

# ACCOLADE HEATING LTD - TERMS AND CONDITIONS

## 1. DEFINITIONS

- 1.1 "Company" means Accolade Heating Limited.
- 1.2 "Customer" means the customer placing an order for Goods with the Company.
- 1.3 "Goods" means all goods which are subject to the Customer's order which are to be supplied to the Customer by the Company under these Conditions.

## 2. ORDERS

- 2.1 There shall be no binding agreement between the Customer and the Company until the Company has accepted and confirmed the Customer's order in writing to the Customer. The written confirmation shall be given at the time of the Customer placing their order. Any prior indications by the Company made orally shall be provisional only.
- 2.2 All orders must be placed using the standard form specified by the Company and must in any event comply with the Company's prevailing ordering procedures.
- 2.3 All orders are accepted subject to the availability of Goods and to these Conditions. No terms or conditions put forward by the Customer shall be binding on the Company.
- 2.4 The Customer accepts that these Conditions and any specific details stated on its accepted order constitute the entire understanding of any kind but the term 'representation' excludes fraudulent misrepresentations.
- 2.5 The Company will at its own discretion consider a refund for Goods returned in the original packaging and in good condition. Any Goods for refund will only be considered or accepted within 14 days of the original delivery to the Customer and will be subject to a 50% handling charge.

## 3. PRICE

- 3.1 Unless otherwise expressly agreed in writing the Goods shall be sold and invoiced at the Company's current prices at the date of despatch. Catalogues, price lists, and other advertising material are provided for illustrative purposes only.
- 3.2 Unless otherwise agreed in writing prices do not include delivery charges (if any) and such costs shall be payable by and invoiced to the Customer.
- 3.3 The Company reserves the right to revise prices to take into account increases in any costs of providing the Goods or delivery, which occurs between the date of order and delivery.
- 3.4 Unless otherwise stated in writing by the Company all prices quoted shall be exclusive of Value Added Tax ("VAT").

## 4. DELIVERY

- 4.1 Delivery shall be at the Customer's premises or, if different, the place specified in the Customer's order.
- 4.2 Dates and times quoted by the Company for delivery are estimates only and any delay in meeting delivery dates and times shall not give rise to a right to cancel the order or to claim damages by the Customer.
- 4.3 The Customer shall notify the Company of any claim for short delivery and/or damage to Goods within 24 hours of delivery and shall confirm that fact in writing to the Company within 5 working days from the date of delivery. All Goods are deemed delivered and completed if such notice is not received within such time period.
- 4.4 The Company reserves the right to make part deliveries.
- 4.5 Any Risk in the Goods shall pass on delivery to or collection by the Customer or their agent, whichever is the earlier.

## 5. PAYMENT

- 5.1 At the time that the Company accepts the Customer's order in writing, full payment is due and payable immediately from the Customer (prior to delivery) or if otherwise agreed within thirty days of delivery.
- 5.2 The Customers shall not be entitled to withhold payment of any amount due to the Company in respect of any claim for damage to Goods or any alleged breach of contract by the Company, nor shall the Customer be entitled to any right of set-off withholding or deduction.
- 5.3 Without prejudice to the Company's other rights if the Customer fails to pay any amount on the due date:
  - 5.3.1 the Company shall have the right to cancel any contract made with the Customer and/or suspend deliveries;
  - 5.3.2 the Company reserves the right to charge interest on a daily basis on overdue accounts at the rate of 5% above the Bank of Scotland's bank base rate until payment;
  - 5.3.3 the Customer shall indemnify the Company and keep it indemnified in respect of all costs (including legal fees) reasonably incurred in attempting to recover such overdue amounts;
  - 5.3.4 the whole of the balance then outstanding to the Company by the Customer on any account whatsoever shall become entirely due and payable.
- 5.4 The Company reserves the right to require the Customer to pay for Goods in advance if the Customer fails to maintain credit account arrangements satisfactory to the Company.

## 6. TITLE

- 6.1 The Company shall retain full ownership of and title to all Goods delivered to the Customer or any part thereof unless and until the Customer has paid all sums owing to the Company in respect of:
  - 6.1.1 the Goods the subject of an order, and
  - 6.1.2 any other Goods the subject of any other order made between the Company and the Customer.
- 6.2 While such amounts remain outstanding to the Company from the Customer:
  - 6.2.1 the Customer shall keep the Goods as fiduciary bailee for the Company and shall store the Goods separately from its other chattels and in a manner, which clearly shows that the Company owns them;
  - 6.2.2 the Customer shall not pledge or in any way charge by way of security for any indebtedness any of the Goods, which remain the property of the Company;
  - 6.2.3 the Customer will deliver up and have delivered up to the Company Goods upon demand and the Company may without limiting any other rights or remedies available to it at law, in equity or by statute, seize repossess and/or resell Goods at its discretion and in the exercise of such right the Company may enter any premises in which it reasonably believes from time to time any Goods are located;
  - 6.2.4 the Customer may only sell transfer or otherwise dispose of the Goods to its customer in the ordinary course of its business and in accordance with the provisions of these Conditions;
  - 6.2.5 the Customer shall take all due care (or ensure that all due care is taken) of the Goods and the Customer shall bear the sole liability for insurance of the Goods and shall indemnify the Company for a loss whatsoever suffered or incurred by the Company

arising out of any failure to insure such Goods.

## 7. EXCLUSION OF LIABILITY

- 7.1 The Customer acknowledges that the Company is not manufacturer of the Goods. The Company will pass on to the Customer such unexpired warranties it receives from the manufacturer of the Goods as are capable of transfer and subject as expressly provided in these Conditions and except where the Goods are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977) all warranties conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law and the Company's liability shall be limited to such guarantee as it may receive from the manufacturer.
- 7.2 The Company shall not in any circumstances whatsoever be liable for indirect or consequential loss.
- 7.3 Without prejudice to Clause 7.1 to 7.2:
  - 7.3.1 in the event of the Company being shown to have been negligent in the supply of Goods its liability for death or personal injury of any person caused by such negligence, shall be limited;
  - 7.3.2 any valid claim in respect of any defects in or failure of Goods or for the loss or damage attributable thereto shall be limited to the making good by replacement or repair of such Goods which upon inspection by the Company appear to be defective and in any event the Company's maximum aggregate liability arising in respect of the supply of Goods shall be limited to the original VAT inclusive price for such Goods.
- 7.4 The Company makes no representation and gives no warranty in respect of the sources of origin of manufacture or production of the Goods or any part thereof.
- 7.5 The Company makes no representation and gives no warranty in respect of the Goods where the installation and Fitting has not been as per the fitting instructions or where unapproved products have been used in the installation and Fitting.
- 7.6 Where the Goods are sold under a consumer transaction (as defined by the Consumer Transaction (Restrictions on Statements) Order 1976) the statutory rights of the Customer are not affected by these Conditions.

## 8. CHANGES

- 8.1 The Company will use its reasonable endeavours to inform the Customer of any alterations made by the manufacturer to the specification of Goods or installation recommendations for fitting with any Filters.
- 8.2 All sizes stated are approximate and Goods may vary from descriptions given.

## 9. INTELLECTUAL PROPERTY

- 9.1 The Customer recognizes the manufacturer's ownership of and title to all trademarks, trade names, patents, copyright and other intellectual property rights in relation to Goods.
- 9.2 The Customer will take no action to violate, obliterate, remove, alter, conceal or misuse any such marks, trade name or copyright notice.

## 10. SEVERABILITY

- 10.1 If and to the extent that any provision or any part of these Conditions is deemed to be illegal, void or unenforceable for any reason then such provisions or part thereof (as the case may be) shall be deemed to be severed from the remaining provisions or parts of the relevant provisions (as the case may be) all of which remaining provisions shall remain in full force and effect.
- 10.2 In particular, should any limitation of the Company's liability contained in these Conditions be held to be illegal void or unenforceable under any applicable statute or rule of law it shall to that extent only be deemed severed here from, but if the Company thereby becomes liable for any loss or damage, such liability shall be subject to all other relevant limitations contained in these Conditions.

## 11. PRIVACY

- 11.1 Once you have placed an order with us, your name will be added to our customer file. We will not share your information with any other companies. You can check the information that we hold about you be e-mailing us at [info@accoladeheating.co.uk](mailto:info@accoladeheating.co.uk) If you find any inaccuracies we will delete or correct it promptly. The personal information, which we hold, will be held securely in accordance with our internal security policy and the law.

## 12. FORCE MAJEURE

- 12.1 The Company shall not be liable to the Customer on any account whatsoever in the event that the Company is prevented from fulfilling its obligations hereunder due in whole or in part to an event of Force Majeure which expression shall mean:
  - 12.1.1 Act of God, fire, flood, storm, power failure, reduction or power supplies, mechanical failure or lack or shortage of materials or stock or any other circumstance beyond reasonable control of the Company; and
  - 12.1.2 whether or not within the Company's control, strikes, lock-outs or industrial disputes in relation to the Company or any other party or any action taken by the Company in connection therewith or in consequence or furtherance thereof.
- 12.2 In such event the Company may at its option either suspend performance or cancel the contract in question or such of it as remains unperformed without liability for any loss and without prejudice to the Company's rights to receive payment of the price of all Goods previously delivered.

## 13. LEGAL STATUS

The relationship between the Customer and the Company shall be as buyer and seller and nothing contained herein shall be deemed to create a partnership or agency.

## 14. LAW

These Conditions shall be construed according to the laws of Scotland and the Company and the Customer submits to the non-exclusive jurisdiction of the Scottish Courts in connection with any dispute or proceedings arising out of any contract incorporating these Conditions.

## 15. GENERAL

- 15.1 No neglect or forbearance by the Company in pursuing any claim or right hereunder against the Customer shall prejudice or in any way affect the Company's rights hereunder
- 15.2 The Headings in these Conditions are for reference purposes and do not form part of these Conditions.