

TERMS AND CONDITIONS OF William Smith Heating Solutions Scotland Ltd

1. DEFINITIONS

1.1. The following words shall, where used in the following terms and conditions, have the meanings set out below, save where the context otherwise requires:-

- 1.1.1. "Customer" means the legal person (whether as an individual, company, partnership or otherwise) with whom the Seller contracts for the supply by the Seller (or its agent) of Goods;
- 1.1.2. "Contract" means the contract (incorporating these terms and conditions and any other contractual documents supplied by the Seller to the Customer, including but not limited to, the page overleaf, the report prepared by the Seller's representative or agent and any building work quotation attached hereto) between the Seller and the Customer for the sale of Goods by the Seller (or its agents) to the Customer;
- 1.1.3. "Goods" means any goods which the Seller agrees to sell to the Customer, and includes, any design, installation and other services provided or to be provided by the Seller or its agents;
- 1.1.4. "Quotation" means the Seller's quote of the cost of the Goods to be supplied by the Seller to the Customer;
- 1.1.5. "Seller" means William Smith Heating Solutions Scotland Ltd, a company incorporated under the Companies Acts with registered number SC422624 and having its registered office at William Smith Heating Solutions Scotland Ltd, Unit 33, Anniesland Business Park, Netherton Road, Anniesland, Glasgow, G13 1EU.

1.2. In these terms and conditions "writing" shall include email and fax communications.

1.3. Headings within these terms and conditions are for convenience only and shall not affect the interpretation of these terms.

2. GENERAL

2.1. These terms and conditions shall form part of the Contract between the Seller and the Customer.

2.2. No variation of, or addition to, these terms and conditions and no modification of the Contract shall be effective unless mutually agreed between the parties. These terms and conditions shall, unless mutually agreed between the parties, supersede any terms and conditions presented by the Customer.

2.3. These terms and conditions shall become binding on both parties when:-

- 2.3.1. The Seller issues the Customer with an acceptance of an order; or
- 2.3.2. The Seller notifies the Customer that they are able to provide the Goods, whichever is the earlier, at which point a contract shall come into existence between the parties.
- 2.4. Except in circumstances where a Quotation has been agreed to by a Customer, a Quotation from the Seller shall only be valid for a period of 30 calendar days from its date of issue.
- 2.5. If the Customer wishes to cancel the Contract within the cancellation period of fourteen working days starting from the date of receipt of the notice in writing of the right to cancel, the Customer MUST DO SO IN WRITING and deliver personally or send (which may be by electronic mail to: cancellation@williamsmithheating.com) the notice of cancellation to the address stated on the notice of the right to cancel attached to this Contract. The Customer may use the notice of cancellation contained within the notice of the right to cancel attached to this Contract but is not obliged to. The notice of cancellation is deemed to be served as soon as it is posted or sent and if emailed from the day it is sent. Any credit agreement related to this Contract will be automatically cancelled if the Contract is cancelled under this clause.
- 2.6. The Customer should check that the details in the Contract are complete and accurate before committing to the Contract. If the Customer believes that there is a mistake, the Customer should inform the Seller of that mistake. The Customer should read and understand the Contract before conclusion of the Contract, because the Customer will be bound by the terms and obligations of the Contract once it comes into existence between the Customer and the Seller, in accordance with clause 2.3.
- 2.7. The Customer will be subject to the policies and terms and conditions of the Seller in force at the time that the Contract comes into existence, unless any change to the Contract is required by law or government or regulatory authority, in which case, it will apply to orders the Customer has previously placed that the Seller has not yet fulfilled.
- 2.8. Any advertising, illustrations or images published or provided by any person or organization other than the Seller (including catalogues and brochures provided by suppliers and manufacturers) do not form part of the Contract, as the Seller cannot guarantee that such advertising, images or illustrations are an accurate representation of the Goods.

3. INSTALLATION

- 3.1. The work will be carried out between the hours of 8am and 4.30pm, Monday to Friday, excluding public holidays, unless otherwise agreed.
- 3.2. The Seller will make every effort to complete any services provided on time (or, if no date has been agreed, within a reasonable time) but we cannot be held responsible for circumstances beyond our control. In these cases we will complete the work as soon as reasonably possible.
- 3.3. With the exception of any product that contains any form of asbestos, the Seller will remove debris and unused materials.
- 3.4. The Seller does not undertake to arrange for the delivery, fitting, connection or any step required to obtain a gas or power supply. This will be strictly the Customer's responsibility.
- 3.5. Any building work to be carried out by the Seller shall be detailed within the Contract.
- 3.6. The parties may at any time mutually agree to vary the Goods to be provided. Where the Seller gives notice to the Customer agreeing to perform alterations on terms different to those already agreed between the parties, and the Customer confirms that he

wishes the alterations to proceed on those terms, the Contract shall be amended to reflect such alterations and thereafter the Seller shall perform the Contract upon the basis of such amended terms.

3.7. The Seller shall use all reasonable care and skill in the providing any services under the Contract.

4. PAYMENT

4.1. The price of the Goods will be as set out in the Quotation or, if a Quotation has not been provided or the Quotation has expired, the current price in Seller's price list in force at the time the Contract comes into existence. Prices are liable to change at any time, but price changes will not affect orders that the Seller has confirmed in writing. Any deposit required will be mutually agreed and shall be received by the Seller prior to the commencement of work.

4.2. Unless otherwise agreed between the parties, the balance of any payment for any Goods (together with any applicable value added tax ("VAT")) shall become payable upon completion of the work, or at such other time as the Seller may agree with the Customer, unless credit facilities have been agreed in writing by the Seller. Prices quoted are inclusive of VAT (and any other applicable taxes) except where otherwise stated, if the rate of VAT changes between the date of the order and the date of completion of the work, the Seller will adjust the VAT payable to the rate applicable at the date of the invoice, unless Customer has already paid for the Goods in full before the change in the rate of VAT takes effect.

5. TERMINATION

5.1. Without prejudice to any other right available, the Seller shall be entitled at its sole discretion to hold the Contract as having been cancelled by the Customer if: (i) the Customer shall fail to pay when due (except to the extent that the Customer has a good valid legal reason to withhold a certain element of payment) any sum due under the Contract; or (ii) the Customer shall commit or continue any breach of any obligation under the Contract (other than non-payment which shall be dealt with as above) and shall fail to remedy the same within fourteen days of the Seller giving notice thereof; or (iii) the Customer shall make any arrangement with its creditors, or be declared bankrupt.

5.2. On the occurrence of any of the events set out in clause 5.1 above, all sums due by the Customer to the Seller shall become immediately due and payable (subject to the terms of clause 5.1), notwithstanding any prior agreement to the contrary.

5.3. It is a condition of the Contract that the Customer is responsible for ensuring that there is an adequate electrical and/or gas supply to the dwelling prior to commencement of any work. Where such supply is not laid to enable work to commence within 90 days of the date of the Contract, the Seller reserves the right to terminate the Contract with immediate effect.

5.4. If the Customer has not allowed the Seller access in order to commence the process of installation within 90 days of the date of the Contract, the Seller reserves the right to terminate the Contract with immediate effect. If the Contract is so terminated, the Seller shall not have any liability for any costs, loss or damage arising from such termination. Any deposit paid by the Customer in respect of the Contract will be refunded by the Seller.

6. DELIVERY AND RISK

- 6.1. Failure by the Seller to make delivery within a reasonable period of time shall entitle the Customer to terminate the Contract.
- 6.2. Where Goods are sold ex-works or carriage paid by the Seller to a specific place, risk therein shall pass to the Customer as soon as the Goods arrive at their destination. For the avoidance of doubt, in the event that damage or loss occurs to the Goods prior to the Goods arriving at their destination, the Customer shall not be liable for any such damage or loss. During the installation of the Goods, the Customer is responsible for any loss or damage to the Goods, except if such loss or damage is: (i) caused by employees of the Seller; or (ii) due to a manufacturing design or design fault.

7. TITLE

7.1. Title to the Goods shall not pass to the Customer until payment has been made in full for the Goods and all other sums due by the Customer to the Seller have been paid in full without deduction or set-off.

8. THE SYSTEM GUARANTEE

- 8.1. The Seller will guarantee the materials supplied by them or their approved central heating installers for such period from the date of completion of installation as is specified in the Contract.
- 8.2. The Customer should note that it is only the Goods supplied and fitted by the Seller that are guaranteed. Subject to the Customer giving notice to the Seller, the said guarantee is fully transferable to any subsequent buyer of the property where the Goods have been installed.
- 8.3. Said guarantee will not be enforceable in circumstances where damage has been caused by the improper operation of the system and or equipment by the Customer.
- 8.4. Said guarantee shall extend to the free replacement of materials and mechanical component parts that fail in the course of normal use. It shall not apply where damage has occurred due to abnormal working conditions, sludge build-up, negligence, willful damage, misuse or alteration of the system by a third party.
- 8.5. The central heating system insofar as installed by the Seller will be guaranteed for up to or 5 years from the date of completion of installation (as specified in the Contract) subject to the conditions detailed in this clause. As soon as reasonably possible after one year has elapsed from the date of commencement of the guarantee, a free of charge service will be undertaken by the Seller. When such service is due, the Seller shall contact the Customer to arrange a mutually acceptable time to undertake the service. Thereafter, the Customer shall ensure that annual services are carried out by the Seller or another authorised representative of the manufacturer of the Goods and such subsequent annual services shall be chargeable at the rate in force at the time.

9. LIABILITY AND ENFORCEABILITY

9.1. The Seller shall not be liable for any delay in installation in the event of any strike, lock out, trade dispute, accident, fire, flood or any natural disaster or act of God or any contingency whatsoever beyond the reasonable control of the Seller affecting the supply or installation of the Contract. Such suspension or cancellation shall not constitute a breach of contract by the Seller, nor will the Customer be liable to claim for any loss or damage howsoever arising as a result of these circumstances

9.2. With the exception of cases where death or personal injury has occurred and such injury or death is caused by the negligent acts or omissions of the Seller or the breach of a duty of care owed by the Seller to the Customer, the Seller will not be liable under the Contract for any loss or damage caused by the Seller or their employees or agents in circumstances where:-

- 9.2.1. there is no breach of a legal duty of care owed to the Customer by the Seller or by any employee or agent of the Seller;
- 9.2.2. such loss or damage is not a reasonably foreseeable result of any such breach; and
- 9.2.3. any increase in loss or damage resulting from breach by the Customer of any term of this Contract.

9.3. In the event that the Customer is using the address where the Goods are being installed in part for commercial purposes then no liability for loss of profits or other economic loss arising out of a breach of this Contract can be accepted by the Seller.

9.4. Where a Contract has been concluded between a Customer and the Seller, this clause 9 does not include or limit in any way the Seller's liability for:-

- 9.4.1. fraud or fraudulent misrepresentation; or
- 9.4.2. any failure to inform the Customer of any reason which means that the Seller does not have the right to sell the Goods free from any charge; or
- 9.4.3. any other matter for which it would be illegal or unlawful for the Seller to exclude or attempt to exclude its liability.

9.5. Where the Contract requires the connection of new equipment to the Customer's existing central heating system, the Seller shall not be liable for any loss arising from the breakdown, leaks or poor performance of, or damage caused to, the Customer's existing central heating system as a result of faulty pipework or some other defect or malfunction of the Customer's existing central heating system.

9.6. The Seller cannot accept responsibility for any deterioration in the performance of the central heating system caused by fluctuations in the water pressure provided by the Customer's water supplier. The Customer should ensure an adequate mains water supply before concluding the Contract.

9.7. If the Customer is a tenant, he may need his landlord's permission for the Contract to be performed. The Seller will assume that such permission has been obtained. The Customer agrees to indemnify the Seller against any liability for any loss or damage arising from failure to obtain such permission.

9.8. The Customer will be responsible for all claims, liabilities, damages, costs and expenses suffered or incurred by the Seller as a result of the Customer's breach or default in the discharge of his obligations under this Contract.

9.9. Each clause of these terms and conditions shall be considered separately and shall be enforceable accordingly.

10. WARRANTY

10.1. The Seller warrants that all Goods manufactured by and/or sold by it are of satisfactory quality at the time of supply. If the Goods (or any part of them) have been lost or damaged by Seller, the Seller will at the Customer's option either repair or replace them or refund the price paid for them.

11. NOTICES

11.1. Notices to be given by the Customer to the Seller may be sent (1) by post to the Seller at the Seller's premises at Unit 33, Anniesland Business Park, Netherton Road, Anniesland, Glasgow, G13 1EU (or to such other place as the Seller may from time to time nominate for that purpose), marked for the attention of the Seller's managing director; (2) by email to the Seller to any email address nominated by the Seller for that purpose; or (3) by fax to 0141 954 3090 (or such other fax number as the Seller may from time to time nominate for that purpose). All notices to be given by the Seller to the Customer shall be deemed to have been properly given for the purposes of this Contract where given in writing or sent by email by the Seller to the Customer by post to the last known address or email address of the Customer.

12. DATA PROTECTION

- 12.1. The Seller will only use any personal information provided by a Customer to provide the Goods and any services under the Contract, or to inform the Customer about similar services which it provides, unless the Customer informs the Seller that the Customer does not want to receive this information.
- 12.2. The Customer acknowledges and agrees that the Seller may pass the Customer's details to credit reference agencies.

13. WAIVER

- 13.1. No failure or delay by either party to use any rights available to them under this Contract shall mean that the relevant party has given up those rights.
- 13.2. Any partial usage of any rights available to the parties under the Contract shall not prevent the relevant party from using those rights at a future date, to the extent possible.

14. GOVERNING LAW

14.1. The construction, validity and performance of the Contract and these terms and conditions shall be governed by Scots Law and the Seller and the Customer hereby submit to the exclusive jurisdiction of the Scottish courts.