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# Terms and Conditions for the Sale and Supply of Goods and Services

Servicing of boilers and supply and installation of tanks

Rix Petroleum Limited  
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## TERMS AND CONDITIONS FOR THE SALE AND SUPPLY OF GOODS AND SERVICES

### Servicing of boilers and supply and installation of tanks

Your attention is in particular drawn to condition 12.

The following Terms and Conditions (the "Conditions") set out how we will work together. As these are legal conditions it is important that you read and understand the Conditions, in particular the provisions of condition 12.4 and 12.5 if you are a business, and conditions 12.9 and 12.10 if you are a consumer, before entering into any contract with us. If you are uncertain as to your rights under them or you want any explanation about them please contact us by telephoning 0800 542 4208, writing to Witham House, 45 Spyvee Street, Hull, HU8 7JR or emailing sales@rix.co.uk. You should only enter into a contract with us if you wish to be bound by the Conditions set out below.

Nothing in these Conditions affects your statutory rights if you are a consumer.

### 1. Definitions and Interpretation

1.1 In these Conditions the following words have the following meanings:

**Contract:** means the Contract between You and Us for the sale and supply of Goods and/or Services incorporating the Schedule of Contract Details (if applicable) together with these Conditions;

**Goods:** means any goods agreed in the Contract to be supplied to You by Us, such as, but not limited to, domestic or commercial oil storage tanks, dispensing stations and replacement parts;

**Schedule of Contract Details:** means the detail which forms part of the Contract and which is set out in the document headed "Schedule of Contract Details", if applicable;

**Services:** means any services agreed in the Contract to be supplied to You by Us (whether or not You agree to buy any Goods from Us) as set out in any written correspondence between us such as in Our quotation, order acknowledgement or Schedule of Contract Details if applicable or in the absence of any written document as agreed between us such as, but not limited to, the installation, dismantling and disposal of domestic and commercial oil storage tanks, and the servicing of boilers and oil fired heaters;

**We, Us, Our:** means Rix Heating Services Limited, company number 5908516, whose registered office is at Witham House, 45 Spyvee Street, Hull, East Yorkshire, HU8 7JR;

**Website:** means [www.rix.co.uk](http://www.rix.co.uk);

**Working Day:** means any day other than a Saturday, Sunday or a public holiday in the United Kingdom;

**You, Your, Yourself:** means the individual consumer or business who purchases the Services and/or Goods from Us. You will be a consumer for the purposes of these Conditions if Your use of the Services and/or Goods is for personal purposes only rather than re-sale and not for use in connection with any trade, business or profession.

### 2. Application of Terms

2.1 Each Contract shall be on these Conditions unless Our authorised representative agrees any variation to these Conditions in writing. By entering into a Contract with Us You agree that no other terms and conditions will apply to the Contract (including any terms and conditions You attempt to apply under any purchase order, confirmation of order, specification or other document).

2.2 In cases where there is a Schedule of Contract Details setting out the details of the Contract, if there is conflict or ambiguity, the order of precedence of these Conditions and the Schedule of Contract Details shall be as follows:

2.2.1 any special conditions as set out and agreed between You and Us in the Schedule of Contract Details;

2.2.2 these Conditions; and

2.2.3 the Schedule of Contract Details.

2.3 Please do not rely on promises or claims which are not confirmed in writing or which are made by anyone other than Our authorised agents. If You are a business no such promises or claims will form part of the Contract. Nothing in this condition shall exclude

or limit Our liability for fraudulent misrepresentation (false statements which We make knowingly or recklessly).

2.4 If You wish to enter into a Contract with Us over the telephone You should telephone 0800 5424208 and place Your order over the telephone. Alternatively, You can place Your order by speaking to one of Our authorised representatives in person and placing Your order with them, by faxing Your order to 01482 338590 or by writing to Us at Witham House, 45 Spyvee Street, Hull, HU8 7JR.

2.5 Subject to condition 9.2, any quotation is valid for 28 days from its date. If You place an order in respect of a quotation, please provide the date, the reference of that quotation and address for delivery (if relevant).

2.6 Any order You place whether placed over the telephone or otherwise will be regarded as a contractual offer by You to purchase the Services and/or Goods subject to these Conditions. There will be no Contract until We write to You to acknowledge or confirm Your order or, if earlier, We perform the Services for You and/or deliver the Goods to You. Any order will be accepted entirely at Our discretion.

2.7 You must ensure that any order You place and any applicable specification(s) are complete and accurate and that You indicate accurately the place You would like Us to perform the Services and/or deliver the Goods at the time You order the Services and/or Goods.

### 3. Description

3.1 The quantity and description of the Services and/or Goods ordered will be as set out in any written correspondence between You and Us such as Our quotation, acknowledgement of Your order or Schedule of Contract Details (as applicable) or, in the absence of any such written correspondence, as agreed between Us.

3.2 All samples, drawings, descriptive matter, specifications and advertising issued by Us and any descriptions or illustrations contained in Our catalogues or brochures are issued or published for the sole purpose of giving You an approximate idea of the Services and/or Goods described in them. If You are a business all such samples as listed above shall not form part of the Contract and this is not a sale by sample.

### 4. Cancellation

4.1 If You are a business, no cancellation of the whole or any part of any order, whether it is an order by instalment or otherwise, is permitted by You except where agreed in advance in writing by an authorised representative of Our Company and provided that You indemnify Us in full on demand against any costs, losses, damages, proceedings, claims or expenses whatsoever suffered by Us arising out of or in connection with any such cancellation or variation. We are not bound to agree to any such cancellation and may complete such order, deliver the Goods or perform the Services even if You purport to cancel.

4.2 If You are a consumer and You order Goods from Us over the telephone, You can cancel any Goods ordered at any time up to the end of the seventh (7) Working Day after the day the Goods are delivered to You subject to condition 4.5.

4.3 If You are a consumer and You order Services from Us over the telephone You can cancel the Services at any time up to the end of the seventh (7) Working Day after the day We provide You with a written document confirming details of the Services ordered. However, Your right to cancel will end early if, at Your request or otherwise with Your consent, We are able to provide the Services to You within this cancellation period. If You require Us to carry out the Services within the cancellation period, You agree that the cancellation period will end as soon as We start to provide the Services.

4.4 If You are a consumer please note that where You order Services and Goods from Us at the same time, You will be entering into two separate Contracts with Us, one Contract for Services and one Contract for Goods and Your cancellation rights in relation to each Contract will run for different periods in accordance with conditions 4.2 and 4.3.

4.5 If You are a consumer, You cannot cancel any Contract for Goods if the Goods are made to Your own specification or are personalised.

- 4.6 If You are a consumer and wish to cancel a Contract You must notify Us by e-mailing sales@rix.co.uk, faxing 01482 338590, telephoning 01482 222250 or writing to Witham House, 45 Spyvee Street, Hull, East Yorkshire, HU8 7JR.
- 4.7 If You are a consumer and You notify Us that You are cancelling a Contract, We will refund any price You have paid under the Contract as soon as possible and in any event within 30 days.
- 4.8 If You are a consumer and You cancel any Goods ordered You must return the Goods to Us at Your expense. If You do not return the Goods to Us within 14 days of the date You cancel the Contract or if You ask Us to collect the Goods from You We will collect them from You but You must make the Goods available for collection and allow Us, Our employees or agents to access Your premises on reasonable notice and at reasonable hours if this is necessary in order to recover the Goods.
- 4.9 Please note that if You are a consumer and You cancel the Contract without returning the Goods to Us and We collect the Goods from You We will charge You the direct costs We incur recovering the Goods.
- 4.10 If You are a consumer You are under a statutory duty to retain possession of the Goods and to take reasonable care of them during the cancellation period. If You breach this duty We will have a right of action against You.

## 5. Provision of Services

- 5.1 If You are a consumer, the Services will be provided no later than 30 days after the day the Contract is formed unless We agree otherwise with You.
- 5.2 Any people We supply to carry out the Services shall be competent and adequately supervised to carry out the Services and will at all times be Our employees or authorised representatives and will not be Your employees at any time.
- 5.3 We shall perform the Services during Our regular working hours, unless otherwise agreed with You. If We perform the Services outside Our regular working hours at Your request or in an emergency We shall be entitled to make an extra charge for the Services but if You are a consumer We will inform You of the amount of any such extra charges before carrying out such Services.
- 5.4 You must provide Us with reasonable assistance at Your premises and as We request from time to time, safe and adequate access to Your premises and adequate power, lighting, heating and other facilities or supplies for Our employees or agents in accordance with applicable legislation and as We reasonably require and in particular with statutes and regulations relating to health and safety and the environment.
- 5.5 We reserve the right to refuse to provide the Services where access is too difficult in Our opinion, if the position of any boiler, heater or oil storage tank makes it difficult or impossible to perform the Services, or if You have not complied with condition 5.4.
- 5.6 You must obtain all necessary permissions and consents required for the Services to be carried out.
- 5.7 We shall perform the Services at the address You specify when You place Your order, unless We agree otherwise with You in writing.
- 5.8 The Services will be regarded as completed and the price for the Services will be due and payable in accordance with condition 10:
- 5.8.1 when We issue a written notice or work sheet to You confirming that the Services have been completed or at the latest when We send an invoice to You; or
- 5.8.2 if We are available to perform the Services but are prevented from doing so by reason of:
- (a) the lack of reasonable co-operation from You or Your failure to comply with condition 5.4; and/or
- (b) the condition of Your property and/or the facilities or services available at Your property or inadequate access to Your property at the time agreed for the provision of the Services.
- 5.9 We will comply with and ensure that any people We employ or instruct to carry out the Services comply with all relevant legislation when performing the Services.

## 6. Collection and Delivery of Goods

- 6.1 Unless We agree with You that You will collect the Goods, the Goods will be delivered to the address You specify at the time You place Your order (if You are a consumer), or to Your place of business (if You are a business). If We have agreed with You that You are to collect the Goods, You will collect the Goods from Our premises within the period (if any) named in the quotation or within such other period as is agreed between You and Us.
- 6.2 If You are a consumer, We will deliver the Goods as soon as possible, and in any event no later than 30 days after the Contract is formed.
- 6.3 If You are a consumer and We are not able to deliver the Goods within the time period specified in condition 6.2, We will contact You and try to agree an alternative date for delivery with You. If You do not wish to agree to a new date for delivery You can cancel the Contract and We will refund any money paid to Us as soon as reasonably possible and at the latest within 30 days.
- 6.4 If You are a business, where We agree with You We will deliver or procure delivery of the Goods on Your behalf, when ready, We will do so at Your risk and cost to such address in the United Kingdom as specified in Your order or, if no such address is specified, at the address to which correspondence and/or Goods may previously have been sent under the Contract and Our only responsibility will be to arrange for a third party to deliver the Goods. The manner of delivery shall be such as We in Our sole discretion shall deem appropriate.
- 6.5 If You are a business and You collect the Goods from Our premises, You will provide at Your own expense adequate and appropriate equipment and manual labour for loading the Goods unless We agree otherwise with You.
- 6.6 If You are a business, if for any reason You do not accept delivery of or collect any of the Goods when they are ready for delivery, or We are unable to deliver the Goods on time because You have not provided appropriate instructions, documents, licences, authorisations or access the Goods shall be deemed to have been delivered and risk in the Goods shall pass to You (including for loss or damage caused by Our negligence) and We may:
- 6.6.1 store the Goods until delivery, whereupon You shall be liable for all related costs and expenses (including, without limitation, storage and insurance) and the costs of any return or subsequent visit which is made; or
- 6.6.2 sell the Goods at the best price readily obtainable and (after deduction of all reasonable storage and selling expenses) charge You for any shortfall below the Contract price.
- 6.7 We may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the Contract. If You are a business, each instalment shall be a separate Contract and no cancellation or termination of any one Contract relating to an instalment shall entitle You to repudiate or cancel any other Contract or instalment.
- 6.8 Practical logistics may mean that We cannot always deliver exact quantities and therefore if We deliver up to 10% more or less than the quantity ordered, You may not object to or reject the Goods as a result of the surplus or shortfall and shall pay for such Goods at the contract rate.
- 6.9 You are under a duty wherever possible to inspect the Goods on delivery or on collection (as the case may be).
- 6.10 Where the Goods cannot be examined on delivery or collection please mark the carrier's note or such other note (as the case may be) "not examined" at the time of delivery.

## 7. Time Limits

- 7.1 If You are a business, any dates or time periods specified by Us for delivery or collection of the Goods or performance of any Services are intended to be an estimate only. If no dates are specified, delivery of the Goods or performance of the Services shall be within a reasonable time. Time is not and shall not be of the essence in relation to this condition.
- 7.2 If You are a business, subject to the other provisions of these Conditions We shall not be liable for any direct, indirect or consequential loss (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, charges

or expenses caused directly or indirectly by any delay in the delivery of the Goods or performance of the Services (even if caused by Our negligence), nor shall any delay entitle You to terminate or rescind the Contract unless such delay exceeds 180 days.

## 8. Risk/Title

- 8.1 If You are a business, risk in the Goods shall pass to You at the times set out below depending on the arrangements for delivery:
- 8.1.1 if the Goods are to be collected from Our place of business, from the time You are due to collect the Goods in accordance with condition 6.1; or
- 8.1.2 if We have arranged for a third party carrier to deliver the Goods to You from the time We make the Goods available to the third party carrier.
- 8.2 If You are a business, full legal, beneficial and equitable title to and property in the Goods will not pass to You until We have received in full (in cash or cleared funds) all sums due to Us in respect of:
- 8.2.1 the Contract; and
- 8.2.2 all other sums which are or which become due to Us from You on any account or under any Contract.
- 8.3 If You are a business, until full legal, beneficial and equitable title to and property in the Goods has passed to You, You shall:
- 8.3.1 hold the Goods on a fiduciary basis as Our bailee and deliver the same up to Us on demand;
- 8.3.2 store the Goods (at no cost to Us) separately from all other goods of You or any third party in such a way that they remain readily identifiable as Our property;
- 8.3.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and
- 8.3.4 maintain the Goods in satisfactory condition and keep them insured on Our behalf (without any cost to Us) for their full price against all risks to Our reasonable satisfaction. On request You shall produce the policy of insurance to Us.
- 8.4 If You are a business, You may resell the Goods before ownership has passed to You solely on the following conditions:
- 8.4.1 any sale shall be effected in the ordinary course of Your business at full market value; and
- 8.4.2 any such sale shall be a sale of Our property on Your own behalf and You shall deal as principal when making such a sale.
- 8.5 If You are a business, Your right to possession of the Goods shall terminate immediately if:
- 8.5.1 any sum due to Us from You under any account or Contract is not paid when due;
- 8.5.2 You have a bankruptcy order made against You or make an arrangement or composition with Your creditors, or otherwise take the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convene a meeting of creditors (whether formal or informal), or enter into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or have a receiver and/or manager, administrator or administrative receiver appointed of Your undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of You or notice of intention to appoint an administrator is given by You or Your directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up of You or for the granting of an administration order in respect of You, or any proceedings are commenced relating to the insolvency or possible insolvency of You; or
- 8.5.3 You suffer or allow any execution, whether legal or equitable, to be levied on Your property or obtained against You, or fail to observe or perform any of Your obligations under the Contract or any other contract between Us and You, or are unable to pay Your debts within the meaning of section 123 of the Insolvency Act 1986 or You cease to trade; or
- 8.5.4 You encumber or in any way charge any of the Goods.

- 8.6 We shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from Us.
- 8.7 If You are a business, You grant Us, Our agents and employees an irrevocable licence during reasonable hours without prior notice to enter any premises (with or without vehicles) where the Goods are or may be stored in order to inspect them, or, where Your right to possession has terminated, to repossess and recover them and dispose of the Goods so as to discharge any sums owed to Us by You under this or any contract.
- 8.8 If You are a business, where We are unable to determine whether any Goods are goods in respect of which Your right to possession has terminated, You shall be deemed to have sold all goods of the kind sold by Us to You in the order in which they were invoiced to You.
- 8.9 On termination of the Contract, howsoever caused, Our (but not Your) rights contained in this condition 8 shall remain in effect.
- 8.10 Our rights and remedies set out in this condition 8 are in addition to and shall not in any way prejudice, limit or restrict any of Our other rights and remedies under the Contract or in law or equity.
- 8.11 If You are a consumer, as soon as We have delivered the Goods to You at the address You asked Us to deliver to or as soon as You have collected the Goods (or, if We are providing You with installation services, as soon as We have installed the Goods), the Goods will be at Your risk and You will be responsible for their safe keeping. You should make sure that You are adequately insured against any damage or loss which may occur.
- 8.12 If You are a consumer, We shall retain ownership of the Goods until You have finished paying for them in full (in cash or cleared funds).
- 8.13 If You are a consumer, until ownership of the Goods has passed to You, You shall:
- 8.13.1 hold the Goods on Our behalf; and
- 8.13.2 keep the Goods in satisfactory condition.
- 8.14 If You are a consumer and You fail to pay for the Goods at the time You are due to pay for them We may require on reasonable notice that You return the Goods to Us or allow Us to collect the Goods from You (and enter Your premises if necessary for this purpose).

## 9. Price

- 9.1 Unless We agree otherwise with You in writing, the price for the Goods and/or Services shall be the price set out in either Our written quotation, Schedule of Contract Details or other written correspondence with You except in the case of emergencies or the supply of parts following the servicing of a boiler or oil fired heater in which case the price will be as agreed between Us and You, subject to condition 2.5 and condition 9.2.
- 9.2 If You are a business, We may vary the price at any time before delivery of the Goods or performance of any Services.
- 9.3 Unless otherwise agreed in writing, if You are a business the price for the Goods and/or Services shall be exclusive of any value added tax and all costs or charges in relation to packaging, travel, loading, unloading, carriage and insurance, all of which amounts You shall pay in addition when You are due to pay for the Goods and/or Services.
- 9.4 If You are a consumer, in addition to the price for the Goods You must pay for the costs of delivery unless We agree otherwise with You.
- 9.5 We reserve the right to charge You for any reasonable costs incurred as a result of delayed delivery where such delay was caused by You and for aborted delivery or travel costs where We are unable to deliver the Goods or perform the Services for any of the reasons set out in condition 5.5.
- 9.6 Whilst We try to ensure Our pricing information is accurate, if You are a consumer, if an error is found in the pricing of Your order We will inform You and give You the option of reconfirming Your order at the amended price or cancelling the Contract.

## 10. Payment

- 10.1 Unless We agree otherwise with You in writing, payment of the price for the Goods is due within 7 days from the date of invoice.

- 10.2 Time for payment shall be of the essence.
- 10.3 No payment shall be deemed to have been received until We have received cleared funds.
- 10.4 All payments payable to Us under the Contract shall become due immediately on its termination despite any other provision.
- 10.5 If You are a business, You shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless You have a valid court order requiring an amount equal to such deduction to be paid by Us to You.
- 10.6 If You are a business and You fail to pay Us any sum due pursuant to the Contract on the due date for payment, We shall be entitled to:
- 10.6.1 charge You interest on such sum from the due date for payment at the annual rate of 8% above the base lending rate from time to time of National Westminster Bank plc, accruing on a daily basis until payment is made, whether before or after any judgment. We reserve the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998;
- 10.6.2 charge You the cost of obtaining judgment or payment to include all reasonable professional costs (including legal fees) and other costs of issuing proceedings or otherwise pursuing a debt recovery procedure; and
- 10.6.3 cancel the Contract or suspend any further performance of the Contract including suspending deliveries of the Goods and suspending delivery of any other goods to You and/or suspending performance of the Services until arrangements as to payment or credit have been established which are satisfactory to Us.
- 10.7 We reserve the right to charge a reasonable fee in the event that an instrument of payment is not met by the clearing bank.
- 10.8 If You are a consumer and You fail to pay to Us any sum due under the Contract on the due date for payment, You will be liable to pay interest to Us at the annual rate of 4% above the base lending rate from time to time of National Westminster Bank plc, accruing on a daily basis until payment is made.
- 11. Quality of Goods**
- 11.1 Where We are not the manufacturer of the Goods, We will, if possible, transfer to You the benefit of any warranty or guarantee given to Us by the manufacturer but if You are a business We do not give any warranty or guarantee as to the quality, fitness for purpose or otherwise, of the manufacturer's goods.
- 11.2 Subject to condition 11.1 (if You are a business), We promise that (subject to the other provisions of these Conditions) upon delivery and for a period of 12 months from delivery the Goods shall be of satisfactory quality and fit for their normal purpose.
- 11.3 If You are a business, You shall be responsible for ensuring that the Goods are fit for the purpose for which You wish to use them and We give no warranty (and none shall be implied) that the Goods are fit for any particular purpose.
- 11.4 We warrant that the Services will be performed with reasonable care and skill and substantially in accordance with the Schedule of Contract Details (if applicable).
- 11.5 If You are a business, We will not be liable for a breach of any of the warranties in condition 11.2 or condition 11.4 unless:
- 11.5.1 You give written notice of any defect in the Goods or failure to perform the Services to Us within 14 days of the time when You discover or ought to have discovered the defect and in any event within 12 months of delivery of the Goods or 3 months of performance of Services to You; and
- 11.5.2 We are given a reasonable opportunity after receiving such notice of examining such Goods or the location at which the Services were performed and You (if asked to do so by Us) return such Goods to Our place of business at Our cost for the examination to take place there.
- 11.6 If You are a business We shall not be liable for a breach of any of the warranties in condition 11.2 or condition 11.4 if:
- 11.6.1 You make any further use of such Goods after giving such notice or attempt to remedy any defect; or
- 11.6.2 the defect arises because You failed to follow Our oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or good trade practice; or
- 11.6.3 the defect arises from fair wear and tear, wilful damage, negligence, abnormal working conditions, misuse or alteration or repair of the Goods without Our approval; or
- 11.6.4 the Goods in question shall not have been serviced and maintained properly and in accordance with Our recommendations or have been fitted with any parts, components and/or accessories other than those manufactured or recommended by Us or where any parts or components have been fitted by third parties; or
- 11.6.5 if the total price for the Contract has not been paid by the due date for payment; or
- 11.6.6 in respect of any type of defect, damage or wear specifically excluded by Us by notice in writing; or
- 11.6.7 the failure to perform the Services in accordance with the Contract does not result from any act or omission of Us or Our employees.
- 11.7 Subject to condition 11.1, condition 11.5 and condition 11.6 if You are a business and You establish to Our reasonable satisfaction that any of the Goods and/or Services do not conform with any of the warranties in condition 11.2 or condition 11.4 We shall at Our option, at Our sole discretion and within a reasonable time:
- 11.7.1 repair or make good such defect or failure in such Goods free of charge to You (including all costs of transportation of any Goods or materials to and from You for that purpose); or
- 11.7.2 replace such Goods with goods which are in all respects in accordance with the Contract or re-perform such Services; or
- 11.7.3 issue a credit note to You in respect of the whole or part of the Contract price of such Goods or Services as appropriate having taken back such Goods or materials relating to such Goods or Services, subject, in every case, to the remaining provisions of this condition 11 provided that Our liability under this condition 11 shall in no event exceed the purchase price of such Goods or Services and performance of any one of the above options shall constitute an entire discharge of Our liability under this warranty.
- 11.8 If You are a consumer, please notify Us as soon as possible if You think We have broken any of the promises set out in conditions 11.2 or 11.4. We may need to access Your premises in order to inspect any Goods which You claim are defective. You should not make any further use of any Goods after discovering a defect.
- 11.9 If You are a consumer and establish that We have broken any of the promises set out in conditions 11.2 or 11.4, We will, at Your option: replace or repair any defective Goods free of charge or refund You the price of the Goods in question or in the case of defective Services, re-perform such Services or refund the cost of any defective Services. You will need to allow Us access to Your premises during reasonable hours and on reasonable notice if this is necessary to allow Us to replace such Goods or inspect any Services You claim are defective or to re-perform any Services.
- 11.10 Any replacement Goods shall be guaranteed on these terms for the unexpired portion of the 12 month period.
- 12. Limitation of Liability**
- 12.1 If You are a business, subject to condition 6 and condition 11, the following provisions set out Our entire financial liability (including any liability for the acts or omissions of Our employees, agents and sub-contractors) to You in respect of:
- 12.1.1 any breach of these Conditions or the Contract; and
- 12.1.2 any use made or resale by You of any of the Goods; and
- 12.1.3 any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.
- 12.2 If You are a business, all warranties, conditions and other terms implied by statute or common law (save 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.
- 12.3 Nothing in these Conditions excludes or limits Our liability:
- 12.3.1 for death or personal injury caused by Our negligence; or

- 12.3.2 under section 2(3) of the Consumer Protection Act 1987; or
- 12.3.3 for any matter which it would be illegal for Us to exclude or attempt to exclude Our liability; or
- 12.3.4 for fraud or fraudulent misrepresentation.
- 12.4 If You are a business, subject to condition 12.2 and condition 12.3 Our 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 shall be limited to 85% of the maximum limit of Our insurance or, if the claim is not covered by Our insurance or no payment is received by Us from such insurers, to £100,000 or, if the claim results from defective Goods and We recover any amount from the manufacturer's of the Goods giving rise to the claim, to the amount recovered from such manufacturer.
- 12.5 If You are a business, subject to conditions 12.2 and 12.3 We shall not be liable to You for any pure economic loss, loss of profit, loss of business, depletion of goodwill or otherwise, in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.
- 12.6 If You are a business, the price of the Goods and/or Services has been calculated on the basis that We will exclude or limit Our liability as set out in these Conditions and You by placing an order agree and warrant that You shall insure against or bear Yourself any loss for which We have excluded or limited Our liability in these Conditions and We shall have no further liability to You.
- 12.7 If You are a business, where We have not acted as carrier but have at Your request arranged for carriage of the Goods to You in accordance with condition 6.4, We accept no liability for damage or loss in transit and claims for such damage or loss shall be made by You directly on the carrier provided that We will use Our reasonable endeavours to assist You to secure recompense from the carrier.
- 12.8 If You are a consumer, nothing in these Conditions excludes or limits Our liability for death or personal injury caused by Our negligence, for fraud or false statements which We make knowingly or recklessly, or for any matter for which it would be illegal for Us to exclude or attempt to exclude Our liability.
- 12.9 If You are a consumer, subject to condition 12.8 Our total liability to You, arising in connection with the performance of the Contract shall be limited to 85% of the maximum limit of Our insurance, or, if the claim is not covered by Our insurance or no payment is received by Us from Our insurers in respect of any claim, to £100,000.
- 12.10 If You are a consumer, subject to condition 12.8, We shall not be liable to You under the Contract for:
- 12.10.1 any loss or damage caused by Us, Our employees or agents in circumstances where there is no breach of a legal duty of care owed to You by Us or by any of Our employees or agents;
- 12.10.2 any loss or damage caused by Us, Our employees or agents in circumstances where such loss or damage is not a reasonably foreseeable result of Our breach;
- 12.10.3 any loss caused by Your own fault, or as a result of You breaching these Conditions;
- 12.10.4 any financial losses which happen as a side effect of the main loss or damage and which are not foreseeable by You and Us (such as loss of business profits or loss of opportunity);
- 12.11 We will not be liable for any information, advice or recommendations We provide if We do not subsequently carry out any work We recommend or if such work is carried out by third parties.
- 12.12 You should be aware that, whilst We will perform the Services with reasonable skill and care, the removal of any pre-existing unit or old fixtures may cause some damage to surrounding areas. We cannot accept responsibility for the costs of repairing such damage unless the damage was caused by Us failing to take reasonable care.

### 13. Data Protection

We will comply with the Data Protection Act and will use and process Your personal details in accordance with Our privacy policy, a copy of which is

available from Our website and/or on request. In particular, We will supply Your personal data to third parties such as credit reference agencies to assess Your credit status.

### 14. Health, Safety and Environment and Compliance with Legislation

You must comply at all times with the written instructions and all written guidelines issued to You from time to time or attached to the Goods and all legislation including health and safety legislation concerning their storage, repair, maintenance and use of the Goods and if You are a business, You shall refer Your employees and customers to such instructions and guidelines. Health and Safety data is available on request.

### 15. Assignment

- 15.1 If You are a business, We may assign the Contract or any part of it to any person, firm or company.
- 15.2 If You are a business, You shall not be entitled to assign the Contract or any part of it without Our prior written consent.

### 16. Events Beyond Our Reasonable Control

We reserve the right to cancel the Contract (without liability to You) (or, if You are a business, to defer the date of delivery or reduce the volume of Products ordered) if We are prevented from or delayed in the carrying on of Our business due to events beyond Our reasonable control including, for example, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, provided that, if the event in question continues for a continuous period in excess of 90 days, You shall be entitled to give notice in writing to Us to bring the Contract to an end.

### 17. Breach of Contract/Termination

- 17.1 We shall have the right at any time and for any reason to immediately bring the whole or part of the Contract to an end or cancel or suspend any unexecuted order for Goods or outstanding performance of the Services or delivery of the Goods by giving You written notice, without liability to You, if:
- 17.1.1 You commit a serious breach of any of these Conditions; or
- 17.1.2 if You are a consumer, You have a bankruptcy order made against You or Your belongings have been taken away from You to pay off Your debts, or a receiving order has been made against You; or
- 17.1.3 if You are a business, any distress, execution or other process is levied upon any of the assets of You; or
- 17.1.4 if You are a business, You have a bankruptcy order made against You or make an arrangement or composition with Your creditors, or otherwise take the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convene a meeting of creditors (whether formal or informal), or enter into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or have a receiver or manager, administrator or administrative receiver appointed of Your undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of You or notice of intention to appoint an administrator is given by You or Your directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up of You or for the granting of an administration order in respect of You, or any proceedings are commenced relating to the insolvency or possible insolvency of You; or
- 17.1.5 if You are a business, You cease or threaten to cease to carry on Your business; or
- 17.1.6 if You are a business, Your financial position deteriorates to such an extent that in Our opinion Your capability to adequately fulfil Your payment obligations under the Contract has been placed in jeopardy; or
- 17.1.7 if You are a business, You refuse to permit or hinder performance of the Services; or
- 17.1.8 if You are a business, You exceed the credit limit agreed between You and Us from time to time on any account.
- 17.2 The termination of the Contract, however arising, shall be without prejudice to the rights and duties of Us accrued prior to termination and all sums payable under the Contract shall

become due immediately on its termination despite any other provision. The conditions which expressly or impliedly have effect after termination shall continue to be enforceable notwithstanding termination.

- 17.3 If this Contract ends it will not affect Our right to receive any money We are owed under these Conditions and all Our rights and duties which exist immediately before the Contract ends shall remain.

## **18. Communications**

- 18.1 All communications between You and Us about the Contract shall be in writing and delivered by hand or sent by pre-paid first class post or sent by fax or electronic mail:
- 18.1.1 (in case of communications to Us) to Our registered office or such changed address as We notify to You or in the case of faxes or electronic mail to the fax number or electronic mail address notified to You by Us from time to time; or
- 18.1.2 (in the case of the communications to You) to Your registered office (if You are a business) or (in any other case) to any address of You set out in any document which forms part of the Contract or such other address as shall be notified to Us by You or in the case of faxes or electronic mail to the fax number or electronic mail address notified to Us by You from time to time.
- 18.2 If You are a business, communications shall be deemed to have been received:
- 18.2.1 if sent by pre-paid first class post, two days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting); or
- 18.2.2 if delivered by hand, on the day of delivery; or
- 18.2.3 if sent by fax or electronic mail on a working day prior to 4.00 pm, at the time of transmission and otherwise on the next working day.
- 18.3 Communications addressed to Us shall be marked for the attention of a servicing director or company secretary of Us.

## **19. General**

- 19.1 If any provision of the Contract is found by any court, or other body to be unenforceable this will not affect the validity of the remaining provisions of the Contract. Failure or delay by Us in enforcing or partially enforcing any provision of the Contract shall not be regarded as a waiver of any of Our rights under the Contract.
- 19.2 The parties to the Contract do not intend that any term of the Contract shall be enforceable by any person that is not a party to it.
- 19.3 These Conditions are governed by English law and We both agree to submit to the non-exclusive jurisdiction of the English courts.
- 19.4 We reserve the right to sub-contract the fulfilment of the Contract or any part of it.