

# Terms and conditions of sale

---

## 1 DEFINITIONS

In these terms and conditions, the following words shall have the following meanings:-

“the Company” shall mean Drakes Plumbing Supplies Limited

“the Goods” shall mean the product, articles or things offered for sale by the Company

“the Buyer” shall mean the corporate entity, firm or person seeking to purchase the Goods from the Company.

## 2 THE CONTRACT

2.1 All orders are placed and accepted by the Company only under these terms and conditions.

2.2 These terms and conditions exclude any other terms and conditions inconsistent therewith which the buyer might seek to impose even though such other terms and conditions may be submitted in a later document and/or purport to exclude or supersede any terms and conditions inconsistent with them or may be contained in any offer acceptance or counter-offer made by the Buyer.

2.3 No variation of these terms and conditions is permitted unless expressly accepted by a Director or Manager of the Company in writing.

2.4 Quotations comprise invitations to treat and may be withdrawn at any time before receipt of the Buyer’s offer to purchase and shall be deemed to be withdrawn if such is not received within thirty days from the date of quotation unless otherwise agreed by the Company in writing.

2.5 Any offer to purchase the Goods made orally and confirmed in writing must be clearly marked “confirmation of telephone order”.

## 3 CANCELLATION BY THE BUYER

3.1 No cancellation of the whole or any part of any order by the Buyer is permitted except where expressly agreed by a Director or Manager of the Company in writing.

3.2 In the event of such agreed cancellation the Buyer shall indemnify the Company fully against all expenses incurred up to the time of or as the result of such cancellation.

3.3 Goods, once delivered, may not be returned unless authorisation has been given as specified in condition 3.1 and provided that the following conditions are satisfied:

3.3.1 Goods will only be accepted if they are in brand new and unused condition;

3.3.2 Packaged items will only be accepted if the package remains unbroken and in reasonable condition;

3.3.3 Goods will only be accepted if returned within four weeks of the date of collection or delivery.

3.4 Where goods are returned by agreement:

3.4.1 A restocking charge of 25% will be made for all Special Order goods;

3.4.2 In every case the invoice number and date, together with reason for return must be stated.

3.5 The Company reserves the right not to accept bespoke items for return under any circumstances.

3.6 Delivery charges will not be refunded.

## 4. PRICE

4.1 Goods are offered for sale at the Company’s prices which are unless otherwise stated net ex works exclusive of VAT.

4.2 Quotations are based on prices applicable to quantities specified. In the event of orders being placed for lesser quantities the Company shall be entitled to adjust the price of Goods as ordered to take account of the variation in quantity.

4.3 The Company reserves the right at any time prior to delivery of the Goods to adjust the price to take account of any increase in the cost of raw materials, freight, labour or services or any currency fluctuations affecting the cost of imported materials. This includes, offers, promotions and items sold via e-commerce.

4.4 The cost of returnable pallets and containers will be charged to the Buyer but full credit will be given to the Buyer provided they are returned undamaged to the Company.

## 5. PAYMENT

5.1 Credit may be allowed on such terms and conditions as the Company shall at its absolute discretion from time to time prescribe. The Company reserves the right to refuse to accept orders on credit at any time and without giving any reason. In the event of non-payment in accordance with credit terms the whole of the price of the Goods delivered shall immediately become due and payable and the Company reserves the right to withhold, suspend or cancel outstanding deliveries.

# Terms and conditions of sale

---

- 5.2 Accounts are due for payment by the end of the month following that in which delivery is made. Goods subject to a settlement discount will be so indicated on the invoice. This discount will only be allowed where payment is received on or before the due date and provided no sum is overdue from the Buyer to the Company on any account whatsoever. The Company reserves the right to charge late payment interest at the prevailing rate in force on all overdue accounts, such interest being deemed to accrue on a day to day basis from the date due for payment.
- 5.3 In the event of any costs or legal proceedings the Buyer will be responsible for all costs reasonably incurred, including solicitors and court fees.
- 5.4 The Company reserves the right at any time at its discretion to demand security for payment before continuing with or delivering goods in satisfaction of any order notwithstanding any subsisting agreement to provide credit to the Buyer.
- 5.5 The Buyer shall not be entitled to withhold payment of any amount payable to the Company by reason of any dispute or claim of the Buyer and in the case of any short delivery or delivery of damaged Goods, shall remain liable to pay the full invoice price of all other Goods delivered or available for delivery.
- 5.6 The Buyer shall have no right of set-off, statutory or otherwise. The Company shall be entitled at all times to set-off any debt or claim which the Company may have against the Buyer against any sum due by the Company to the Buyer.
- 5.7 The Buyer shall reimburse to the Company the entire costs of representing any cheque or other instrument delivered to it in payment of any sum due by the Buyer.
- 5.8 The Company shall have the option (without prejudice to any other rights against the Buyer) to rescind the contract or to suspend deliveries and all sums payable to the Company shall become due and payable forthwith on the following events:-
- 5.8.1 Should any sum owing by the Buyer to the Company be overdue.
- 5.8.2 Should the Buyer be in breach of any term of the contract.
- 5.8.3 If the Buyer is a company and compounds or enters into any composition or arrangement with its creditors or a proposal is made for a Voluntary Arrangement with its creditors; has a Petition presented for the appointment of an Administrator or for its winding-up or an Administrator is appointed or a Winding-up Order made; has a Receiver or Manager or Administrative Receiver appointed over all or any part of its assets; is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986; passes a resolution for its voluntary winding-up save for the purpose of amalgamation or reconstruction or enters Voluntary Liquidation; is removed for any reason from the Register of Companies.
- 5.8.4 If the Buyer is an individual and enters a Deed of Arrangement or makes any assignment for the benefit of or enters into any arrangement voluntary or otherwise with its creditors either by composition or otherwise; makes or has an application made for an Interim Order in connection with a proposal to creditors for a Voluntary Arrangement; has a Petition presented for its Bankruptcy or are made Bankrupt.
- 5.8.5 If the Company has bona fide doubts as to the Buyer's solvency.
- 6 DELIVERY**
- 6.1 Delivery will be deemed to have been effected when the Goods leave the premises of the Company or as the case may be the premises of the suppliers to the Company in circumstances where the Goods are delivered direct from such suppliers.
- 6.2 Delivery dates are estimates only and time of delivery is not of the essence of the Contract.
- 6.3 The Company shall not be liable for any loss whatsoever or howsoever arising caused by its non-delivery or by the failure to make Goods ready for collection on the due date.
- 6.4 The Company reserves the right to make delivery by instalments and to tender a separate invoice in respect of each instalment.
- 6.5 When delivery is agreed to be by instalments or the Company exercises its right to delivery by instalments under clause 6.4 hereof or if there is delay in the delivery of any one or more instalments for whatever reason this will not entitle the Buyer to treat the Contract as repudiated or to damages.
- 6.6 The Buyer is to provide free of charge any labour necessary for unloading Goods when delivered and the responsibility of the Company's driver is limited to handling Goods off the vehicle at the kerbside.
- 6.7 If the Company's vehicle is kept on site for an unreasonable time or has to return to the Company's premises without completing delivery

# Terms and conditions of sale

---

	through lack of assistance or if additional staff have had to accompany the driver an additional charge will be made.	7	<b>INSPECTION</b>
6.8	Where delivery is refused by the Buyer or is delayed, suspended or made by instalments at the request of the Buyer, the Company on giving notification of readiness to delivery shall be entitled to treat the Contract as fulfilled and shall then place the Goods into store. Delivery will be deemed to have taken place for invoicing payment and the passing of risk.	7.1	The Buyer is under duty wherever possible to inspect the Goods on delivery or on collection as the case may be.
6.9	The Buyer shall either themselves or by their duly authorised representative sign the delivery ticket as acknowledgement of delivery provided that on delivery to the address nominated by the Buyer the Company shall be entitled to assume that any signature given is that of such a representative.	7.2	Where the Goods cannot be examined the carriers note or such other note as appropriate shall be marked "not examined".
6.10	The Company does not undertake to delivery or collect any load over roads or ground which in the Company's discretion is considered to be unsuitable. If a vehicle used for performing the contract with the Buyer delivers or collects a load to or from a place situate off the public highway, the Buyer is to be solely responsible for any damage or accident and is to fully indemnify the Company and its employee(s) in respect thereof.	7.3	The Company shall be under no liability for any defects, shortages or incorrect Goods that would be apparent on careful inspection if the terms of this clause are not complied with, and, in any event will be under no liability if a written complaint is not delivered to the Company within 7 days of delivery detailing the alleged defect, shortage or incorrect Goods.
6.11	Deviations in quantity of the Goods delivered (representing not more than 10% by value) from that stated in these terms and conditions shall not give the Buyer any right to reject the Goods or to claim damages and the Buyer shall be obliged to accept and pay at the contract rate for the quantity of Goods delivered.	7.4	In all cases where defects, shortages or incorrect Goods are complained of, the Company shall be under no liability in respect thereof unless a reasonable opportunity to inspect the Goods including all or any strapping, battens or packaging in which the Goods complained of are contained is provided to the Company before any use, alteration or modification is made of or to the Goods.
6.12	Unless otherwise expressly agreed in writing the price only covers delivery and working on normal working days and during normal working hours. All deliveries made or work done at the Buyer's request on Bank Holidays, Saturdays, Sundays and outside normal working hours will be subject to extra charges.	7.5	Subject to Clauses 7.3 and 7.4 the Company shall make good any shortage in the Goods and where appropriate replace any Goods damaged in transit as soon as it is reasonably able to do so, but otherwise shall be under no liability whatsoever or howsoever arising for such shortage or damage.
6.13	In the event of any Goods or any packing or container being delivered and deposited whether on the public highway or elsewhere the Buyer shall be responsible for compliance with all regulations and for all steps which need to be taken for the protection of persons or property in relation to such Goods packing or container and shall indemnify the Company in respect of all or any costs, claims, losses or expenses which it any incur as a result of such delivery.	8	<b>TITLE AND RISK</b>
		8.1	Risk in the Goods shall pass to the Buyer when the Goods are delivered to, or collected by, the Buyer or its agent.
		8.2	The ownership of the Goods shall remain with the Company until the Buyer has paid all liquidated sums owed by the Buyer to the Company whether in respect of this order or otherwise.
		8.3	The Buyer is licensed by the Company to use or to agree to sell the Goods delivered to the Buyer subject to the express condition that the entire proceeds of any sale or insurance proceeds received in respect of the Goods are held in trust for the Company and are not mixed with other monies, or paid into an overdrawn bank account and shall at all times be identifiable as the Company's money.
		8.4	Until title to the Goods passes:-
		8.4.1	The Buyer will hold the Goods as fiduciary agent

# Terms and conditions of sale

---

- and bailee for the Company;
- 8.4.2 The Goods, shall subject to Clause 8.3 be kept separate and distinct from all other property of the Buyer and of third parties and in good and substantial repair and condition and be stored in such a way as to be clearly identifiable as belong to the Company and the Buyer will not or will not allow any interference with any identification marks or serial numbers on the Goods or the packaging thereof.
- 8.4.3 Without prejudice to any other rights the Company may at any time revoke the power of sale and use contained in Clause 8.3 by notice to the Buyer upon the happening of any of the events in Clauses 5.7.1, 5.7.2 or 5.7.5 and the power of sale and use shall automatically cause upon the happening of any of the events set out in Clause 5.7.3 or 5.7.4.
- 8.5 The Buyer shall place any of the Goods in its possession or under its control and unsold at the disposal of the company and the Company by its servants or agents shall be entitled to enter upon any premises of the Buyer or any premises under the Buyer's control or to which the Buyer has a right of access for the purposes of inspection, repossession and removal of such Goods at any time.
- 8.6 The Buyer shall indemnify the Company against any costs, expenses or losses incurred or sustained by the Company in the exercise of the Company's rights under the clause.
- 8.7 The Company shall at any time be entitled to appropriate any payment made by the Buyer in respect of any Goods in settlement of such invoices or accounts in respect of such Goods as the Company may in its absolute discretion think fit notwithstanding any purported appropriation to the contrary by the Buyer.
- 9 **LIABILITY**
- 9.1 No representation or warranty is given as to the suitability or fitness of the Goods for any particular purpose and the Buyer shall satisfy itself in this respect and shall be totally responsible therefor.
- 9.2 In the event that a defect caused by faulty design, manufacture, materials or workmanship but not defects caused by abnormal use, misuse or neglect is discovered in any Goods during the period of twelve months from the date of delivery of the Goods and notified to the Company in writing within seven working days of the discovery the Company will at its option either repair the Goods at its own expense, replace the Goods or refund the purchase price of the Goods subject in all cases to the return of the Goods to the Company at the expense and risk of the Buyer.
- 9.3 Save as set out above all warranties or other terms implied by statute or otherwise will not apply to this order including but not limited to those implied by the Sale of Goods Act 1979, the Supply of Goods and Services Act 1982 and the Consumer Protection Act 1987.
- 9.4 The Company shall not be liable for any consequential loss suffered by the Buyer or any third party in relation to Goods supplied and the Buyer shall indemnify the company in respect of any claim of any person in respect of any such consequential or indirect loss.
- 9.5 The above clauses constitute the Company's entire liability which, in any event, shall not exceed the contract price save in respect of any liability for death or personal injury resulting from negligence.
- 9.6 The Buyer shall indemnify the Company against any liability that the Company may incur as a result of a claim against the Company under the Consumer Protection Act 1987 in respect of any alleged defect in the Goods.
- 9.7 Where manufacturers of Goods or materials have limited or excluded their liability in respect thereof including in respect of any consequential liability the same limitation or exclusion shall apply to the Company's liability on the sale of those Goods. Details of the Terms and Conditions upon which the manufacturers supply Goods to the Company are available on request.
- 10 **SAMPLES**
- Where samples are submitted, these are drawn from bulk and are representative of the whole and no guarantee can be given that every item will be the same in all material respects as the sample.
- 11 **SALES PROMOTION DOCUMENTATION**
- Whilst the Company takes every precaution in the preparation of its catalogues, technical circulars, price lists and its other literature, these documents are for the Buyer's general guidance only and the particulars contained therein shall not constitute representations by the Company and the Company shall not be bound thereby.

# Terms and conditions of sale

---

## 12 FORCE MAJEURE

- 12.1 The Company shall not be liable for any failure to deliver the Goods arising from circumstances outside its control.
- 12.2 Non-exhaustive illustrations of such circumstances would be acts of God, war, riot, explosion, abnormal weather conditions, fire, flood, strikes, lockouts, Government action or regulation (U.K. or otherwise), delay by suppliers, accidents and shortage of materials, labour or manufacturing facilities.

## 13 NOTICES

Any notice to be given hereunder shall be in writing and shall be deemed to have been duly given if sent or delivered to the party concerned at its address specified overleaf or such other address as that party may from time to time notify in writing and shall be deemed to have been served, if sent by post, 48 hours after posting or if by telex or facsimile transmission at the time of sending.

## 14 PROPER LAW AND JURISDICTION

The Contract shall be governed by and construed in accordance with English Law and all disputes arising in connection with the Contract shall be submitted to the non-exclusive jurisdiction of the English Courts.

## 15 SEVERANCE

If any provision of the Contract shall be void or unenforceable in whole or in part, the remaining provisions and the remainder of the provision affected shall remain in full force and effect.

**Please keep this document for your records.**