

## Terms & Conditions

### 1) DEFINITIONS

In these conditions:

"the company" means Magnum Heating Ltd;

"the buyer" means the customer who shall order or buy the products or Contractual services;

"the products" means the goods supplied by the Company under the terms of the Contract;

"the Contractual Services" means those services supplied by the Company to the buyer under the terms of the Contract;

"the Contract" means any contact for the supply of the Products or the Contractual Services by the Company to the Buyer;

"the price" means the amount payable in respect of the Products (including delivery charges where applicable) and the Contractual Services.

### 2) THE CONTRACT

- 2.1) A quotation shall constitute an invitation to the Buyer to negotiate with the company. An order placed with the company shall be accepted by the company at the time an unqualified acknowledgement and acceptance of such order is issued to the Buyer. In the event of the Buyers' order forms containing conditions which are inconsistent with these conditions it is understood and agreed that the Buyers' conditions are only binding insofar as they are not in variance with these conditions which shall prevail.

No employee or agent of the Company is authorised to give any guarantee or warranty, or to make any representation which may vary these Conditions. Unless otherwise agreed in writing, no previous communication between the parties relating to the Products and the Contractual Services shall be incorporated into the contract.

- 2.2) All quotations provided by the Company are based on the Buyers' specifications as supplied to the Company and the Company shall not be responsible for the sufficiency or otherwise of the Products or the Contractual Services supplied in accordance with such specifications. The Buyer shall pay for all of the Products and Contractual Services supplied by the Company in accordance with such specifications.
- 2.3) The acceptance by the Buyer of the Company's quotation must be accompanied by sufficient technical information to enable the Company to proceed with the Contract forthwith, and failure to supply such information shall leave the Company at liberty to amend the quoted prices to cover any increase in costs which may arise subsequent to acceptance.

### 3) INFORMATION SUPPLIED BY THE COMPANY

No warranty, expressed or implied, is given by the Company as to the accuracy or completeness of information supplied by the Company (whether that information is supplied in connection with a quotation or otherwise) and, to the extent that such exclusions of liability shall be permitted by law, the Company shall have no liability for any loss (including consequential loss), damage, costs or expenses (whether the same shall result from the negligence of the Company, its employees, agents, or others for whom it may in law be responsible or otherwise) which may be incurred by the Buyer;

### 4) DRAWINGS

- 4.1) Any specifications, drawings and particulars of weights and dimensions submitted with a quotation are approximate only, and the descriptions and illustrations contained in the Company's literature are intended merely to present a general idea of the Products and Contractual Services described therein, and none of this documentation shall form part of the Contract.

4.2) Unless expressly so agreed, any specifications, drawings or technical documents intended for use in relation to the Product or Contractual Services and submitted to the Buyer prior or subsequent to the formation of the Contract remain the exclusive property of the Company. They may not, without the written consent of the Company be utilised by the Buyer or copied, reproduced, transmitted or communicated to a third party.

5) DELIVERY

5.1) Subject to the provisions hereof, the Products shall be delivered by the Company to the address specified by the Buyer: The Company's charges in respect thereof shall be payable by the Buyer to the Company in accordance with these provisions.

5.2) Where a delivery has been arranged, then if the buyer requests that such a delivery be deferred, it shall become liable to pay an additional charge reflecting the additional costs reasonably incurred by the Company as a result of that request.

5.3) If the buyer fails to accept delivery of the products, the price together with any additional costs incurred shall be payable to the Buyer;

5.4) The Buyer must satisfy himself as the condition of the Products at the time of delivery. The company shall have no liability in respect of any defect which could have been revealed on examination at the time of delivery unless said defects are reported within twenty four hours of delivery. Where transport has been arranged by the Buyer an inspection of the goods shall take place at the time of loading of the goods onto the Buyers' transport.

6) DAMAGE IN TRANSIT

The Company shall replace (or at its own discretion) repair free of charge any Products damaged in transit, provided that the company shall receive notification of such damage within twenty four hours of delivery, confirmed in writing within three days. The company shall; have no obligation in respect of products damaged in transit where the seller has arranged to transport.

7) DELAY IN DELIVERY

Any proposed delivery date specified by the Company for the completion of the Contract is the Company's considered estimate of the date on which the products will be delivered to the Buyer or the Contractual Services will be completed by the Company. The Company will make every reasonable endeavour to ensure that the Products are delivered to the Buyer or the Contractual Services duly completed on that date. Time shall not be of the essence with regard to delivery of the Products or the completion of the Contractual Services under the terms of the Contract. Save in so far as such exclusion of liability may be precluded by law from time to time, the Company shall have no liability (in contract, delict or otherwise) to the Buyer in respect of any loss, damage, costs or expenses (including consequential loss or damage, which may be incurred by the Buyer and which may arise from and delay in the delivery of the Products or the completion of the Contractual Services, and whether or not the said delay shall result from the negligence of the Company, its employees, agents or others for whom it may in law be responsible or otherwise. The Buyer shall not be entitled to refuse to accept delivery or take collection of the Products, or repudiate or cancel the Contractual Services as a result of any delay in delivery of the Products or in the completion of the Contractual Services. Late delivery or late completion shall not affect the obligations of the Buyer to pay the Price.

8) PRICE AND PRICE ESCALATION

The price is based upon the costs of materials, labour, transport, overheads, insurance, taxes (other than Value Added Tax), or any other similar costs that are current at the date or earlier of the Company's quotation and the Buyer's order. The Price may be varied to take account of any reasonable increase in any such costs or charges which may occur before the Contract is fulfilled. In addition to the Price, the Buyer shall pay Value Added Tax at rate ruling at time of invoice.

9) PAYMENT

- 9.1) Whilst the Buyer remains an approved credit customer; payment shall be made within 30 days of the date of invoice. In all other cases, payment shall be made against delivery or on a pro-forma invoice at the Company's option, or within a period specifically agreed between the Company and the Buyer in writing as part of a credit agreement.
- 9.2) The Buyer shall not be entitled to make any deduction from, or retention of the amount due under the Contract.
- 9.3) IN the event that any amount due under the Contract shall not have been paid in full by the date due, the Company shall be entitled to charge interest on all monies outstanding at the rate of 1.5% per month or part thereof calculated from the invoice date, or in accordance with special terms specifically agreed between the Company and the Buyer in writing as part of a credit agreement.

10) PASSING OF RISK

The risk in the Products supplied shall pass to the Buyer at the time when such Products are either delivered to the address specified by the Buyer or are loaded on to the Buyer's vehicle or onto the vehicle of any person acting for the Buyer.

11) RETENTION OF TITLE

The Company and the Buyer expressly agree that, until the Company has been paid in full for the Products comprised in the Contract or any other contract between them:

- 11.1) The Products comprised in this Contract remain the property of the Company and the Buyer shall store such Products in the proper manner without charge to the Company so that they are clearly identified as belonging to the Company.
- 11.2) The Company may recover those Products at any time from the Buyer if still in the Buyer's possession if any of the circumstances set out in Clause 15 occurs or if the Company judges that the amount outstanding from the Buyer on the general statement of account between the parties is in excess of the credit limit the Company is willing to accord to the Buyer; and for the purpose of such recovery the Company, its agents or servants may enter upon any land or buildings upon which it is reasonably believed that the Products are situated.
- 11.3) If any Buyer incorporates the Products into other Products (with addition of its Products or those of others) or users such Products (with or without such addition) the property in those Products is, upon such incorporation or use, transferred to the Company and the Buyer as Trustee although for the Company will store the same for the Company in a proper manner without any charge to the Company.
- 11.4) The Buyer has the right to dispose of the Products or such other products in the ordinary course of its business for the account of the Company and to pass good title to the Product or other such products to the Buyer's customer being bona fide purchaser for value without notice of the Company's rights.
- 11.5) In the event of such disposal the Buyer has the fiduciary duty to the Company to account to the Company for the sale proceeds but may retain there from an excess of such proceeds over the amount outstanding under this or any other contract between the Company and the Buyer; and the Company has the additional right to recover the Buyer's price from the Buyer's customer to the extent unpaid; if the Company avails itself of such right, the Company will account to the Buyer for any such excess as aforesaid less any expenses incurred by the Company in or about the recovery.

12) DEFECTS

- 12.1) Notwithstanding the provisions of Clause 13 and subject to the Buyer having paid the price in accordance with the Contract and subject also to any defective goods being immediately returned to the Company's premises free of expense to the Company, the Company shall, in the case of goods or materials manufactured by the Company, make good replacement or repair any defect or failure which under proper use appears therein and arises solely from faulty design,

materials or workmanship within a period of ninety days after the Products have been delivered or the Contractual services have been completed. At the termination of that period all liability on the Company's part shall cease. Such replacements or repaired goods or materials will be delivered to the Buyer by any method of transport at the Company's option and (if any delivery charge was made for the original delivery) the cost of such replacements or repaired goods or materials shall be payable by the Buyer.

12.2) In respect of goods manufactured by any other person, firm or corporation the Buyer shall be entitled only to such benefits as the Company itself may receive under any guarantee or warranty given in respect thereof by the manufacturer;

13) LIMITATION OF LIABILITY

13.1) The potential losses that might be caused or be alleged to be called by the failure of the Company, its agents, employees or subcontractors to complete the Contract or to take any particular precaution or care (whether as a result of breach of contract or delict (including negligence) or to avoid any act so great in proportion to the sums which can be reasonably charged by the Company that the Company and its agents, employees and subcontractors cannot and will not assume terms of these Conditions. However; the Company is prepared to negotiate special indemnity cover in any particular case at the expense and request of the Buyer.

13.2) Accordingly, without prejudice to the provisions of clauses 3, 7 and 12, the Company's entire liability under the Contract and the Buyer's exclusive remedy shall be as follows;

(a) The Buyer's remedies (whether in contract or in delict (including negligence) against the Company for any breach of the Company's obligations hereunder or otherwise for any act, omission or statement of the Company, its employees, agents or subcontractors in connection with or in relation to the subject matter of the Contract, shall, subject to Sub-Clause (c) below, be limited to actual money damages not exceeding the price. For the purpose of this Sub-clause (a) a number of causes, whether successive or concurrent, which together result in or contribute to substantially the same loss or damage shall be treated as one cause occurring at the date of the last such causes.

(b) Subject to Sub-clause (c) below, the Company will accept liability for direct physical injury to or death of persons which is caused by the negligence of the Company, its employees, agents or subcontractors and the above money limits shall not apply.

(c) In no event will the Company be liable for any loss of profits, business or anticipated savings or for damages in respect of special, indirect or consequential loss howsoever caused even if the Company has been advised of the possibility of such loss or damage. Furthermore the Company will not be liable in respect of any claim against the Buyer by any other party (except with regard to personal injury claims arising under the foregoing Sub-clause) for any loss or damage caused by the Company's failure to perform its responsibilities.

(d) No action (whether in contract or in delict (including negligence) and regardless of form including arbitration proceedings) arising out of the Contract or any other services of any kind supplied or to be supplied hereunder may be brought by either party more than two years after the party concerned becomes aware of the facts constituting the cause of the action.

(e) The Buyer agrees that it is fair and reasonable for the Company to limit its liability hereunder and accordingly the Buyer agrees that, except as expressly set forth in this clause 13, all conditions or warranties expressed or implied, statutory or otherwise, are hereby excluded.

14) Save in respect of personal injury, the maximum liability of the Company under this contract is limited to the cost of the Products.

15) PATENT RIGHTS

15.1) The Company will not accept liability or give any warranty in respect of any patent rights caused by the manner of the Buyer's instructions, expressed or implied.

15.2) The Buyer shall indemnify the Company against all liability arising from any infringement of patent rights caused by the manner of the Buyer's use of sale of the Products.

16) CANCELLATION

16.1) If the Buyer fails to make any payment when it comes due or enters into any composition or arrangement with its creditors or if, being an incorporated company, has a receiver appointed or passes a resolution for winding up or a court makes an order to that effect or, if not being an incorporated company has a receiving order made against it, or if there is any breach by the Buyer of any of these conditions, then the Company may defer or cancel any further deliveries of the products or completion of the Contractual Services and treat the Contract as determined but without prejudice to the Company's rights to any unpaid purchase price of products delivered and Contractual Services supplied and to damages for any consequential loss incurred.

16.2) If the Buyer cancels or postpones its order the Company shall be entitled to recover all costs accrued and/or incurred by the Company up to date upon which the Company receives notice of such cancellation.

17) INDULGENCE

No indulgence or forbearance extended to the Buyer shall limit or prejudice any right or claim available to the Company.

18) FORCE MAJEURE

The Company shall not be responsible or liable in any manner for any loss (direct, indirect or consequential) arising from an delay or default in the performance of any of the Company's obligations under the Contract where such delay or default arises as a result of any circumstances beyond the control of the Company including (but without prejudice to the generality of the foregoing) war; industrial action, riot, malicious damage, fire, storm, flood, act of God, accident, non-availability or shortage of material or labour; failure by any subcontractor or supplier to perform, failure or production equipment, or any statute, rule, byelaw, order; regulation or requisition made or issued by any government department, local or other duly constituted authority.

If performance of the Contract shall be delayed by any such circumstances then the Company shall have the right to suspend further performance

19) ASSIGNATION

The Buyer shall not without the Company's prior consent, assign or transfer or purport to assign to transfer the contract to any other person whatsoever.

20) LIMIT OF CONTRACTS

Any quotation includes only such goods, materials and work as are specified therein. In the event of any material supplied by the Buyer being defective, the Buyer shall be responsible to the Company for all additional work occasioned by such defect.

21) CONSTRUCTION

The Contract shall in all respects be construed and operate as a Scottish Contract in conformity with Scottish Law. The Buyer agrees to prorogate the jurisdiction of the Court of Session and Perth Sheriff Court. The Contract shall be governed by Scots Law.

22) THE COMPANY

The Company reserve the right to change and update Products and installation methods in accordance with their policy of continual Product upgrade.