

Terms & Conditions for the supply of goods and services

- 1.(a) In these conditions 'the Company' means Emsworth Fireplaces Ltd and the 'Customer' means the individual firm, Company or other party with whom the Company contracts 'Supply' included (but is not limited to) any supply under a contract sale.
- (b) No order in pursuance of any quotation or otherwise shall be binding on the Company unless and until such order is accepted by the Company. Any contract made between the Company and the Customer (herein called 'the Contract') shall be subject to these conditions and save as after mentioned no representative or agent of the Company has authority to agree any terms or make any representations inconsistent with them or enter into any contract except on the basis of them; any such term representation or contract will bind the Company only if in writing and signed by a director.
- (c) Unless otherwise agreed in writing by the company these conditions shall override any terms and conditions stipulated or referred to by the Customer in his order or pre-contract negotiations.
- (d) Any description contained in the Company's catalogues, samples, price list or other advertising material is intended merely to present a general picture of the Company's products and shall not form a representation or to be part of the Contract.
- (e) In the event that the Company has not given a written acknowledgement of the Customer's order these conditions provided the Customer shall have had prior notice of them, shall nonetheless apply to the Contract.
- (f) The Company reserves the right to correct any clerical or typographical errors made by its employees at any time.
2. Where goods are made to the Customer's specification, instruction or design, the Customer undertakes full responsibility for the suitability and accuracy of the specification, instructions or design and undertakes to indemnify the Company against any infringement of any patent, registered design, trade mark, trade name or copyright and any loss, damage or expense which it may incur by reason of such infringement in any country.
- 3.(a) Subject to any agreement to the contrary the Company's quotations are provisional and may be altered to take account of any change taking place between the date of quotation and the Company's acceptance of the Customer's order in the price of raw materials, rates of wages and other costs of production or in the Customer's specification, instructions or design or in the event that the Customer orders part only of the quantity referred to in any quotation.
- (b) The Company shall be entitled to increase its prices at any time to take account of any increase in the cost to the Company of purchasing any goods or materials or manufacturing working on or supplying any goods. All prices quoted are exclusive of VAT and the Customer shall pay any and all taxes, duties, and other government charges payable in respect of the goods. Price charged will be price prevailing at date of despatch.
- (c) The Company shall be entitled to deliver the quantity of goods required under the contract: or 5% and the contract price shall be adjusted accordingly.
- 4.(a) Unless otherwise specified by the Company, the Company shall deliver the goods by the means most convenient to the Company to the address or addresses specified by the Customer or (in the event that the Customer fails to specify an address) to any address at which the Customer resides or carries on business.
- (b) Should the Company be delayed in or prevented from supplying the goods or services due to war, governmental or parliamentary restrictions, strike, lock-outs, fire, floods, explosions, labour disturbances, trade disputes, damage to or destruction of goods, breakdown of machinery, shortages or labour or of raw materials of Act of God or due to any other cause whatsoever beyond the reasonable control of the Company the Company shall be at liberty to cancel or suspend the order placed by the Customer without incurring any liability for any loss or damage arising there from.
- (c) While the Company will endeavour to supply the goods or services by any date or within any period agreed upon such dates and periods are estimates only given in good faith and the Company will not be liable for any failure to supply by such a date or within such a period. Moreover the Company shall be entitled to defer supply until any monies due from the Customer have been received.
5. Unless otherwise specified in writing by the Company payment for the goods or any instalment thereof shall be made by the Customer net cash not later than the end of the month following the month in which such goods are despatched or (in the case of goods to be collected from the Company's premises) in which the company notifies the Customer that the goods are ready for collection. Time for payment shall be of the essence of a Contract. Without prejudice to any other rights of the Company interest will be payable on all overdue accounts at 3% per month and for the purposes of paragraphs 6 and 8 hereof the full purchase price of the goods shall include any interest payable hereunder.
- 6.(a) If the Customer shall fail to make any payment when it becomes due or shall enter into composition or any arrangement with his creditors or if being an incorporated Company shall have a receiver appointed or shall pass a resolution for winding up or a Court shall make an order to that effect or if there shall be any breach by the Customer of any of the terms and conditions hereof the Company may defer or cancel any further supply and treat the contract of which these conditions form part as determined but without prejudice to its right to the full purchase price for goods and services supplied and damages for any loss suffered in consequence of such determination.
- (b) Cancellation by the Customer will only be accepted at the discretion of the Company and in any case on condition that any costs or expenses incurred by the Company up to the date of cancellation and all loss or damage resulting to the Company by reason or such cancellation will be paid by the Customer to the Company forthwith. Acceptance of such cancellation will only be binding on the Company if in writing.
- (c) A charge will be made for any costs incurred by the Company due to suspension or any order by the Customer or in the event that that Customer defaults in collecting, or giving instructions for the delivery or any goods.
- 7.(a) Nor claim for damage in transit, shortage of delivery or loss of goods will be entertained unless the Customer shall have given the Company written notice of such damage shortage or loss with reasonable particulars thereof within 3 days (excluding Saturday, Sunday and public holidays) after receipt of goods or (in the case of total loss) within 10 days of receipt of the invoice or other notification of despatch. The Company's liability, if any, shall be limited to replacing or (in its discretion) repairing in such goods and it shall be a condition precedent to any such liability that the Customer shall if so requested have returned damaged goods to the Company within 14 days of such request. The Customer shall not be entitled to make any claims against the Company for consequential loss arising out of such damage shortage or loss as aforesaid.
- (b) Orders for Bulk Deliveries are accepted on the express understanding that the Company will incur no liabilities whatsoever in respect of the following:
- (i) Failing to ensure that discharge is affected into storage space specified by the Customer.
- (ii) Failing to ensure that the storage space available will accept the load delivered.
- (iii) Failing to ensure that the receiving facilities are in correct working order.
- (c) The Company will indemnify the Customer in respect of any direct damage to property caused by the negligence of the Company or the negligence or wilful default of its servants or agents in or in connection with the supply of any services under the Contract at the Customers premises provided that the Company's liability hereunder shall not exceed the price payable under the contract.
- (d) The Customer warrants that all goods supplied by the Company will be used within any period recommended by the Company as the safe shelf life and will indemnify the Company against any claims arising as a result of the use or sale of any goods outside such period.
- (e) Save as otherwise provided in these conditions the Company's liability in respect of any defects or failure of goods supplied or default in work done (including all work done in or in connection with the supply of any services required under the Contract or the provision of any information or advice) is limited to replacing or (in its discretion) repairing or paying for the repair or replacement of goods which are defective by reason of faulty or incorrect design, workmanship, parts or materials and in the event of any error in any specification or other description which has formed a representation or is part of a contract the Company's liability in respect of any such error shall not exceed the price of the goods on respect of which the description is incorrect. Conditions precedent to the Company's liability hereunder shall be that as soon as reasonably practicable, the Customer
- (i) Shall have given the Company reasonable notice of the defect, failure, default or error.
- (ii) Shall have either returned the goods to the Company or provided authority for the Company's servants or agents to inspect them, as the Company may request. The Company shall have no other or further liability in respect of any direct or consequential loss or damage sustained by the Customer arising from or in connection with any such defect failure default or error as aforesaid.
- (f) Where the Company agrees to repair or replace goods in accordance with the foregoing provisions of this paragraph any times specified for delivery under the Contract shall be extended for such period as the Company may reasonably require.
- (g) All goods sold by the company (other than under international supply contracts as described in Section 26 of the unfair Contract Act 1977) are supplied by the benefits of the terms implied by section 12 of the Sale of Sale Goods Act 1979. Subject there to, and whether or not the Contract is a Contract of Sale, all conditions, warranties and other terms expressed or implied, statutory or otherwise, are expressly excluded save insofar as contained herein or as otherwise expressly agreed by the Company in writing provided that if and insofar as any legislation or any order made there under shall make or have made it unlawful to exclude or purport to exclude from the Contract any term or shall have made unenforceable any attempt to exclude any such term, the foregoing provision of this paragraph will not apply to any such term.
8. The following provision shall apply to all contracts other than international supply contracts as defined in paragraph 7 g) above and to all goods which under the Contract the Company agrees to supply to the Customer. No failure by the Company to enforce strict compliance by the Customer with such provisions shall constitute a waiver thereof and no termination of the contract shall prejudice limit or extinguish the Company's rights under this paragraph.
- (i) Upon delivery of the goods the Customer shall hold the goods solely as bailee for the Company and the goods shall remain the property of the Company until such time as the Customer shall have paid to the Company the full purchase price thereof. Until such time the Customer if so required by the Company shall store the goods separately from goods not being given the property of the Company and in such a fashion as to be readily identifiable by the Company who shall be entitled to examine the goods upon reasonable notice, to require that the goods shall be delivered up to it and to recover the same and for the purpose of exercising such rights the Company its employees and agents with appropriate transport may enter upon the Customers premises and any other location where the goods are situated.
- (ii) The Customer is hereby licensed to sell on the goods and any products incorporating any of them but shall hold the whole of the proceeds of sale as trustee and agent for the Company and shall not mingle any of the proceeds of sale with his own monies or in any bank account with other monies but shall insure that all such receipts of sale are kept separate and identifiable. More over, the Customer shall immediately upon receipt of the proceeds of sale, remit to the Company the full purchase price of the goods less any part thereof which has already been paid.
- (iii) If the Customer does not receive the proceeds of any such sale on the due date he shall within 7 days notify the Company and, if called upon to do so, assign to the Company any claim of any nature whatsoever against the person or persons to whom he has supplied the goods or any part of them.
- The Customer shall maintain all appropriate insurance in respect of the goods from the date or dates on which the risk therein passes to him. In the event of any loss or damage occurring while the goods remain the property of the Company the Customer shall hold all insurance monies received in respect thereof as trustee for the Company and Separate and identifiable from all other monies and shall forthwith remit to the Company the full purchase price of the goods less any part thereof which as already been paid.
9. In the case of international supply contracts property in the goods shall pass to the Customer on delivery.
10. The attention of the Customer is drawn to the provisions of section 6 of The Health and Safety at Work Etc Act 1974. The Company will make available on request information relating to the use of goods to ensure that as far is reasonably practicable they will, when put to that use, be safe and without risk to health. The Customer warrants that he will ensure that any person to whom he supplies the goods is made aware that such information is available from the Company.
11. Save as hereinbefore provided and subject to the provisions of section 2.1 of the Unfair Terms Act 1977 the Company shall not be liable to the Customer for any damage or for any direct or consequential loss incurred by the Customer in consequence of any negligence on the part of the Company or negligence or wilful default on the part of its servants or agents in, or in connection with, the supply of any goods or in the carrying out of any work (which expression shall, without prejudice to its generality include all work done, in or in connection with, the design or and manufacture of any goods, the provision of any services and the supply of any information or advice).
12. The proper law of all contracts with the company shall be English law which shall govern in all respects the construction and effect of such contracts and of these Conditions. The Customer agrees that in any event of any dispute arising out of the Contract or the performance thereof he will submit to the jurisdiction of the English