entitled You to damages.

“**Goods**” means the goods (or parts of them) or when the context permits services to be supplied by Us.

“**Terms**” means the terms set out in this document and any special terms agreed in writing between a Company Signatory and You.

“**We**”, “**Us**” and “**Our**” means Deepings Building and Plumbing Supplies Limited Registered in England and Wales No 05985255.

“**You**” means the person or entity seeking to purchase Goods from Us.

2. THE CONTRACT

- 2.1 All orders are accepted by Us only under these Terms and they may not be altered – other than with the written agreement of a Company Signatory. Terms implied by trade, practice or in the course of trade, and any contrary or additional terms unless so agreed, are excluded.
- 2.2 These Terms will become binding on You and Us when We issue You with a written acceptance of an order or We act in accordance with an order, at which point a contract will come into existence between You and Us.
- 2.3 Quotations are invitations to treat only, and are valid for 30 days only.
- 2.4 Orders may be cancelled only with the agreement of a Company Signatory and You will indemnify Us against all costs, claims, losses or expenses incurred as a result of that cancellation.
- 2.5 You shall be responsible to Us for ensuring the accuracy of the terms of any order including any applicable design drawing or specification provided to Us by You and for giving Us any necessary information relating to the Goods within a sufficient time to enable Us to perform the Contract in accordance with its Terms.
- 2.6 It is your responsibility to be fully conversant with the nature and performance of the Goods, including any harmful or hazardous effects their use may have.
- 2.7 Without prejudice to Clause 2.9 of these Terms while We take every precaution in the preparation and use of Our samples, drawings, catalogues, technical circulars, price lists and other literature, these documents are for your general guidance only and statements included in these documents (in the absence of fraud on Our part) shall not constitute representations by Us and We shall not be bound by them.
- 2.8 If You require advice (including Health and Safety information) in relation to the Goods, a specific request for advice should be made and any advice given in writing by a Company Signatory in response to such a request shall amount to a representation and We shall be liable accordingly.
- 2.9 We shall not be liable in respect of any misrepresentation made by Us, Our employees or agents to You, your employees or agents as to the condition of the Goods, their fitness for any purpose or as to quantity or measurements, unless the representation is:

2.9.1 made or confirmed in writing by a Company Signatory; and/or

2.9.2 fraudulent.

2.10 For the avoidance of doubt, Our liability for damages for misrepresentation (other than fraudulent) is excluded or limited by Clause 8 of these Terms.

3. PRICE

- 3.1 The Price of the Goods shall be that prevailing at the date of delivery of the Goods. The price is exclusive of VAT which shall be due at the rate ruling on the date of a VAT invoice.
- 3.2 Prices listed or quoted are based on costs prevailing at the time when they are given or agreed. We shall be entitled to adjust the price of the Goods as at the time of delivery by such amount as may be necessary to cover any increase sustained by Us after the date of acceptance of your order and any direct or indirect costs of making, obtaining, handling, or supplying the Goods.
- 3.3 Prices quoted are applicable to the quantity specified and on the information provided by You at the time of order. In the event of orders being placed for lesser quantities, or if there is any change in specifications, delivery dates, or delay is caused by your instructions or lack of instructions. We shall be entitled to adjust the price of the Goods as ordered to take account of the variations.
- 3.4 We shall have the option of supplying any Goods ordered by You in imperial measurements in the nearest equivalent metric measurements and the Goods may be charged in metric measure allowing for conversions.

4. PAYMENT AND CREDIT

- 4.1 Unless the sale is for cash, or other credit terms have been agreed in writing with a Company Signatory, all accounts are due for payment on the last day of the month, following the month in which the Goods are delivered. For the avoidance of doubt, the time for payment is of the essence.
- 4.2 Late payment will incur interest at 8% above the Bank of England base rate, prevailing from time to time, on all overdue amounts accruing on a daily basis, until the date of payment after as well as before judgment.
- 4.3 Credit facilities may be withdrawn or reduced at any time at Our sole discretion.
- 4.4 Even if We have previously agreed to give You credit, We reserve the right to refuse to execute any order or Contract if the arrangements for payment or your credit rating is not satisfactory to Us. In Our discretion We may require security satisfactory to Us or payment for each consignment when it is available and before it is despatched in which case delivery will not be effected until We are in receipt of security or cleared funds as requested by Us.
- 4.5 In the case of short delivery, You will remain liable to pay the full invoice price of all Goods delivered or available for delivery.
- 4.6 You may not withhold payment of any invoice or other amount due to Us by reason of any right of set off or counterclaim, which You may have, or allege to have, for any reason whatsoever.
- 4.7 We shall be entitled at all times to set off any debt or claim of whatever nature which We may have against You against any sums due from Us to You.

5. DELIVERY

- 5.1 Delivery will be effected when the Goods leave Our premises whether carried by Us or an independent carrier, or the premises of Our suppliers when the Goods are delivered direct from suppliers, or the port if the goods are delivered direct from a UK port.
- 5.2 Delivery dates are given in good faith, but are estimates only.
- 5.3 Time for delivery shall not be of the essence.
- 5.4 For the avoidance of doubt, and without detracting from any other provisions of these Terms, We shall not be liable for any damages whatsoever whether direct or indirect (including for the avoidance of doubt of any liability to any third party) resulting from any delay in delivery of the Goods, or failure to deliver the Goods in a reasonable time – whether such delay or failure is caused by Our negligence or otherwise howsoever.
- 5.5 We reserve the right to make delivery by instalments and tender a separate invoice in respect of each instalment. Our failure to deliver any one or more instalments, or any claim by You in respect of any one or more instalments, shall not entitle You to treat the Contract as a whole as repudiated.
- 5.6 The price agreed includes Our normal delivery charges but We may make an additional charge if We incur further costs or expense such as (but not limited to):
 - 5.6.1 those caused by delivery of less than a full load,
 - 5.6.2 complying with your request for delivery outside Our normal delivery pattern or trading by instalments,
 - 5.6.3 orders of small value which are not reasonably economical for Us to deliver free.
- 5.7 You must notify us of any features of the proposed location for delivery which might reasonably be considered as likely to cause difficulties in effecting delivery. Such features must be notified to Us at the time of order; or if unknown at the time, as soon as reasonably practicable after the order has been made.
- 5.8 If We cannot deliver the Goods because You have not informed us of the location for delivery or the location that you notified is not reasonably accessible and/or safe for Our delivery vehicle and staff, We reserve the right:
 - 5.8.1 deliver the goods to a suitable alternative location (acting reasonably) and inform You of that location as soon as reasonably practicable; or
 - 5.8.2 return the Goods to Our premises and notify You that You may collect the Goods in accordance with this clause 5.
- 5.9 If, when delivery is attempted, the location for delivery has changed, or the location is not easily accessible, which delays Our delivery vehicle for an unreasonable time, then additional charges may be made.
- 5.10 You must provide the necessary labour for unloading the Goods and unloading is to be completed with reasonable speed. If Our delivery vehicle is kept waiting for an unreasonable time, or is obliged to return without completing delivery, or if We provide additional staff to unload Goods, an additional charge will be made.
- 5.11 You may collect Goods from Us during Our trading hours. If they are not collected within 14 days from when We notify You that they are available for collection, we may charge you a storage charge.
- 5.12 If You fail to take delivery, accept or collect the Goods within the agreed time, in Our discretion, We may make an additional charge, invoice You for the Goods, or treat the Contract as repudiated and, in any case, recover Our losses from You resulting directly or indirectly from the resale or otherwise disposal of the goods.

- 5.13 If You collect Goods from Us, You are solely responsible for the size, weight and positioning of the load on the vehicle and shall indemnify Us in respect of all costs, claims, losses or expenses We may incur as a result of your collecting the Goods.
- 5.14 If the Goods are to be deposited other than on your private premises, You shall be responsible for compliance with all regulations, and for all steps which need to be taken for the protection at all times of persons or property.
- 5.15 We shall make a charge for packaging, including crate cases and pallets, which shall be credited if the crate cases or pallets are returned carriage paid – in good condition and within 28 days of delivery. Polythene sacks are not returnable.
- 5.16 You will indemnify Us in respect of all costs, claims, losses or expenses We may incur as a result of delivery in accordance with your instructions. This indemnity will be reduced in proportion to the extent that such costs, losses, claims or expenses are due to Our negligence.

6. INSPECTION

- 6.1 You shall inspect the Goods at the place and time of unloading or collection.
- 6.2 You must advise Us by telephone immediately and give Us written notice within three working days of unloading of any claim for short delivery.
- 6.3 If You do not give Us that notice within that time, the Goods will be deemed to have been delivered in the quantities shown in the delivery documents.
- 6.4 You shall not be entitled, and irrevocably and unconditionally waive any rights, to reject the Goods or claim any damages whatsoever, for short delivery howsoever caused.
- 6.5 Our liability for short delivery is limited to making good the shortage.
- 6.6 Where it is, or would have been, apparent on a reasonable inspection that the Goods are not in conformity with the Contract or (where the Contract is a contract for sale by sample) that the bulk does not compare with the sample, You must advise Us by telephone immediately, and give Us written notice within three working days of inspection.
- 6.7 If You fail to give Us that notice within that time, the Goods will be deemed to have been accepted and You shall not be entitled, and irrevocably and unconditionally waive any rights, to reject the Goods.
- 6.8 If You fail to give Us that notice within that time, Clause 8 shall have effect.

7. TITLE AND RISK

- 7.1 Risk in the Goods passes when they are delivered in accordance with clause 5.
- 7.2 For the purpose of section 12 of the Sale of Goods Act 1979, We shall transfer only such title or rights in respect of the Goods as We have and if the Goods are purchased from a third party shall transfer only such title or rights as that party had and has transferred to Us.
- 7.3 Notwithstanding the earlier passing of risk, ownership of the Goods shall remain with Us and shall not pass to You until the amount due under the invoice for them (including interest and costs) has been paid in full.
- 7.4 Until ownership passes you shall hold the Goods as bailee for Us and shall store or mark them so that they can at all times be identified as the property of the Us.
- 7.5 You shall not interfere with any identification, marks, labels, batch numbers or serial numbers on the Goods.
- 7.6 We may at any time before title passes, without limiting any other right or remedy We may have, require You to deliver up the Goods to Us.

- 7.7 If You fail to carry out your obligations promptly under clause 7 and, following notification to You of Our intention to do so, We may enter any premises of or occupied by You where the Goods are stored, in order to recover them.
- 7.8 Where the Goods have been resold or irrevocably incorporated into another product in part, We may repossess any of the Goods not used or sold and by doing so terminate your right to use, sell or otherwise deal in them.
- 7.9 In the event that Goods are sold or moved out of your possession before ownership of the Goods has passed the entire proceeds of sale of the Goods shall be held in trust for Us and shall be held in a separate designated account and not mingled with other moneys or paid into any overdrawn bank account and shall be at all times identifiable as Our money.
- 7.10 We may maintain an action for the price of any Goods notwithstanding that title in them has not passed to the You.

8. LIABILITIES

- 8.1 Nothing in these Terms shall exclude or restrict Our liability for death or personal injury resulting from Our personal negligence or Our liability for fraud or fraudulent misrepresentation; nor shall these Terms exclude or restrict liability for any matter in respect of which it would be unlawful for Us to exclude or restrict liability.
- 8.2 Without prejudice to clause 8.1 We shall not under any circumstances whatever be liable for damages whatsoever to the You by reason of:
 - 8.2.1 Misrepresentation (unless fraudulent);
 - 8.2.2 Breach of warranty;
 - 8.2.3 Breach of condition (other than express or implied terms);
 - 8.2.4 Breach of duty (common law or statutory);
 - 8.2.5 Negligence;

And instead of liability in damages, We undertake liability under Clause 8.3 below.
- 8.3 Where but for the effect of Clause 8.2 of these Terms You would have been entitled to damages against Us, We shall not be liable to pay damages but subject to the conditions set out in Clause 8.4 below shall at Our sole discretion, either repair the Goods at Our own expense, or supply replacement Goods free of charge or refund all (or where appropriate part) of the price of the relevant Goods.
- 8.4 We shall not be liable under Clause 8.3:
 - 8.4.1 if the Defect arises from wear and tear.
 - 8.4.2 if the Defect arises from wilful damage, negligence, abnormal working conditions, misuse, alteration or repair of the Goods, failure to follow British Standard or industry instructions relevant to the Goods, or storage of the Goods in unsuitable conditions (but this sub-clause shall not apply to any act or omission on Our part).
 - 8.4.3 unless after discovery of the Defect We are given a reasonable opportunity to inspect the Goods before they are used, or in any way interfered with. For the avoidance of doubt, We acknowledge that the costs of suspending works are relevant to the determination of what is reasonable opportunity and this sub-clause shall not apply to any works affecting the Goods, which it may be reasonably necessary to carry out in the interests of safety and/or as emergency measures.

- 8.4.4 if the Defect would have been apparent on a reasonable inspection under Clause 6.1 of these Terms at the time of unloading, unless You advise Us by telephone immediately and written notice of any claim is given to Us within three working days of the time of unloading.
- 8.4.5 if the Defect is discovered within four months from the date of delivery, unless You give Us written notice of the Defect within three working days of it being discovered.
- 8.4.6 if in any case the Defect is discovered more than 4 months from the date of delivery.

- 8.5 You will unconditionally, fully and effectively indemnify Us against all loss damages, costs on an indemnity basis and expenses awarded against, or incurred, by Us in connection with, or paid, or agreed to be paid, by Us in settlement of any claim for infringement of any patents, copyright design, trademark, or any other industrial or intellectual property rights of any other person.
- 8.6 You will further unconditionally, fully and effectively indemnify Us against all loss damages, costs on an indemnity basis and expenses awarded against, or incurred by Us in connection with, or paid, or agreed to be paid, by Us in settlement of any other claim arising from any such manufacturing processing or milling, including – but not limited to – any Defect in the Goods. This indemnity will be reduced in proportion to the extent that such loss damage, costs and expenses are due to Our negligence.
- 8.7 If the Goods are not manufactured by Us, or have been processed or milled by a third party – whether or not at your request – Our liability, in respect of any Defect in workmanship or materials of the Goods, will be limited to such rights against the manufacturer or the third party as We may have in respect of those Goods.
- 8.8 You will unconditionally, fully and effectively, indemnify Us against all loss damages, costs on an indemnity basis and expenses awarded against, or incurred by Us in connection with, or paid, or agreed to be paid by Us in settlement of any claim by any third party arising from the supply or use of the Goods. This indemnity will be reduced in proportion to the extent that such loss, damage, costs and expenses are due to Our negligence.
- 8.9 Where subject to clause 8.1 you are entitled to maintain a claim of damages against Us, without prejudice to any other provisions in these Terms, in any event, Our total liability for any one claim, or for the total of all claims arising from any one act of default on Our part howsoever arising (whether arising from Our negligence or otherwise), shall not exceed the purchase price of the Goods – the subject matter of any claim.

9. NON-PAYMENT/INSOLVENCY

- 9.1 “Insolvent” means:
 - 9.1.1 You suspend, or threaten to suspend, payment of your debts, or You are unable to pay your debts as they fall due or admit an inability to pay your debts;
 - 9.1.2 (being a company or limited liability partnership) You are deemed unable to pay your debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) You deemed either unable to pay your debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply;

- 9.1.3 You commence negotiations with all or any class of your creditors with a view to rescheduling any of your debts, or where You make a proposal for or enter into any compromise or arrangement with your creditors;
- 9.1.4 (being a company) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with your winding up, other than for the sole purpose of a scheme for a solvent amalgamation of You with one or more other companies or the solvent reconstruction of your business;
- 9.1.5 (being an individual) You are the subject of a bankruptcy petition or order;
- 9.1.6 a creditor or encumbrancer of You attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- 9.1.7 (being a company) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over You;
- 9.1.8 (being a company) the holder of a qualifying charge over the your assets has become entitled to appoint or has appointed an administrative receiver;
- 9.1.9 a person becomes entitled to appoint a receiver over the your assets or a receiver is appointed over the your assets;
- 9.1.10 any event occurs, or proceeding is taken, with respect to You in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clauses 9.1.1 to 9.1.9.
- 9.1.11 You are ceasing, or threatening to cease to carry on your business or a substantial part of it; or
- 9.1.12 If your financial position deteriorates to such an extent that, in Our reasonable opinion, You are no longer able to comply with your obligations under these Terms.
- 9.1.13 (being an individual) the Customer dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.
- 9.2 If You fail to pay the price for any Goods on the due date or fail to pay any sum due to Us under any Contract on the due date or You become Insolvent or if You are a limited company or partnership and there is a material change in your constitution or You commit a breach of this Contract and fail to remedy that breach, all sums outstanding between You and Us shall become immediately payable, and We shall be entitled to do any one or more of the following (without prejudice to any other right or remedy We may have):
- 9.2.1 require payment in cleared funds in advance of further deliveries
- 9.2.2 cancel or suspend any further deliveries to You under any Contract without liability on Our part
- 9.2.3 without prejudice to the generality of Clause 7 of these Terms exercise any of Our rights pursuant to that clause.
- 9.3 If We reasonably incur third party costs, such as tracing or debt collection agency costs, or seek to take legal proceedings to enforce Our rights as a result of your breach of this Contract – including but not limited to – recovery of any sums due, You will reimburse Us such reasonable agency costs or legal costs incurred on an indemnity basis.
- 9.4 Without prejudice to clause 9.3 in the event of late payment We reserve the right to claim compensation pursuant to the Late Payment of Commercial Debts (Interest) Act 1998 at the prevailing rate, currently £40 for a debt less than £1000, £70 for a debt of more than £1000 but less than £10,000 and £100 for a debt in excess of £10,000.

10. GENERAL

- 10.1 This agreement and the documents referred to in it constitute the whole agreement and understanding of the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter of this agreement.
- 10.2 This Contract shall be governed and interpreted according to the Law of England and Wales and You agree to submit to the non-exclusive jurisdiction of the English Courts.
- 10.3 We shall not be liable for any delay or failure to perform any of Our obligations in relation to the Goods due to any cause beyond Our reasonable control, including industrial action.
- 10.4 The waiver by Us of any breach or default of these Terms shall not be construed as a continued waiver of that breach, nor as a waiver of any subsequent breach of the same, or any other provision.
- 10.5 Any waiver of any right under this agreement is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and to the circumstances for which it is given.
- 10.6 If any clause or sub-clause of these Terms is held by a competent authority to be illegal, invalid or unenforceable, the validity of the other clauses and subclauses of these Terms shall not be affected and they shall remain in full force and effect.
- 10.7 We may transfer, assign, novate, or subcontract all or part of this Contract and You shall be deemed to consent to any novation. This Contract is personal to You and it may not be assigned by You.
- 10.8 Nothing in this Contract is intended to, or will grant any right, to any third party to enforce any Terms of this Contract, be it express or implied.
- 10.9 If You incorporate or restructure your business in anyway, We may continue to assume You are still liable under the Term of this Contract and act upon this accordingly.

I have read and accept these terms and conditions.

Name:

Signature:

Date:

Company / business name: