

CONDITIONS OF SALE

1. DEFINITIONS

"Buyer" means the company, firm, body or person from whom an order is received;
"Business Days" means any day from Monday to Friday (inclusive) which is not Christmas Day, Good Friday or a statutory holiday;
"Company" means Marley Plumbing & Drainage;
"Conditions" means the conditions set out below
"Contract" means any contract for the supply of the Goods;
"Goods" means the Goods to be supplied by the Company to the Buyer pursuant to the Order (including but not limited to any part or parts of them and any materials, articles and commodities supplied in connection with the Services;
"Services" means the work and/or services (or any of them) to be performed by the Company for the Buyer pursuant to the order.

2. COMPANY APPLICATION

2.1 Subject to clause 2.2 these Conditions are the only conditions on which the Company is prepared to deal with the Buyer and they will govern the Contract and of the Company's future supplies to the Buyer. The headings in these conditions are for convenience only and shall not affect their interpretation.
2.2 Any variation of these Conditions and any representations about the Goods will have no effect unless agreed in writing and signed by a director of both parties.
2.3 No order placed by the Buyer will be deemed to be accepted by the Company until a written acknowledgement of order is issued by the Company or (if earlier) the Company supplies the Goods to the Buyer.
2.4 Where Goods are to be supplied from stock, such supply is subject to the availability of stocks at the date of delivery.
2.5 All descriptions, specifications, technical data and other information in the Company's catalogues, trade literature and other similar documents are of a generally informative nature only and do not and are not intended to form part of Contract.

3. QUOTATIONS AND PRICE VARIATION

3.1 Any quotation given by the Company is an invitation to the Buyer to make an offer only and no order of the Buyer placed with the Company in pursuance of a quotation or otherwise shall be binding on the Company unless and until it is accepted in writing by the Company.
3.2 Unless stated otherwise, all quotations and published price lists are ex works, exclusive of VAT and shall remain valid for 30 days or such a period as may be quoted but nevertheless the Company may amend or withdraw any quotation by written or oral notice. Quotations may be varied if the Buyer makes variations in his specifications.

4. STATEMENTS OR REPRESENTATIONS TO THE BUYER

If any statement or representation has been made to the Buyer upon which the Buyer relies other than in the documents enclosed with the Company's quotation, the Buyer must set out that statement or representation in a document to be attached to or endorsed on the order in which case the Company may submit a new quotation.

5. DELIVERY - TIME

5.1 Any period for delivery given at any time and in any manner by the Company is an estimate only and is not binding on the Company. Delivery periods are normally calculated from the later of:
5.1.1 acceptance of order; or
5.1.2 where applicable, the receipt by the Company of a detailed specification or drawings.
5.2 Time shall not be deemed to be of the essence of the contract. The Company will use its reasonable endeavours to deliver the Goods to the Buyer within the time agreed and, if no time is agreed, within a reasonable time. Failure by the Company to meet any agreed delivery period for any part or the whole of the order shall not entitle the Buyer to rescind the contract or to claim damages of any nature.
5.3 The Company will endeavour to comply with reasonable requests by the Buyer for postponement of delivery but shall be under no obligation to do so. Where delivery is postponed otherwise than due to default by the Company the Buyer shall pay all costs and expenses including a reasonable charge for storage and transportation occasioned thereby and an extra charge for split delivery if applicable.
5.4 The Buyer will receive delivery of any consignment between the hours of 8.00am and 4.00pm Monday to Friday inclusive, unless otherwise agreed in writing. Cost incurred by the Company arising from the Buyer's refusal to accept consignments within the agreed hours shall be borne by the Buyer.

6. DELIVERY AND RISK

6.1 Except where stated to the contrary in the contract, delivery shall be made as follows:
6.1.1 where the Buyer provides the transport, delivery shall be made ex the Company's works;
6.1.2 where the Company provides the transport, delivery shall be made to the premises of the Buyer, or the premises of the Buyer's customer or works site if the Buyer has requested delivery to be so made but where the Buyer has made such a request the Company will make a first delivery to the Buyer's customer or works site as so much of the Goods as is available for that delivery but subsequent deliveries will be made to the premises of the Buyer.
6.1.3 If the Goods are not delivered ex works, delivery will be deemed to have taken place when the Company notifies the Buyer that the Goods are ready for collection.
6.2 The Company may at its discretion make partial delivery of orders and invoice the same.
6.3 Risk in the Goods shall pass on delivery.
6.4 Where Goods are sent FOB the Company's responsibility shall cease when the Goods are placed on board ship or aircraft without the need for the Company to give notice to the Buyer and the provisions of section 32(3) of the Sale of Goods Act 1979 shall not apply.

7. OWNERSHIP OF GOODS

7.1 The Goods shall remain the sole and absolute property of the Company as legal and equitable owner until such time as the Buyer shall have paid to the Company the contract price together with the full price of any other Goods the subject of any contract between the Company and the Buyer.
7.2 The Buyer acknowledges that until such time as the property in the Goods passes to the Buyer he is in possession of the Goods as a bailee and fiduciary agent for the Company and the Buyer shall store the Goods in such a manner that they are clearly identifiable as the property of the Company.
7.3 The Buyer shall maintain the Goods in satisfactory condition, insured on the Company's behalf for their full price against all usual risks to the reasonable satisfaction of the Company.
7.4 Until payment due under all contracts between the Buyer and the Company had been made in full, in the event of sale of the Goods by the Buyer:
7.4.1 The Company shall be entitled to trace all proceeds of sale received by the Buyer through any bank or other account maintained by the Buyer; and
7.4.2 The Buyer shall if requested by the Company in writing to so assign its rights to recover the selling price of the Goods from the third parties concerned. Such monies to be held separately by the Buyer as agent on behalf of the Company.
7.5 The Company may for the purpose of recovery of its Goods enter upon any premises where they are stored or where they are reasonably thought to be stored and may repossess the same.

8. PRICE AND PAYMENT

8.1 where the Goods are sold by reference to the Company's published price list, the price payable for the Goods shall be the price as published in the price list current at the date of delivery of the Goods.
8.2 In all other cases, the price stated in the Contract is based on the cost to the Company of raw materials, fuel, power, transport, taxes, duties, labour and all other costs at the date of the Company's quotation or acknowledgement of order (whichever is earlier). If at the date of delivery of the Goods there has been any increase in all or any of such costs, the price payable for the Goods may at the request of the Company be increased accordingly.
8.3 Quotations given in a currency other than sterling are based on the rate of exchange at the time of quoting and, unless otherwise agreed in writing between the parties, the price may be subject to revision up or down if any different rate of exchange is ruling at the date of invoice.
8.4 Where the price for the Goods is varied in accordance with clause 8.2, the price, as varied, will be binding on both parties and will not give either party any option of cancellation unless the price increase exceeds 10%.
8.5 There will be added to the price for the Goods any value added tax (and any other tax or duty relating to the manufacture, transportation, sale or delivery of the Goods) and unless otherwise agreed in writing any costs or charges in relation to export and/or import, packaging, loading, unloading, carriage and insurance. Such costs and expenses will be paid by the Buyer when it is due to pay for the Goods.
8.6 The Company may invoice the Buyer for the Goods at any time after the delivery of the Goods or the delivery of any instalment (as appropriate).
8.7 Buyers who have been granted by the Company (in its sole discretion) a credit account facility will pay the price within 30 days of the date of invoice. The Company may (in its sole discretion) amend the terms of or withdraw such credit account facility at any time without notice with immediate effect and on such withdrawal all amounts due or accruing to the Company under the Contract will become immediately payable despite any other provision of these Conditions.
8.8 Buyers who have not been granted a credit account facility will pay the price at the same time as delivery of the Goods.
8.9 No payment will be deemed to have been received until the Company has received cleared funds.
8.10 Time for payment will be of the essence of the Contract.
8.11 All payments payable to the Company under the Contract will become due immediately upon termination of this Contract despite any other provision of these Conditions.
8.12 The Buyer will make all payments due under the Contract without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Buyer.
8.13 If the Buyer fails to pay the Company any sum due pursuant to the Contract the Buyer will be liable to pay interest to the Company on such sum from the due date for payment at an annual rate of 2.5% above the base lending rate from time to time of Barclays Bank plc accruing on a daily basis until payment is made in full (whether before or after any judgment). The Company reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.

9. SHORTAGES AND DEFECTS APPARENT ON DELIVERY

9.1 It shall be the responsibility of the Buyer to inspect or arrange for an inspection of the Goods on delivery whether the Goods are delivered to the Buyer's premises or to the premises of the Buyer's customer or to a works site. If no such inspection is made the Buyer shall be deemed to have accepted the Goods.
9.2 The Buyer shall have no claim for shortages or defects apparent on inspection unless:
9.2.1 a written complaint is made to the Company within three days of receipt of the Goods specifying the shortage or defect; and
9.2.2 the Company is within seven days of receipt of the complaint given an opportunity to inspect the Goods and investigate the complaint before any use is made of the Goods.
9.3 If a complaint is not made to the Company as herein provided then in respect of such shortages or defects the Goods shall be deemed to be in all respects in accordance with the contract and the Buyer shall be bound to pay for the same accordingly.

10. CLAIMS FOR DEFECTS NOT APPARENT ON INSPECTION

10.1 The Buyer shall have no claim for defects not apparent on inspection unless the Company is notified of defective workmanship or materials within 30 days from delivery of the Goods: Provided that the Goods have been installed and applied in accordance with any relevant recommendations made by the Company, the Company will at its option replace the Goods or refund the net invoiced price in respect of the Goods which have been shown to be defective. If the Company does so supply substitute Goods the Buyer shall be bound to accept such substituted Goods in full satisfaction of the obligations of the Company under the contract.
10.2 The Buyer shall in any event have no claim or set-off in respect of defects unless a written complaint is sent to the Company as soon as the defect is noticed and no use is made of the Goods thereafter or alteration made thereto by the Buyer before the Company is given an opportunity to inspect the Goods.
10.3 The Buyer is responsible for ensuring that the Goods are fit for any particular purpose, and no warranty or condition of fitness for any particular purpose is to be implied into the contract.

11. LIMITATION OF LIABILITY

11.1 All warranties, conditions and other terms implied by statute or common law (except for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.
11.2 Nothing in these Conditions excludes or limits the liability of the Company for fraudulent misrepresentation or for any death or personal injury caused by the Company's negligence.
11.3 THE CUSTOMER'S ATTENTION IS IN PARTICULAR DRAWN TO THE PROVISIONS OF CLAUSES 11.3 AND 11.4
11.3 The Company will not be liable to the Buyer in contract, tort (including but not limited to negligence), misrepresentation or otherwise for any economic loss of any kind (including but not limited to loss of profit, business, contracts, revenue or anticipated savings), any damage to the Buyer's reputation or goodwill, any product recall costs or any other special, indirect or consequential loss (whatsoever and howsoever caused) which arise out of or in connection with the Contract.
11.4 (Subject to the provisions of clause 11.1, 11.2 and 11.3) the Company's total liability in contract, tort (including but not limited to negligence), misrepresentation or otherwise arising in connection with the performance or contemplated performance of this Contract will be limited to £ 1,000,000.

12. TERMINATION

12.1 The Company may terminate the Contract immediately if:
12.1.1 the Buyer fails to pay the price on the due date;
12.1.2 the Buyer is in breach of any term of the Contract and has failed to remedy such breach within 28 days of receipt of written notice specifying the breach and requiring it to be remedied;
12.1.3 there is a material charge in the ownership or control of the Buyer; or
12.1.4 the Buyer is wound up or becomes insolvent or has a receiver or administrative receiver appointed or suffers the appointment or the presentation of a petition for the appointment of an administrator or any equivalent or analogous event occurs in any other jurisdiction.
12.2 The termination of the Contract (howsoever arising) will be without prejudice to any rights and remedies which may have accrued to either party.
12.3 Any Conditions which impliedly have effect after termination will continue to be enforceable notwithstanding termination.

13. CONFIDENTIALITY

The Buyer will keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and which have been disclosed to the Buyer by the Company or its agents and any other confidential information concerning the Company's business or its products which the Buyer may obtain. The Buyer will restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know the same and will ensure that such employees, agents or subcontractors are subject to equivalent obligations of confidentiality as bind the Buyer.

14. FORCE MAJEURE

Notwithstanding anything herein contained neither the Buyer nor the Company is to be held liable for any delay or failure to carry out the contract due wholly or in part to an act of God action by any Government whether British or foreign civil war strikes and/or lockouts wheresoever occurring fire trade disputes floods or unfavourable weather or any material becoming unavailable or irreplaceable (whether at all or at commercially acceptable prices) or any other circumstances beyond the control of the Company.

15. SUB-CONTRACTING

The Company reserves the right to sub-contract the fulfilment of any order or any part thereof.

16. INSOLVENCY AND BREACH OF CONTRACT

In the event that:
16.1 the Buyer commits any breach of the contract and fails to remedy such breach (if capable of remedy) within a period of thirty days from receipt of a notice in writing from the Company requesting such remedy; or
16.2 any distress or execution is levied upon any of the Goods or property of the Buyer; or
16.3 the Buyer offers to make any arrangements with or for the benefit of its creditors or (if an individual) becomes subject to a petition for a bankruptcy order or (being a limited company) has a receiver appointed of the whole or any part of its undertaking property or assets; or
16.4 an order is made or a resolution is passed or analogous proceedings are taken for the winding up of the Buyer (save for the purpose of reconstruction or amalgamation with insolvency and previously approved in writing by the Company) the Company shall thereupon be entitled without prejudice to its other rights hereunder forthwith to suspend all further deliveries until the default has been made good or to determine the contract and any unfulfilled part thereof or at the Company's option to make partial deliveries. Notwithstanding any such termination the Buyer shall pay to the Company at the contract rate for all the Goods delivered up to and including the date of termination.

17. INTELLECTUAL PROPERTY RIGHTS

If Goods supplied by the Company to the Buyer's design or specifications infringe or are alleged to infringe any patent or registered design right or copyright the Buyer will indemnify the Company against all damages, costs and expenses incurred by the Company as a result of the infringement or allegation. The Buyer will give the Company all possible help in meeting any infringement claim brought against the Company.

18. BUYER'S ERROR IN ORDERING

In the event the Buyer orders incorrectly the Company will be under no obligation to the Buyer to rectify or assist in rectifying the error.

19. NOTICES

Any notice or other document to be served under the Contract must be in writing and may be delivered or sent by prepaid first class letter, post or facsimile transmission.

20. LAW AND JURISDICTION

The contract shall be subject in all respects to English Law and to the jurisdiction of the English Courts.