

TERMS AND CONDITIONS

1. Interpretation

(a) In these Conditions: "Buyer" means the customer named overleaf; "Contract" means the contract for the purchase and sale of the Services subject to conditions; "Price" means the prices for the Services specified overleaf; "Seller" means Paynes Heating and Plumbing Services Ltd. of Oak Tree Barn, Lewes Road, Blackboys, East Sussex; "Services" means the services and goods specified overleaf which the Seller is to supply under the Contract; "Specifications" means the specifications (if any) supplied to the Buyer by the Seller.

2. Basis of the Sale

- (a) The Seller sells and the Buyer purchases the Services subject to the Conditions. It is the Seller's intention that all terms of the Contract are contained in these Terms & Conditions.
- (b) Any typographical, clerical or other error or omission in any document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.
- (c) All descriptions and illustrations of the Services contained in catalogues, price lists and advertisements or otherwise communicated to the Buyer are intended to present an idea of the Services.

3. Orders Quotations and Specifications

(a) A quotation by the Seller does not constitute an offer. Quotations are subject to withdrawal or revision at any time before acceptance of the order by the Seller.

4. Cancellation

The Buyer may cancel this agreement within 7 working days after accepting the quotation without paying a penalty. This is known as the "cooling off period". If you would like to cancel the contract you should send a written notice to Andy Payne, Director, Paynes Heating and Plumbing Services Ltd.

If you request cancellation after the "cooling off period" and before any installation has commenced the Buyer will indemnify the Seller in full against all losses, including loss of profit, the cost of all labour and materials used, any transportation costs, erection of scaffolding, damages, charges, and expenses incurred by the Seller as a result of the cancellation.

Please note that you will be required to pay for the goods or services supplied if the performance of the contract has begun with your written agreement before the end of the cancellation period.

Should the Seller be unable to install the system within a reasonable period, within 90 days of the mutually agreed delivery date, the customer may cancel the contract. Should the agreed delivery date be rescheduled the time frame above will be extended accordingly.

5. Performance

(a) Upon acceptance of the Buyer's order, the Seller shall use reasonable endeavours to complete the supply in accordance with the Specifications within a reasonable period. The Buyer is advised that dates given for completion shall be way of estimate only and the Seller shall not be liable for any loss or damage arising out of a failure to complete by a specified date and such failure shall not entitle the Buyer to terminate the Contract.

(b) The Buyer shall grant free access to the premises (including temporary storage facilities) and undertakes to procure that the Premises shall be safe for the supply of the Services.

(c) The Buyer warrants to the Seller as a condition of the Contract that:(i) all necessary third party consents required under applicable Acts, Regulations and Bylaws and from neighbours, landlords or mortgagees; and (ii) all necessary power supplies including power points required for the safe operation of any goods have been or shall be obtained in order to permit the supply of the Services.

(d) Whilst the Seller will take care to avoid damage, the Buyer has been advised that Price does not include the cost of making good decorations, walls, skirting boards, floors, floor coverings or other parts of the Premises which will be the Buyer's responsibility.

(e) The Buyer shall be responsible for clearing all furnishings, furniture and fittings affected by the supply of the Services.

(f) The Services may be varied from the Specifications and any system layout supplied to the Buyer to the extent prescribed by the Seller as necessary for the safe and efficient completion and working of the installation.

(g) Any alteration of the Services made at the request of or with the consent of the Buyer shall entitle the Supplier to make a reasonable charge for additional works and materials.

(h) The Seller will carry out the work and all communication with you according to the REAL Assurance Scheme Consumer Code.

6. Price of the Services

- (a) The price of the Services shall be the Price.
- (b) The Price includes the cost of delivery to the Buyer of any goods unless otherwise stated by the Seller.
- (c) The Price is exclusive of any applicable value added tax, which will be added at the current rate.

7. Terms of Payment

(a) Upon acceptance of the contract a deposit of the sum specified in the quotation must be paid and the balance due as specified with the final payment made on the day of completion notwithstanding that the property in any goods has not passed to the Buyer. Time of payment shall be of the essence of the Contract.

(b) Payment shall be made by the Buyer without any deduction.

(c) If the Buyer fails unlawfully to take delivery of the goods or fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Seller, the whole of the price of all goods and services already supplied to the Buyer shall fall due and payable without demand and the Seller shall be entitled to:(i) cancel the Contract in so far as it relates to goods or services not yet supplied (in which event the Buyer shall reimburse the Seller for all unavoidable costs and expenses incurred by the Seller as a result of such cancellation) or suspend any further deliveries of goods or the supply of services to the Buyer until such payment has been made in full together with interest thereon; and (ii) charge the Buyer interest (Both before and after any judgement) on the amount unpaid, at the rate of 3% per annum above HSBC plc's base rate from time to time, until payment in full is made (a part of a month being treated as a full month).

(d) The Seller shall be entitled to set off sums owed by the Seller to the Buyer against sums owed by the Buyer to the Seller.

(e) The Seller will place the Buyer's deposit and advance payment before the goods have been delivered to the property in a special "client" or other third party bank account. This money can only be used for work carried out under this contract.

If the Seller should fall into receivership, administration or bankruptcy then the money in that dedicated bank account will be returned to the Buyer or passed to another supplier who will complete the work. Only when the Seller purchases goods on behalf of the Buyer (to the value of the sums held in this account) will the Seller be entitled to transfer those sums from the dedicated bank account for the Seller's benefit.

7(f) Where the Buyer's money has been used to make specific purchases on behalf of the Buyer, then legal title to those goods, or the proportion of the goods paid for, will pass to the Buyer. The Seller must either deliver the goods to the Buyer or label them as belonging to the Buyer. Where the goods are stored by the Seller then they will be kept separate from the Seller's own goods and those of third parties. The Seller will keep the goods stored, protected, insured and identified as the property of the Buyer until they are delivered to the Buyer.

7(g) Until ownership of the goods passes to the buyer, then the Buyer must:

- Store the goods separately in such a way that they remain readily identifiable as the Seller's property
- Not destroy, deface or obscure any identifying mark or packaging on or relating to the goods
- Maintain the goods in a satisfactory condition.

8. Risk and Property

(a) Any goods shall remain the property of the Seller as legal and equitable owner until the Price has been duly paid to and received by the Seller.

- (b) Risk in any goods passes to the Buyer on delivery.

9 Warranties and Liability

- (a) Subject to these Conditions, the Seller warrants that the Services will correspond with the Specification at the time of supply and will be free from defects in material and workmanship for a period of 12 months from the date of supply.
- (b) The above warranty is given by the Seller subject to the following conditions: (i) if the Price has not been paid by the due date the Seller shall be under no liability under any warranty; (ii) the Seller shall be under no liability in respect of any defect in the Services arising from any drawing, design or specification supplied by the Buyer; (iii) the Seller shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage or negligence by the Buyer or a third party, abnormal working conditions, failure to follow the Seller's instructions (whether oral or writing), misuse or alteration or repair of any goods without the Seller's approval; (iv) the above warranty does not extend to parts, materials or equipment not supplied by the Seller.
- (c) Subject as expressly provided in these conditions, and except where the Services are supplied to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977), all warranties, conditions or other terms implied by statute, common law, trade usage or otherwise are excluded to the fullest extent permitted by law.
- (d) Any claim by the Buyer which is based on any defect in the quality or condition of the Services or their failure to correspond with the Specification shall (whether or not supply is refused by the Buyer) be notified to the Seller within 7 days from the date of supply or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure. If supply is not refused and the Buyer does not notify the Seller accordingly, the Buyer shall not be entitled to reject the Services and the Seller shall have no liability for such defect or failure and the Buyer shall be bound to pay the Price as if the Services had been supplied in accordance with the Contract.
- (e) Where any valid claim in respect of any of the Services which is based on any defect in the quality or condition of the Services or their failure to meet the Specification is notified to the Seller in accordance with these conditions, the Seller shall be entitled to repair or replace the Services (or the part in question) free of charge or, by agreement with the Buyer, refund to the Buyer the price (or a proportionate part of the Price), but the Seller shall have no further liability to the Buyer.
- (f) Except where due to the Seller's negligence, the Seller shall not be liable to the Buyer by reason of any representation, or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the contract, for any consequential loss or damage (whether for loss of profit or otherwise), costs, expenses or other claims for consequential compensation whatsoever which arise out of or in connection with the supply of the Services or their use or resale by the Buyer.
- (g) The Seller shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing, of any failure to perform, any of the Seller's obligations if the delay or failure was due to any cause beyond the Seller's reasonable control, including but not limited to Act of God, explosion, flood, tempest, fire or accident, war or threat of war, sabotage, insurrection, civil disturbance or requisition, act, restrictions, regulations, by-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary, local or other authority, import or export regulations or embargoes, strikes, lock-outs, or other industrial actions or trade disputes, difficulties in obtaining goods, raw materials, labour, fuel, parts or machinery, power failure, or breakdown in machinery.

10 Indemnity

The Buyer agrees to indemnify the Seller against any damages, losses, costs, claims or expenses incurred by the Seller towards a third party arising out of or in connection with the Services supplied by the Seller or their operation or use arising from the negligence of the Buyer.

11 Insolvency of Buyer

- (a) This Condition applies if: (i) the Buyer makes any voluntary arrangement with its creditors or becomes subject to an administration order or becomes bankrupt or goes into liquidation (otherwise than for the purpose of amalgamation or reconstruction); or (ii) an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer; or (iii) where the Buyer carries on a business at the Premises or a business connected with the supply of the Services, the Buyer ceases or threatens to cease to carry on such business.
- (b) If this Condition applies then, without prejudice to any other right available to the Seller, the Seller shall be entitled to cancel the Contract or suspend any future deliveries without any liability to the Buyer, and if the Services have been delivered but not paid for the Price shall become immediately due and payable despite any previous agreement or arrangement to the contrary.

12 General

- (a) The Seller may perform any of its obligations or exercise any of its rights hereunder itself or by any third party.
- (b) Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to that other party.
- (c) No waiver by the Seller 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.
- (d) If any provision of these Conditions is held by any 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 Condition in question shall not be affected thereby.
- (e) The Contract shall be governed by the Laws of England and Wales, and the parties submit to the exclusive jurisdiction of the English Courts.
- (f) By signing this contract you are confirming that you have received planning permission for the proposed installation or ascertained that planning permission is not required. The Seller will not be held responsible for any installations where planning permission was required but not obtained and no refunds will be offered.
- (g) Payment can be made by BACS, cheque, debit or credit card (2% surcharge).
- (h) All complaints must be communicated in writing within 1 week of the occurrence.

13 Conciliation and Arbitration

- (a) If at any time a dispute arises between the Buyer and the Seller which cannot be resolved amicably then both the Buyer and the Seller can refer the matter to conciliation. The Seller must agree to conciliation if that is the buyer's wish.
- (b) The conciliation service that will be used is that offered by the REAL Assurance Scheme and is described in the Consumer Code. It aims to reach a non-legal solution to the dispute in a reasonable timescale. The REAL Assurance Scheme will appoint a suitably qualified independent expert (or experts) to consider the matter in the light of consumer protection legislation in force. After considering all the evidence, either in writing, or in a face-to-face mediation, the expert will make recommendations for resolving the issue. Neither party will be bound by these recommendation, though both are strongly encouraged to accept them in the interests of resolving the dispute speedily and effectively.
- (c) If the conciliator's recommendations are not acceptable for any reason, the Buyer can refer the matter to the independent arbitration service and the Seller must agree to arbitration if that is the Buyer's wish. If the Seller would like to seek arbitration then we must seek the Buyer's permission first. The procedure used for independent arbitration is described in the REAL Assurance Scheme Consumer Code. The Buyer will have to pay a fee equivalent to the County Court small claims procedure fee. This fee will be refunded to the Buyer if the arbitrator finds in the Buyer's favour.
- (d) The outcome of the arbitration process will be legally binding and enforceable. An award made under the independent arbitration service will be final and binding on the Buyer and the Seller. Each party may only challenge the award on certain limited grounds under the Arbitration Act 1996.