

Smart Showers Ltd

Unit 11, Woodside Road, South Marston Park, Swindon, Wiltshire SN3 4WA England
Tel: 01793 822775 Fax: 01793 823800

GENERAL TERMS AND CONDITIONS OF SALE

1. The Agreement.

Goods are sold and work undertaken by Smart Showers Ltd (hereinafter called "The company") solely and exclusively upon the terms and conditions hereinafter set out. These terms and conditions shall have an exclusive effect and shall specifically exclude any previous terms and conditions or any other form of contract between the company and the purchaser. Nothing in this agreement shall be deemed to exclude any provision imposed by law.

2. Acceptance of conditions.

Acceptance of the terms and conditions herein contained shall be deemed to take place when the order for the goods or work to be done is confirmed by the purchaser.

3. Quotations.

Quotations and tenders are open to acceptance for the period stated or if no period is stated then within 30 days from the date thereof. The company reserves the right however to withdraw any quotations or tenders prior to the date of acceptance. Quotations and tenders are to be submitted on the basis that they do not constitute an offer upon the acceptance of a quotation or tender and shall not constitute a contract but the contract shall only be formed when the company's quotation or tender is accepted.

4. Delivery

a. Where delivery is by the company delivery shall be without guarantee or penalty as to the time and date of delivery. The company shall use its best endeavours to make delivery within the time and date specified but failure to do so by the company shall not permit the purchaser to repudiate the contract or deduct or withhold any sum of money properly payable to the company in respect thereof. Notwithstanding any delay by the company to deliver the goods (or any of them) the purchaser shall be bound to accept delivery and to pay for the goods in full provided that delivery shall be tendered at any time within two months of the date originally specified by the company when the goods were to be delivered.

b. Where delivery is by the purchaser the company shall use its best endeavours to make the goods available for collection by the purchaser. Failure by the company in making the goods available for collection either in whole or in part shall not invalidate the contract and the company shall not be liable for any penalty or other payments to the purchaser by reason thereof.

5. Quotation for Installation.

In respect of an order where the installation is included the company's quotation assumes that such work can be carried out continuously in one visit to the site. Where such work cannot be carried out on this basis the company reserves the right to make an additional charge against the purchaser such additional charge to be calculated on the basis of time spent and work done.

6. Specifications and Drawings.

Except where quotations or tenders are accepted by the company against the purchaser's detailed drawings, statements of dimensions submitted with any quotation or tender are approximate only and the descriptions and illustrations in any of the company's catalogues price lists or other advertising materials are intended to present a general idea only of the goods described therein and none of these shall form part of any contract. All quotations drawings and descriptive matter whatsoever are the property of the company and are returnable on request. They must be treated as confidential and must in no circumstances be communicated to other persons, firms or companies unless the written consent of the company has been first obtained nor must they be otherwise used in any way against the interest of the company.

7. Damage, Shortage or Loss In Transit.

a. Where delivery is by the company. The purchaser must notify the company within 24 hours of the date of delivery of any alleged damage to the goods. All damaged goods must be retained by the purchaser for inspection by the Company which shall at its discretion replace the goods or credit to the purchaser the value thereof. The purchaser shall notify the company in writing within 5 days of the date of delivery of the alleged shortages and the company shall after verifying such shortages either at its sole discretion credit the purchaser for the value of the shortages or send to the purchaser items not sent. The company shall not give any payment credit or replacement to the purchaser for any alleged shortages or damaged goods after the time limit herein specified.

b. Where delivery is by the purchaser. The purchaser shall within 24 hours of collection notify the company of any alleged damages or shortages and the company may at its sole discretion either credit the purchaser for the alleged damages or shortages or replace the alleged damaged goods or supply to the purchaser the alleged goods not supplied. After collection by the purchaser the company shall be under no liability whatsoever in respect of alleged damaged goods or shortages.

8. Non-Delivery through Purchaser's fault.

If delivery is by the company and the purchaser shall refuse to accept delivery of the goods or request a deferment thereof or if delivery is by the purchaser and the purchaser shall fail to collect the goods on the date specified for their collection the company may at its sole discretion charge the purchaser a fee specified by the company being the costs of delivery or the costs of making the goods available for collection. Nothing in the clause shall be construed to limit the company's powers or rights to sue for damages or bring any other court proceedings for breach of contract or otherwise.

9. Acceptance of goods.

9.1 Standard stock, goods and materials can only be returned for credit if an official receipt is obtained from the Company. A handling charge of 25% will be made on all returns. A further 20% may apply if the original packaging is marked, damaged or not present.

9.2 In the case of standard stock materials cancellation can only be accepted in writing. Where items have been ordered to customer's specifications then those items must be collected and paid for.

Where the purchaser signs the company's delivery note but does not mark upon the said delivery note shall constitute absolute proof that the delivery was as stated by the company and the goods were in perfect condition.

10. Defective Goods.

10.1 In the event of product failure, contact should be made with Smart Showers in the first instance and then subsequently with the manufacturer to organise a replacement or site visit by a manufacturers representative. Under no circumstances should the buyer or anybody acting on behalf of the Buyer attempt to repair or alter the product, without prior written agreement from the manufacturer. Smart Showers accept no responsibility for consequential or liquidated damages in the event of product failure.

10.2 Smart Showers does not give any warranty or declaration implied or otherwise regarding quality or fitness for purpose of any goods supplied by the company. The section does not apply to Consumer Sales. The purchaser shall notify the company within seven days after the date of delivery or installation of any goods alleged to be defective after the date of delivery or installation. Defective goods shall not include goods damaged prior to or during delivery.

11. Limitation of Damages.

The company shall not be liable to the purchaser for damages for consequential loss arising out of damages, shortages or defective goods or work. All other damages shall not exceed the amount of the contract price. Liability for defective goods is limited to replacing the defective item or items or a credit being given by the company at its sole discretion for the value thereof. The company accepts no liability arising from or contributed to by the fixing of equipment by the purchaser or by contractors employed by them or from the placing upon equipment or articles of excessive weight.

12. Installation.

Where installation is by the company the purchaser shall ensure that the company's workmen are able to do work upon the site immediately upon delivery of the goods and unless some other date and time is agreed between the company and the purchase in writing prior to delivery the purchase shall ensure that all refuse and cleaning of the site has been complete prior to the commencement of installation. The purchaser shall be liable for the clearance of all refuse following installation by the company.

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13. Sub Contracts.

The company shall only accept sub-contract work upon the basis that no retention is made by the main contractor or principal.

14. Sub -Contractors.

The company reserves the right to sub-contract any order or part of any order.

15. Purchaser's Design.

Goods manufactured to purchaser's designs carry no warranty or condition except that they comply with the purchaser's design

16. Price and Payment

16.1 The price for the goods or work done or both shall be the company's quoted price and is exclusive of VAT which shall be due at the rate ruling on the date of the company's invoice.

16.2 Payment for all goods and materials supplied should be made 30 days from the date of invoice.

16.3 In cases where the company agrees to interim payment terms the company is entitled at any time to render an account for up to 90% of the price for the goods delivered and / or work carried out to the date of such account credit however being given for payment made. At the conclusion of the delivery or completion of the work the company may render a final account of all amounts outstanding from previous interim accounts. All interim accounts are due for payment by the purchaser immediately on receipt of the account.

16.4 Time for payment shall be the essence of the contract. Without prejudice to any other rights of the company if the purchaser fails to pay the invoice by the due date the purchaser shall pay interest on any overdue amount from the date of which payment was due to that on which it is made (whether before or after judgement) on a daily basis at a rate of 3% p.a. over the base rate from time to time quoted by National Westminster Bank plc and reimburse to the company all costs and expenses (including legal costs) incurred in the collection of any overdue amount.

16.5 If the purchaser fails to pay the deposit or any part of the price when due the company shall be entitled at its sole option

(1) Without notice to suspend further deliveries of the goods and/or cease work pending payment by the purchaser and/or

(2) to treat the contract as repudiated by the purchaser and

(3) to submit an account on a quantum meruit basis for goods delivered and or work carried out to the date of suspension.

16.6 If the purchaser fails to make payment for the goods in accordance with these conditions or commits any other breach of these conditions or if any distress or execution shall be levied upon any of the purchaser's goods or if the purchase has offered to make any arrangement with its creditors or commits an act of bankruptcy or if any petition in bankruptcy is presented against the purchaser or the purchaser is unable to pay its debts as they fall due or if being a limited company any resolution or petition to wind up the purchaser (other than for the purpose of amalgamation or reconstruction without insolvency) shall be passed or presented or if a receiver administrator administrative receiver or manager shall be appointed over the whole or any part of the purchaser's business or assets or if the purchaser shall suffer any analogous proceedings under foreign law all sums outstanding in respect of the goods shall become payable immediately. The company may in its absolute discretion and without prejudice to any other rights which it might have :-

16.6.1 suspend all future deliveries of goods to the purchaser and/or terminate the contract without liability upon its part and/or

16.6.2 exercise any of its rights pursuant to clause 18 hereof

16.7 Where a dispute arises between the company and the purchaser the purchaser shall pay to the company the undisputed amount of the company's account or invoice and the disputed amount thereof shall be paid into a suspense account held by the company at its bank. The disputed amount thereof shall be held as stake holder by the company until the final determination of the dispute.

17. Exclusion of Discount.

No discount shall be allowed or be taken by the purchaser unless it is specifically contracted for in the quotation tender order or invoice. It is a condition of any discount given that the purchaser shall supply labour to unload the delivery vehicle. If the purchaser shall not pay the amount due under the invoice or account rendered by the company within the time herein specified the purchaser shall lose its right to the discount and shall pay to the company the full price when the same is due.

18. Title to Goods.

18:1 The goods shall be at the purchaser's risk as from delivery whether or not the company has to complete any installation.

18:2 In spite of delivery having been made property in the goods shall not pass from the company until

18:2:1 the purchaser shall have paid the price plus VAT in full; and

18:2:2 no other sums whatsoever shall be due from the purchaser to the company.

18:3 Until property in the goods passes to the purchaser in accordance with Clause 18.2 hereof the purchaser shall hold the goods and each of them on a fiduciary basis as bailee for the company. The purchaser shall store the goods (at no cost to the company) separately from all other goods in its possession and marked in such a way that they are clearly identified as the company's property

18:4 The company shall be entitled to recover the price (plus VAT) notwithstanding that property in any of the goods has not passed from the company.

18.5 Until such time as property in the goods passes from the company the purchaser shall upon request deliver up such of the goods as have not ceased to be in existence or resold to the company. If the purchaser fails to do so the company may enter upon any premises owned occupied or controlled by the purchaser where the goods are situated and repossess the goods. On the making of such request the rights of the purchaser under Clause 18.4 shall cease.

18:6 The purchaser shall not pledge or in any way charge by way of security for any indebtedness any of the goods which are the property of the company. Without prejudice to the other rights of the company if the purchase does so all sums whatever owing by the purchaser to the company shall forthwith become due and payable.

18.7 The purchaser shall insure and keep insured the goods to the full price against 'all risks to the reasonable satisfaction of the company until the date that property in the goods passes from the company and shall whenever requested by the company produce a copy of the policy of insurance. Without prejudice to the other rights of the company if the purchaser fails to do so all sums whatever owing by the purchaser to the company shall forthwith become due and payable.

18.8 It is hereby agreed and declared that all legal equitable and beneficial right title and interest in the goods shall be retained by and belong to the Company as against and shall not pass to the Purchaser or any third party so long as the Company shall not have received the whole of the purchase price and all charges by the Company for packing transport insurance and storage and value added tax appropriate due for the Goods and for all other property agreed to be sold by the Company to the Purchaser for which payment has become due notwithstanding delivery and the passing of risk in the Goods or other such property and any other terms and conditions. The Company shall have the absolute right title and authority to retake sell deal with or otherwise dispose of the Goods or any part hereof or any interest therein so long as aforesaid. In consideration of the agreement for safe of the Goods the Purchaser hereby covenants as a fundamental term of contract with the Company so long as aforesaid.

18.8.1 not to permit or procure the Goods or any part thereof to become part of any land premises or fixtures thereon and not to mix the Goods or any part thereof with any other goods:

18.8.2 not to sell hire charge pledge or part with possession or enter into any analogous transaction relating to the Goods whether or not for value and not to allow any right title or interest in the Goods to arise adverse to the Company provided nevertheless that into whatsoever's hands the Goods may come the Purchaser shall give notice thereto of the exclusive interest of the Company in the Goods identity and keep the proceeds of any such transaction as aforesaid and the proceeds from any insurance of the Goods separate from all other monies and give forthwith written notice to the Company on any proceeds arising immediately on the happening of any such event as aforesaid the whole of the said purchase price charges and tax shall be payable forthwith as a debt due to the Company.

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18.8.3 to keep and maintain the identity of the Goods separate from any of her Goods whatsoever and where so ever situate to hold the Goods identified as belonging to the Company and not to lose the separate identity of the Goods or any part thereof:

18.8.4 to hold the Goods safe and protected from harm and insure the Goods for the full replacement and installed value thereof naming the Company as the payee of any proceeds there from and the Purchaser shall forthwith upon receipt procure a certificate of insurance to be Issued to the Company endorsed by the insurance company with a sole of the interest of the Company:

18.8.5 to return the Goods at the expense and risk of he Purchaser to the Company forthwith on demand free from any damages and in the same condition as that when supplied to the Purchaser

18.8.6 to use best endeavours to allow the Company as licensee free and uninterrupted access with or without notice to the location of the Goods or to the premises where the Goods or any part thereof is reasonable believed to be situated for the time being and to remain at the location or premises for the purpose of inspecting recovering possession or removing and protecting title to the Goods.

18.8.7 to include a note in all statutory accounts of the Purchaser that the Goods are subject to retention of title and of the amount equal to the purchase price of the Goods and of the said changes and tax

18.8.8 to indemnify and keep indemnified the Company and any successor and assign thereof against breach of any of the above covenants and against any claim arising from the exercise of the said rights of the Company as licensee.

19. Third Party Liability.

The purchaser shall indemnify the company against all and any claims demands liabilities and costs whatsoever and howsoever arising other than those arising by virtue of the negligence of the Company or it employees.

20. Frustration of contract.

Whilst the company shall use its best endeavours to fulfill its contractual obligations if the contract shall become impossible of performance or shall otherwise be frustrated the purchaser shall be liable to pay the company all costs which the company shall have incurred directly or indirectly and any prepayment which may have been made to the company under the contract shall be applied towards the satisfaction of such sum.

21, Legal Construction.

Any contract entered into between the company and the purchaser shall in all respects be construed and operate as an English contract and be subject to the laws of England and Wales.

22. Copyright.

Where the company has designed any goods or work the subject of a quotation or tender then for the avoidance of doubt the company shall remain beneficial owner of the copyright and any design right and all other rights of a like nature conferred under the laws of the United Kingdom and any other countries in the world and the same shall not pass to the purchaser without formal assignment.

23. Disputes.

If any dispute or difference shall arise between the parties as to the meaning of these conditions or any matter or thing arising out of or connected with these conditions then it shall be referred to the determination of an arbitrator to be appointed by agreement of the parties or in default of agreement within 10 days of the service upon one party of a written request to concur in such appointment by the President for the time being of the Chartered Institute of Arbitrators.