

TITON HARDWARE LIMITED

TERMS & CONDITIONS OF SALE

1. DEFINITIONS

"The Company" means TITON HARDWARE LIMITED. "The Customer" means the person, firm, company, organisation, corporation or public authority whose order referred to in a quotation or document issued by the Company is accepted by the Company. "The Goods" means the Company's products ordered by the Customer and agreed to be sold by the Company.

2. GENERAL

(1) All quotations given, orders accepted and Goods delivered by the Company are subject to and upon the following terms and conditions of sale which (together with the Conditions of Quotation and Supply for Ventilation Systems products, where applicable) shall constitute the entire agreement between the Company and the Customer and no addition or variation shall apply unless specifically agreed in writing by an authorised representative of the Company. IF THE CUSTOMER SHALL NOT PREVIOUSLY HAVE ACCEPTED THESE TERMS AND CONDITIONS THEN UPON DELIVERY OF THE GOODS OR (WHERE DELIVERY IS BY INSTALLMENTS) THE FIRST ITEM THEREOF THE CUSTOMER SHALL BE DEEMED TO HAVE GIVEN FINAL AND ABSOLUTE ACKNOWLEDGEMENT OF ITS ACCEPTANCE OF THESE TERMS AND CONDITIONS IN THE FORM HEREIN SET OUT.

(2) No other terms and conditions shall apply notwithstanding any provisions to the contrary which may appear on the order form or purchase order or any other document issued by the Customer whether or not the same shall be signed by or on behalf of the Company and whether issued either before or subsequent to the acceptance by the Company of the Customer's order.

(3) Acknowledgement of receipt of a Customer's enquiry or order or other communication by the Company in connection therewith shall not constitute acceptance of that order for contractual purposes.

(4) The sending by the Company to the Customer of either:

(i) formal written acceptance or

(ii) a despatch/collection note to the Customer shall alone constitute the Company's acceptance of the Customer's order.

(5) Liability is not accepted by the Company for any inaccuracy in orders when placed by the Customer by telephone. The Customer shall at all times ensure that the terms of its orders and any applicable specification are complete and accurate.

(6) In no circumstances shall the Customer cancel a contract to which these terms and conditions apply without the Company's written agreement. If such agreement is given the Customer will indemnify the Company against all losses (including loss of profit) suffered by the Company arising out of such cancellation.

(7) No contract governed by these terms and conditions shall be a sale by sample unless the Company expressly agrees in writing.

(8) The quantity and description of the Goods shall be as set out in the Company's quotation or formal written acceptance referred to in (4) above.

(9) All specifications, illustrations, colours, drawings and diagrams in the Company's catalogues, trade literature and other published matters are of a generally informative nature and are approximate only and none of these form part of any contract or give rise to any independent or collateral liability of whatsoever nature on the part of the Company and the Company shall be under no liability whatsoever for inaccuracies, changes or alterations in dimensions or measurements given, quoted or made by it.

(10) If any provision of these terms and conditions is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of these terms and conditions and the remainder of such provision shall continue in full force and effect.

(11) The parties to any contract to which these terms and conditions apply do not intend that any term of such contract will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

3. PRICES

(1) Prices quoted are those ruling at the date of quotation or acknowledgement of enquiry (as the case may be) and are quoted inclusive of all packaging delivery and insurance costs unless otherwise stated.

(2) Prices are quoted net of VAT and other applicable taxes imposed and levies which are or may from time to time be levied by any governmental statutory or local authority upon the sale of the Goods and such additions (if any) shall be charged at the rate prevailing at the date of delivery or invoice as the case may be.

(3) PRICE VARIATION Prices quoted by the Company in brochures, order forms or any other material are based on, inter alia, the cost of materials, labour, transport, import duties and levies, currency exchange rates and statutory obligations ruling at the date of the Company's acceptance of the Customer's order and if before delivery there occurs any increase, however arising, in the cost to the Company of supplying the Goods, including (without limitation) any of the above matters, the Company shall be entitled without notice to adjust the price for the Goods by a reasonable amount to take account of such increases. Notwithstanding the above, any specific written quotation given by the Company in response to a direct request by the Customer shall remain valid for a period of 30 days only from its date.

(4) Where special materials are required for the execution of any order these will be ordered and purchased by the Company subject to delivery periods quoted by the suppliers to the Company. In the case of special materials which cannot readily be absorbed into the Company's stock these shall be taken to and paid for by the Customer at cost price if for any reason whatsoever the relevant order is not completed other than by the Company's default.

(5) The price of any tools quoted or ordered has been calculated at a proportion of total cost and any such tools shall remain the property of the Company for exclusive use upon the Customer's orders. However, where Customers require to apply for investment grants the Company will if requested quote and charge the full cost of the tools to the Customer (who shall become the purchaser of these tools) but in such case these tools shall be leased back to it in respect of all sums due to the Company whether in relation to the particular order for which the tools are required or not. Whether tools remain the property of the Company or not the Company undertakes to keep the tools in condition for production for such a reasonable life as shall be agreed between the Customer and the Company when manufactured by the Company. Customers shall contribute to the complete renewal of tools if and when necessary on the original terms of manufacture, but at the costs then prevailing.

4. PAYMENT TERMS

(1) Time of payment shall be of the essence of any contract to which these terms and conditions apply and unless otherwise expressly stated payment shall be made within 30 days from the date of invoice.

(2) The Customer shall not be entitled to make deduction from any payment due to the Company in respect of any set-off, counterclaim, discount, abatement or otherwise unless both the validity and the amount thereof have been expressly admitted in writing by the Company.

(3) No payment shall be deemed to have been received until the Company has received cleared funds.

(4) All payments payable to the Company under a contract to which these terms and conditions apply shall become due immediately upon termination of such contract despite any other provision.

(5) Without prejudice to any other rights, failure to pay the price or part thereof or other monies payable by the Customer will also entitle the Company at the Company's sole discretion either to refuse to make delivery of any goods agreed to be supplied or to cancel any contract to which these terms and conditions apply, either in whole or part, by notice in writing to the Customer and without incurring any liability to the Customer for any loss caused by such delay or cancellation.

(6) If the payment of the price or any part thereof and of all other sums payable by the Customer is not made on the due date the Company, without prejudice to its other rights hereunder, shall be entitled to charge in addition to any monies due hereunder interest on the outstanding amount at the rate of 3% above the base lending rate of The Bank of England per annum or any part thereof from the due date until payment is made. The Company reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.

(7) If the Company's estimate for Goods shall specify payment in a currency other than £ Sterling the price payable by the Customer shall be increased pro-rata to any increase that may occur in the value of that currency in relation to the £ Sterling between the date of the Company's estimate and the due date of payment for the Goods.

5. DELIVERY

(1) The Company will use its best endeavours to comply with despatch collection and delivery dates, but such dates are estimates only and are not guaranteed and shall not be of the essence of any contract between the Customer and the Company.

(2) Delivery shall be deemed to take place on the occurrence of the first point in time of any of the following events:

(i) the physical handing over of the Goods to the Customer or its delegated carrier or agent or

(ii) upon the removal of the Goods from the Company's premises when the Company has at the request of the Customer agreed to transport the Goods or

(iii) upon the placing of the Goods in the Company's own storage facilities at the request of the Customer or upon its failure or refusal to accept delivery.

(3) In the event of any failure to make delivery or delay in delivery (even if caused by the Company's negligence) the Customer shall have no claim whatsoever against the Company for any direct, indirect or consequential loss or damage of any kind (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, expenses or charges whether caused directly or indirectly by any delay in the delivery of the Goods and the Company shall accept no liability whatsoever for loss or damage to the Goods in transit or storage unless the same shall be caused by the negligence of the Company in which event the Company's liability shall be limited to the value of the Goods nor shall any delay entitle the Customer to terminate or rescind a contract with the Company.

(4) The Company shall not be liable for any non-delivery of the Goods (even if caused by the Company's negligence) unless written notice is given to the Company within 3 days of the date when the Goods would in the ordinary course of events have been received.

(5) Without prejudice to any rights of the Company hereunder, if the Customer shall fail to give on or before the time the Company is ready to deliver the Goods all instructions reasonably required by the Company and all necessary documents, licences, consents and authorities for forwarding the Goods or shall otherwise cause or request delay, the Customer shall pay to the Company all storage and other costs of whatever nature incurred or arising from such delay.

(6) The quantity of any consignment of Goods as recorded by the Company upon despatch from the Company's place of business shall be conclusive evidence of the quantity received by the Customer on delivery unless the Customer can provide conclusive evidence proving the contrary.

(7) Deviations in quantity of Goods delivered from those stated in any contracts to which these terms and conditions apply shall not give rise to a right to reject on the part of the Customer and the Customer shall have no right to claim for damages for breach of contract but the Customer will only be obliged to pay at the contract rate for the quantity of the goods delivered.

6. TITLE TO THE GOODS AND RISK IN THE GOODS AND INSURANCE

(1) Title to and property in the Goods shall remain vested in the Company until:-

(i) the total invoice price for the Goods together with any other related charges and

(ii) any other amounts which are overdue for payment by the Customer, have been received in full (in cash or cleared funds) by the Company.

(2) Until such time as title to the Goods shall pass to the Customer it shall hold them in a fiduciary capacity and as bailee for the Company storing them separately from any other products in the keeping of the Customer or in such manner as they can easily be identified as being the Company's goods (at no cost to the Company) and shall if so requested forthwith return them to the Company.

(3) Until title has passed to the Customer the Customer must insure the Goods on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company. On request the Customer shall produce the policy of insurance to the Company. The Customer must hold the proceeds of the insurance on trust for the Company and not mix them with any other money, nor pay the proceeds into an overdrawn bank account.

(4) Until title has passed to the Customer, the Customer grants to the Company, its agents and employees an irrevocable licence at any time to enter the premises where the Goods are stored, or where they are reasonably thought to be stored, in order to inspect them, or, where the Customer's right to possession has terminated, to recover them.

(5) If any of the Goods are incorporated in other products by the Customer before payment in full by the Customer in respect thereof the property in the whole of such products shall be vested in and remain with the Company until payment of all amounts overdue for payment by the Customer to the Company.

(6) The Company may maintain an action for the price of the Goods sold notwithstanding the property in them may not have passed to the Customer.

(7) The risk in the Goods shall pass to the Customer on delivery under 5(2) above or despatch (whichever be appropriate).

(8) Whilst the Goods are in the possession of the Customer and before property in the Goods has passed to the Customer, the Customer shall keep the goods properly maintained in the same condition as that in which they were delivered and shall make good any damage or deterioration. The Customer shall be entitled to install Goods in his possession in accordance with the Company's installation instructions or manuals.

(9) On termination of the contract between the Company and the Customer, howsoever caused, the Company's (but not the Customer's) rights contained in 6(1) to 6(8) shall remain in effect.

7. STORAGE

(1) If for any reason the Customer fails or refuses to accept delivery of the Goods at the time when the Goods are due and ready for delivery the Company shall, at its storage facilities, store the Goods and take reasonable steps to safeguard and preserve them until their actual delivery.

(2) Storage of the Goods shall be at the Customer's risk and expense.

(3) If the Customer shall fail to take delivery of the Goods within 28 days of notification that they are ready for delivery or having been stored that storage facilities are no longer available the Company shall have the right to sell dispose or otherwise deal with the Goods and the Customer shall be liable to the Company for loss (including profits) or damage which the Company shall suffer in consequence of the Customer's failure to take delivery of the Goods.

8. DESIGNS AND SPECIFICATIONS

The Company reserves the right at any time to make any modification in design or specification of the Goods without prior notice to the Customer if it shall reasonably consider that such modification is beneficial.

9. FORCE MAJEURE

In the event that the Company shall be delayed in or prevented from carrying out all or any of its obligations under a contract for sale of Goods as a result of any cause beyond its control including (but not by way of limitation), acts of God, war, invasion, hostilities, civil war, civil strike, or commotion, strikes, lock-outs, or other labour disputes (whether or not relating to either party's workforce), breakdown of plant, failure of third parties to deliver goods or materials, storm, flood or any cause it shall be relieved of all obligations and liabilities incurred under such contract insofar as and for so long as the fulfilment of such obligations and liabilities is thereby prevented, frustrated or impeded.

10. WARRANTY

(1) Goods sold by the Company are warranted free from defects in material and workmanship for a period of 12 months from the date of delivery unless otherwise stated in the Company's specific sales literature for the Goods.

(2) The Company shall not be liable for a breach of the warranty in 10(1) above unless:

(i) the Customer gives written notice of the defect to the Company and, if the defect is as a result of damage in transit by the carrier, within 3 days of the date when the Goods would in the ordinary course of events have been received; and

(ii) the Company is given a reasonable opportunity (after receiving the Customer's notice and following authorised return of such Goods to the Company) to complete its own examination. The Company may at its discretion request from the Customer the proof of purchase and a full description of the defect which the Customer must provide to the Company.

(3) The Company shall not be liable for a breach of the warranty in 10(1) above, if any Goods:-

(i) have been used by the Customer after giving notice in accordance with 10(2) above;

(ii) have been tampered with in any way outside the Company's premises; or

(iii) have been stored in unsuitable conditions; or

(iv) have been subject to misuse, incorrect installation, negligence or accident; or

(v) have not been maintained in accordance with the instructions provided at the point of sale.

(4) Subject to 10(2) and 10(3) above, if any of the Goods do not conform with the warranty in 10(1), the Company may, at its option, repair or replace such Goods (or defective part) with the same or a suitable similar product or refund the price of such Goods at the pro rata rate paid by the Customer.

(5) If the Company complies with 10(4), it shall have no further liability for a breach of the warranty in 10(1) in respect of such Goods.

(6) To avoid doubt, the Company gives no warranty as to the fitness for purpose of Goods supplied and the Customer must determine the suitability of the Goods.

11. LIMITATION OF LIABILITY

(1) Except as expressly stated above all other warranties, conditions and representations express or implied statutory or otherwise are (to the extent that they may in law be excluded) hereby excluded and the Company shall not be liable under any circumstances in contract tort or otherwise for any loss, damage, expense or injury (whether direct indirect or consequential) arising out of or in connection with the order supply or use of the Goods or any defect in them PROVIDED ALWAYS that it shall accept:

(i) liability in respect of death or personal injury arising out of the Company's negligence;

(ii) liability for fraudulent misrepresentation;

(iii) such liability in respect of direct physical damage arising out of the Company's negligence as may in the circumstances be reasonable provided that such liability shall not in any event exceed the total invoice price of the Goods;

(iv) liability for any term as to title quiet possession and freedom from encumbrance which may be implied by Section 12 of the Sale of Goods Act 1979.

(2) Subject to (1)(i) to (1)(iv) above, the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the contract between the Customer and the Company shall be limited to the total invoice price of the Goods.

12. INDEMNITY

The Customer shall (and shall ensure that any third party to whom any Goods may subsequently be supplied) comply with all instructions of the Company and any other manufacturer in relation to the fitting, installation, service and use of the Goods, and notwithstanding such compliance, the Customer shall keep the Company fully and effectually indemnified against all costs, claims, demands, expenses and liabilities of whatsoever nature and wheresoever arising, including without prejudice to the generality of the foregoing, claims for damage to property and consequential loss (including loss of profit) which may be made against the Company or which the Company may sustain, pay or incur arising out of or in connection with the supply, fitting, installation or use of the Goods.

13. DEFAULT OR INSOLVENCY OF CUSTOMER

(1) If the Customer:

(i) defaults in any way in its commitments with the Company or is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 or the Customer ceases to trade or suffers any distress or execution upon its property or assets; or

(ii) makes or offers to make any arrangement or composition with its creditors or commits an act of bankruptcy or otherwise takes the benefit of any Act for the time being in force for the relief of insolvent debtors or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager or administrative receiver appointed of its undertaking or any part thereof, or a resolution is passed or a petition presented to any court for the winding up of the Customer or for the granting of an administration order in respect of the Customer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Customer; or

(iii) encumbers or in any way charges any of the Goods;

then the Customer's right to possession of the Goods shall terminate immediately and all sums outstanding in respect of the Goods shall become payable immediately and the Company shall have the right (without prejudice to any other remedies) to cancel any uncompleted order or to withhold or suspend delivery of the Goods.

(2) In the event of an order being cancelled by the Company in the above circumstances or being cancelled by the Customer the Customer shall indemnify the Company against all loss (including profits), costs (including labour, materials and overheads) and all other expenses and damages incurred by the Company in connection with the order and its cancellation (the Company shall give credit for the value of any materials sold or utilised for other purposes).

14. ENGLISH LAW

Every contract to which these Terms & Conditions shall apply shall be construed in accordance with and governed in all respects by the Laws of England and the Company and the Customer agree to submit to the exclusive jurisdiction of the English Courts.

15. ASSIGNMENT

(1) The Customer shall not assign or transfer or purport to assign or transfer any contract to which these terms and conditions apply or the benefit thereof to any person whatsoever.

(2) The Company may assign any contract to which these terms and conditions apply or any part of it to any person, firm or company.

16. CONSUMER SALES

Nothing in these terms and conditions shall affect the statutory rights of any person dealing with the Company as a consumer.

17. WAIVER

(1) The waiver of any rights by the Company shall not be construed as a waiver of the same right at a future date or as a waiver of any other right.

(2) Failure or delay by the Company in enforcing any provision of these terms and conditions will not be construed as a waiver of any of its rights under these terms and conditions.