

Terms and conditions of sale of goods

THESE TERMS AND CONDITIONS FOR THE SALE OF GOODS state the basis on which we, PHOENIX WHIRLPOOLS LIMITED, will sell goods to our business customers.

Please read them carefully, especially the terms at clause 11 relating to liability.

We are a company incorporated and registered in England and Wales with company number 04317226 whose registered office is at Unit 8 Leeds 27 Industrial Estate, Bruntcliffe Avenue, Morley, Leeds, England, LS27 0LL. We're called 'the Supplier' in this agreement.

You are called 'the Customer' in this agreement. You are the individual, firm, company or other organisation stated on the order form or other document agreed in writing between us ('the **Order**').

It is agreed that:

1. Definitions and interpretation

- 1.1. If any word, phrase or explanation used within this agreement is not clear, it will be defined and interpreted according to the definitions and interpretations set out below:

Acts, Legislation: or other similar references shall include any updates and or amendments to the same.

Charges: the charges payable by the Customer to the Supplier according to the terms of this Contract.

Customer: the individual, firm, company or other organisation stated on the Order.

Goods: the goods set out in the Order which the Supplier is to supply, according to the terms of this Contract.

Order: the Supplier's order form, or other document agreed in writing by the Supplier and the Customer.

Written: and any similar expression, includes e-mail.

2. Supply and sale of goods

It is also agreed that:

- a. The Customer wishes to acquire the goods described in the Order ('**Goods**') and the Supplier wishes to supply them to the Customer, on the terms and conditions set out in this agreement ('**Terms**').
- b. The Supplier shall only supply Goods to the Customer on these Terms. (Terms can only be varied in writing signed by an authorised officer of the Supplier.)
- c. Quotes for Goods provided by the Supplier to the Customer are not offers by the Supplier. Any Charges quoted in a quotation shall only be valid for 30 days from the date of the quotation
- d. Any Orders placed by the Customer are offers for the purchase of the Goods based on these Terms
- e. When the Supplier accepts an Order in writing, the Supplier's contract with the Customer for the supply of the Goods in that Order shall come into existence at the point of the Supplier's written acceptance.
- f. The Supplier's contract with the Customer for the supply of the Goods comprises the Order, these Terms and anything else the Supplier expressly agrees in writing ('**Contract**').
- g. Any descriptions of the Goods contained in the Supplier's brochures or on the Supplier's website, along with any samples of Goods, are only for illustrative purposes and do not form part of the Contract
- h. The Supplier may amend any specification for Goods as required by law, or to comply with any relevant regulatory obligations.

3. Charges

- 3.1. The Customer will pay the Charges set out in
- a. the quotation sent by the Supplier to the Customer
 - b. the Order, or
 - c. in the Supplier's written acceptance of the Order.

- 3.2. If no Charges have been quoted or set out in the Order, or in the Supplier's written acceptance, then the Charges shall be those set out in the Supplier's price list in force on the commencement date of the Contract.
- 3.3. The Supplier has the right to change the Charges at any time prior to delivery of the Goods, to reflect any increases in costs which are beyond the Supplier's control, including, for example, to reflect changes to foreign exchange rates or taxes, changes in the costs of labour or materials and to reflect any changes requested by the Customer after the commencement date of the Contract.
- 3.4. The Supplier may charge amounts in addition to the Charges if the Customer requests any change to the Goods after the commencement of the Contract, if the Customer fails promptly to provide any instructions required by the Supplier for the supply of the Goods, or for any reason which is due to any other act or omission of the Customer.
- 3.5. Unless otherwise stated the Charges will be exclusive of VAT, which the Customer shall be liable to pay to the Supplier in addition to the Charges.

4. Invoicing and Payment

- 4.1. The Supplier is entitled to raise invoices containing the Charges on or after delivery of the Goods by the Supplier.
- 4.2. If the Goods are to be delivered to the Customer and the Customer fails to accept delivery of the Goods, then the Supplier is entitled to raise an invoice containing the Charges after the Supplier has attempted to deliver the Goods.
- 4.3. The Customer will pay the Supplier within 30 days of the end of the month of receiving the Supplier's invoice unless otherwise stated and agreed in writing by the Supplier. Payment must be made without any deduction or set-off. Payment shall be treated as made once the Supplier receives cleared funds.
- 4.4. Time for payment of the Charges shall be of the essence.
- 4.5. If any amounts owed by the Customer to the Supplier become overdue, then (without prejudice to any other rights or remedies available to the Supplier), the Supplier:
 - a. shall be entitled to charge interest upon such amounts in accordance with the Late Payment of Commercial Debts (Interest) Act 1998
 - b. may suspend the supply and/or delivery of Goods (and any goods under any other contract between the Supplier and the Customer), until the overdue amounts are paid in full, and/or
 - c. may terminate the Contract.
- 4.6. The Customer is responsible for all reasonable costs and expenses incurred by the Supplier in relation to the recovery by the Supplier of any amounts owed to it by the Customer.

5. Delivery of Goods

- 5.1. Any dates quoted for delivery of Goods are approximate only and time for delivery of the Goods shall not be of the essence.
- 5.2. The Supplier will deliver the Goods to the premises identified by the Customer in the Order, or to another location agreed in writing between the Supplier and Customer, unless the Customer has requested to collect the Goods.
- 5.3. If the Customer does not accept delivery of the Goods, then (without prejudice to any other rights or remedies available to the Supplier), the Supplier may
 - a. store the Goods until delivery of the Goods occurs and
 - b. invoice the Customer for the costs and expenses of storage, insurance and other associated costs.
- 5.4. The Supplier may deliver the Goods by instalments. Each instalment shall be deemed to be a separate contract and any failure or delay by the Supplier to deliver any one instalment shall not entitle the Customer to terminate the Contract in relation to other instalments.
- 5.5. Notwithstanding the above, the Supplier will not be liable to the Customer where non-delivery of the Goods is due to a reason beyond the Supplier's reasonable control, or to a default by the Customer (for which the Supplier shall have no liability).

6. Responsibility for Goods

- 6.1. For goods that are delivered to the premises identified in the Order (or any other location agreed between the Supplier and Customer in writing), the responsibility for and risk in the Goods passes to the Customer:
 - a. at the time of delivery of the Goods to those premises, or

b. if the Customer fails to accept the Goods, then delivery (and the responsibility for and risk in the Goods passed to the Customer) will be at the time when the Supplier attempted to deliver the Goods to the Customer.

6.2. Where Goods are collected by the Customer, the responsibility for and risk in the Goods passes to the Customer at the time when the Supplier notifies the Customer that the Goods are ready for collection.

7. Ownership of Goods

7.1. Subject to section 7.5, ownership of the Goods does not pass to the Customer until the Supplier has received full and cleared payment of the Charges for the Goods (and for any other goods under any other contract between the Supplier and the Customer for which payment for such goods has become due).

7.2. Until ownership of the Goods passes to the Customer, the Customer will:

- a. keep and store the Goods separately from any goods belonging to any other person or company;
- b. ensure that the Goods remain readily identifiable as belonging to the Supplier. The Customer shall not do anything which may obscure or deface any markings indicating that the Goods belong to the Supplier;
- c. store and keep the Goods in good condition; and
- d. insure the Goods from the time at which risk in the Goods passes to the Customer.

7.3. If the Customer's business fails, or is likely to fail, the Customer will immediately notify the Supplier and any right of resale of Goods under the Contract shall terminate immediately. (The Customer's business will be treated for this purpose as having failed if it meets any of the termination conditions identified in section 13.2.)

7.4. Subject to section 7.5, until the time when ownership of the Goods passes to the Customer, the Customer may use or resell the Goods only in its ordinary course of business. If it does resell the Goods in its ordinary course of business, ownership of such Goods shall pass to the Customer immediately before such resale.

7.5. Until the time when ownership of the Goods passes to the Customer, the Supplier may require the Customer to deliver up all the Goods to the Supplier. If the Customer fails to do so, the Supplier shall have the right to enter the premises at which the Goods are located and retake possession of those Goods.

8. RETURNS

8.1. Subject to section 9.4, no Goods once delivered to the Customer shall be returned to the Supplier unless in the Goods are in a re-saleable, un-used condition and are in the original packaging. A restocking fee will be charged to the Customer where Goods are returned to the Supplier as not required.

8.2. Goods specifically produced to order cannot be cancelled or returned once the Customer has received the Supplier's written acceptance of the Order and production has commenced.

9. Warranties relating to Goods

9.1. The specification for the Goods can be found in the Supplier's brochure or on the Supplier's website, (except to the extent that such specification is amended by any drawing, design or specification supplied by the Customer).

9.2. Subject to the remaining provisions of this section 8, the Supplier warrants that the Goods will correspond in all material respects with the specification of the Goods, that the Goods will be of satisfactory quality and that they will be free from defects in material and workmanship on delivery and for a period of 12 months from delivery, unless otherwise stated in the Supplier's brochure or on the Supplier's website..

9.3. The Supplier shall not be liable under the warranty in section 9.2 if:

- a. any use is made of the Goods after the Customer has provided the Supplier with notice that the Goods do not meet the warranty (see section 9.4);
- b. any defect(s) in the Goods are due to any specification, drawing or design supplied by the Customer;
- c. any defect(s) in the Goods are due to fair wear and tear, wilful damage, abnormal working conditions, the Customer's negligence, failure by the Customer to follow any instructions in respect of the Goods, failure by the Customer to follow good practice in respect of the Goods or any misuse of the Goods; and
- d. any repair or alteration to the Goods has been made without the prior written approval of the Supplier.

9.4. If the Customer considers that any of the Goods do not meet the warranty in section 9.2, then the Customer will promptly provide written notice to the Supplier and will allow the Supplier, at the Supplier's request, to examine those Goods. The Customer will promptly return these Goods to the Supplier at the Supplier's cost if requested by the Supplier.

9.5. If:

- a. the Customer has a legitimate claim in respect of Goods not complying with the warranty in section 9.2
- b. none of the factors listed in section 9.3 apply, and
- c. the Customer has complied with section 9.4,

the Supplier may, at its option, repair or replace the relevant Goods, or provide a refund to the Customer in respect of such Goods. Once it has done so, the Supplier shall have no further liability to the Customer for those Goods.

9.6. Except as provided in this Contract, all other warranties or conditions implied by statute or by common law are excluded to the maximum extent allowed by law.

10. Indemnity

If the Customer provides any specification, drawing or design to the Supplier in respect of the Goods, the Customer shall indemnify the Supplier against all losses, costs and expenses incurred by the Supplier in respect of any claim, made to the Supplier from a third party, that the Supplier's use of the specification, drawing or design in relation to the Goods, infringes that third party's intellectual property rights.

11. Obligations of Customer

11.1. The Customer will:

- a. ensure that the Order, the Customer Materials and any other materials or information (including any specification, design or drawing for the Goods) which the Customer supplies to the Supplier are complete and accurate
- b. promptly provide the Supplier with such materials and information as the Supplier requires to supply the Goods, and
- c. comply with all applicable laws and relevant regulatory obligations

11.2. If the Supplier is delayed or unable to fulfil any of its obligations under the Contract due to any act or omission of the Customer (Customer Failure), then the Supplier may rely on such Customer Failure to relieve it from its obligations under the Contract.

11.3. To the extent that the delay or inability at section 11.2 is due to the Customer Failure, then without limiting or otherwise compromising any other rights or remedies available to it, the Supplier:

- a. may suspend the supply of Goods until the Customer makes good the Customer Failure;
- b. shall not be liable for any losses, costs or expenses which the Customer suffers or incurs because of any delay or suspension which is attributable to the Customer's Failure; and
- c. may request immediate payment by the Customer of any losses, costs or expenses which the Supplier suffers or incurs because of the Customer Failure.

11.4. Any right of suspension under this section is additional to any rights available to the Supplier under the law of any relevant jurisdiction.

12. Liability

12.1. Subject to section 12.3, the Supplier is not liable to the Customer for any indirect or consequential loss, any loss of profits or any loss of business, whether arising from tort, breach of contract, indemnity or otherwise under or in connection with the Contract.

12.2. Subject to section 12.3, the Supplier's liability in respect of all claims, losses or damages of whatever nature, whether arising from tort, breach of contract, indemnity or otherwise, under or relating to, the Contract, shall not exceed the aggregate of the Charges paid by the Customer to the Supplier under the Contract.

12.3. Nothing in the Contract shall exclude or limit either party's liability for any death or personal injury caused by negligence or for any other liability which cannot be excluded or limited by law.

13. Termination

13.1. Without prejudice to any other rights and remedies available to it, the Supplier may terminate the Contract, without any liability to the Customer, if:

- a. the Customer fails to pay any amount under the Contract when it is due

- b. the Customer commits a material breach of the Contract and fails to rectify the breach within 5 working days, or
- c. the Customer's business fails.

13.2. The Customer's business will be treated for this purpose as having failed if:

- a. the other party is or appears to be unable to pay its debts as they fall due
- b. the other party makes any voluntary arrangement with that other party's creditors
- c. (being an individual or firm) the other party becomes bankrupt
- d. (being a company) the other party becomes subject to an administration order or goes into liquidation
- e. any third party takes possession of, or enforces rights over, any of other party's property or assets under any form of security;
- f. the other party stops or threatens to stop carrying on business;
- g. the other party suffers any process equivalent to any of these, in any jurisdiction; or
- h. the terminating party reasonably believes that any of the events mentioned above are about to occur and the terminating party notifies the other party accordingly.

13.3. Upon termination of the Contract, however caused, and without prejudice to any other rights or remedies available to the Supplier, the Customer shall pay to the Supplier on demand:

- a. all Charges and other sums due but unpaid at the date of such demand, together with any interest accrued according to the terms of section 4.6;
- b. any Charges under any invoice which the Supplier raises after termination, relating to any Goods which have been supplied prior to termination, but for which the Supplier had not yet raised an invoice before termination; and
- c. any costs and expenses incurred by the Supplier in recovering the Goods and/or in collecting any sums due under the Contract (including any storage, insurance, repair, transport, legal and remarketing costs).

13.4. Termination or expiry of the Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.

13.5. Any term of the Contract which is specifically stated to continue or which, by its very nature, is intended to continue after termination of the Contract, shall continue to bind the parties following termination or expiry of the Contract

14. **Events beyond the reasonable control of the Supplier ('Force majeure')**

The Supplier shall not be liable to the Customer for any failure or delay in performing any of its obligations to the extent that such failure or delay is caused by an event beyond its reasonable control.

15. **General**

15.1. The Contract represents the entire agreement between the parties in relation to the subject matter and supersedes all previous agreements, representations or understandings between the parties. The parties agree that they shall have no rights or remedies in relation to any representation or warranty that is not included in the Contract.

15.2. The Customer shall not assign, sub-contract, delegate, or otherwise transfer any of its rights or obligations under the Contract without the prior written consent of the Supplier.

15.3. If any provision of these Terms is held by a competent authority to be invalid or unenforceable, in whole or in part, the validity of the other Terms and of the remainder of the provision in question will not be affected. Every provision is severable from every other.

15.4. No single or partial exercise or failure or delay in exercising any right, power or remedy by a party under the Contract, howsoever arising, shall operate as a waiver by that party of, or impair or preclude any further exercise of that right, power or remedy. To be valid and effective, any waiver must be in writing.

15.5. Unless otherwise expressly stated, nothing in the Contract will create or confer any rights or other benefits pursuant to the Contracts (Rights of third Parties) Act 1999 in favour of any person other than a party to the Contract.

15.6. Any written notice under these Terms will be deemed to have been sufficiently served if posted by pre-paid official post, couriered, faxed on receipt of successful answerback, or if sent by e-mail (but in this case only on evidence of successful transmission and only if the parties have regularly communicated on contract matters by e-mail).

15.7. The Contract will be governed by the law of England, and the parties submit to the exclusive jurisdiction of the English courts.