

# Keemlaw & Keemlaw Limited Standard Conditions of Sale.

## 1. General

All orders are accepted subject to these Conditions of Sale, which cannot be altered except in writing by us. These Conditions of Sale are applicable only as far as consistent with the Sale of Goods Act 1979 and the Unfair Contract Terms Act 1977.

You may not assign your contractual rights hereunder to a third party without our prior written consent. The conditions and all other express terms of the contract shall be governed and construed in accordance with the Law of England and shall be deemed to have been made at our head office.

## 2. Compliance With The Law

Acceptance of the Seller's estimate/quotation shall constitute a Warranty and representation by the Buyer that he has complied with every applicable Statute, Order in Council, Regulation or Direction, Bye-Law or other lawful requirement or instruction whether of the Government or any Local or other Lawful Authority and in particular, that he has lawfully obtained every necessary licence, permit or authority that may be required in connection with the work.

## 3. Validity

This offer is open for 30 days only from the date shown. It is subject to withdrawal or alteration at any time before a contract is concluded.

## 4. Plans, Drawings & Designs Patent Copyright

All drawings and specifications prepared by the seller shall remain the property of the seller and the copyright is reserved accordingly. You will indemnify us against all damages penalties, costs, claims and liability in respect of any libellous matter printed, the infringement of any patent rights, utility model rights or registered design or copyright resulting from the supplying of goods or carrying out of work in accordance with your specification or instructions expressed or implied. We reserve all rights protected by statute, license, registration or at Common Law vested in us by way of letters patent, utility model rights, registered designs of copyright or trade secrets in all documents, drawings, plans or specifications, technical data, or formulae, or in any goods or materials written, drawn, or manufactured by us and you will not reproduce the same or cause or permit them to be reproduced without our written consent. We reserve the right to charge for drawings.

## 5. Descriptions

Although every effort has been made to ensure that the descriptions and illustrations in our catalogues are correct, they do not constitute a sale by description. We reserve the right to modify or vary the design, specification, or finish of any of our products without notice unless we have given you a written undertaking to the contrary.

## 6. Prices

Prices are based on our total costs at the date of quotation. If these costs should vary between the time of ordering and delivery, our prices will be amended accordingly.

Prices do not include the cost of erection and installation unless specifically stated. There is normally an extra charge for deliveries outside the mainland of Great Britain and to Northern Ireland and the Republic of Ireland.

## 7. Estimate

All quotations and tenders, unless otherwise agreed, are based on the work being done during recognised normal working hours specified in the National Agreement of the relevant Industry. Overtime authorised by the Customer, his Architect or other Agents shall be an additional charge. Authorisation for overtime must always be in the form of written authority.

## 8. Terms

Nett unless otherwise agreed.

## 9. Payment

On contract work, we reserve the right, in accordance with trade custom, to require payment by instalments as the work progresses based on the total contract price. We will despatch goods to customers who do not have an account with us only when we have received cash against a pro-forma invoice or when goods are despatched on a C.O.D. basis. OVERDUE ACCOUNTS may be subject to an interest charge of 2.5% per month. It is a material term of the contract that monthly accounts are rounded up to end of each month and are posted to the customer on or about fifth of the following month. Payment is required by 21st day of month following despatch or within such other time as we may allow in writing. Failing timely payment, we shall be entitled at our option to rescind the contract and repossess the goods, or to take such other steps, as we think fit. The customer shall not be entitled to retain the price or any portion thereof in respect of any alleged counterclaim or set-off.

## 10. Delivery

Delivery dates are estimates only and do not form part of any contract and it is agreed that s.29 (3) of the Sale of Goods Act 1979 shall not apply. Whilst we make every effort to meet the dates we quote; customers should appreciate that they can be affected by many factors beyond our control. We cannot be held liable for any losses that a customer may incur because of delivery dates being changed by factors beyond our control; in the event that a contract is delayed, it will remain in suspense until it can be executed under the conditions prevailing at the time of quotation. It is the customer's responsibility to provide labour for unloading goods unless otherwise specified in the quotation document. If advance notice of delivery time is required, the customer should indicate this on the order.

In the event of deferment of delivery after an item has been made against a customer's requirements, we reserve the right to charge expenses incurred in storing said goods.

Any assistance given by the carrier beyond the stated delivery address shall be at the sole risk of the customer who will keep the carrier indemnified against all claims or demands that may arise notwithstanding that property in the goods may not yet have passed to the customer.

## 11. Installation

We will not accept responsibility for the incorrect installation or adjustment of goods by others. If the goods are to be installed by us, then the following conditions precedent apply unless otherwise stated by us in writing:

- You are responsible for ensuring that the gas/electricity service supply is terminated with a suitable isolator or stop cock within one metre of the position of each of the goods requiring such services, and our quotation/price does not include the costs of providing such a supply.
- You will provide a clear site for the installation.
- Installation will be carried out during normal working hours.
- We shall not be responsible for the making good of any building work or paintwork, which becomes necessary because of our installation.
- We shall not be responsible for the removal of existing goods connecting to your existing services, scaffolding, electrical earthing, or the obtaining of building requisitions, byelaw, or property owner's permission relating to the installation.
- All installation work whether included as part of the price quoted or as a separate quotation, will be undertaken only at the risk of the customer.

## 12. Passing of Property

The property in the goods shall not pass to the customer unless and until the full purchase price has been paid to us; and the customer expressly agrees:

- Not to resell, hire, lend, gift, pledge or otherwise dispose of the goods until the full purchase price has been paid; and
- Until the full price is paid, to store the goods in such a way that they are clearly identifiable as our property; and
- Until the full price is paid, to act as our agent in respect of the goods.

In the event that the price remains unpaid we may enter upon any premises where such goods are stored or where they may be reasonably be thought to be stored for the purpose of re-possessing said goods and recovering the same.

## 13. Risk of Damage or Loss, etc.

Risk of damage to or loss or destruction of the goods shall pass to the customer on delivery of the goods at the designated delivery point, notwithstanding that property in the goods has not yet passed to the customer; and the customer shall insure accordingly. The designated delivery point will be as follows:

- EX WORKS – as soon as the goods are loaded onto the truck or other transport for transit to the customer.
- BY US TO A SPECIFIED PLACE – the place or designated place specified; providing that we shall not be liable for damage caused during unloading.

## 14. Damage

All goods and materials delivered to site, fixed or unfixated shall be at the sole risk of the Buyer, and in the event of any of the same being damaged, destroyed, stolen, the Seller shall be entitled to full payment therefore, also for any work damaged, destroyed or lost, and the cost of replacing any such goods and materials and of re-instating or restoring any such work shall be charged as an extra, provided that the Buyer shall not be responsible for any loss occasioned solely by the negligence of the Seller or their employees. The buyer shall be solely responsible for all loss or damage to the contract works and shall indemnify the seller against such loss or damage.

## 15. Loss in Transit

In the event of non-arrival of goods, no claim will be entertained unless you write and tell us of the non-arrival within fourteen days of our despatch date (which will be shown on the advice note). Non-delivery of postal items must also be notified in writing to both the postal authorities and ourselves within seven days of the despatch date shown on the advice note.

## 16. Shortage

No responsibility will be accepted for goods that are short delivered unless notification in writing is sent to the Company within 48 hours from receipt of goods.

## 17. Third Party Liability

The customer will be liable for any claim relating to or arising out of the goods whether brought against the customer or us, under any statute or at Common Law which arises from any cause except that of negligence of our employees. The customer will indemnify us against any such claim and against the cost of legal proceedings.

## 18. Cancellation

If a customer cancels an order for standard items of equipment after that order has been entered in our books, we reserve the right to hold the customer liable to pay 25% of the trade price as liquidated damages to cover our administrative and other costs.

If a customer cancels an order for an item of equipment, which has been made to his specific requirements, he will be liable (in addition to the paragraph above) to bear the additional cost of converting the equipment to standard specification.

Where the items are not capable of being converted, the customer will be liable for the cost of cancellation as well as the liabilities outlined in the paragraph above.

## 19. Warranty

Provided you have complied with our contractual terms and make payment of the total payment and make payment of the total price of the goods and installation charges by the due dates for payment, we warrant that subject to Clauses A and B herein:

- Any goods manufactured by us which prove faulty in material of workmanship with a period of 12 months from the date of delivery, or installation by us will be repaired or replace by us free of charge.
- We guarantee any goods not manufactured by us by us against faulty material and workmanship for the same period as and to the same extent as the manufacturers guarantee them.
  - We exclude all liability in respect of any defect in the goods or installation arising from any drawing, design or specification supplied to you, your servants, or agents.
  - Certain goods (such as e.g., ovens) require regular maintenance/servicing at least every six months (and more frequently with heavy use) even during the warranty period. We will carry out such service either under a separate service agreement or at your request on an ad hoc basis at our normal charging rate from time to time. Defects arising from a failure to regularly service and maintain the goods are excluded from our warranty and any work and parts to rectify such defects will be charged at our normal rate. Unless you enter into a service agreement with us or request service on our normal contractual terms, no service will be provided. No condition warranty description or representation is or has been given by us to you other than stated herein or giving by us in writing and any condition and/or warranty express or implied (whether by statute, common law or otherwise), other than those contained herein are expressly excluded. We regret that we cannot accept liability for any item that has been repaired before we have been able to inspect it or given authority for repair work to be carried out or in cases where other than genuine manufacturers recommended components have been used. We do not undertake to pay for the cost of disconnecting or reconnecting any equipment or the carriage charges involved in returning it to us.

## 20. Liability

We shall not be under any liability to the customer for any loss or damage whether direct, indirect, or consequential arising out of this contract, whether liability in contract, tort, delict, quasi-delict or otherwise, and whether by reason of negligence of our employees or our breach of contract or otherwise, provided that this condition shall not apply to –

- Any liability arising as previously mentioned for death or personal injury.
- Any liability in respect of any breach of sections 12 – 15 of the Sale of Goods Act 1979.
- Any consumer contract as defined in the Unfair Contract Terms Act 1977.

## 21. Limit of Liability

If any liability on our part shall arise (whether under the express or implied terms of this contract, or at common law, or in any other way) to the customer for any loss or damage whatever nature arising out of this contract of the goods supplied hereunder, such liability shall be limited to the payment by us by way of damages of a sum not exceeding a maximum of twice the purchase price and the customer shall insure accordingly; or we, if requested to do so in writing by the customer, will arrange insurance on the customer's behalf, premiums to be paid by the customer. Providing a consumer contract as defined in the Unfair Contract Terms Act 1977, nor to any liability for death or personal injury.