

## Heat Trace Limited Terms and Conditions of Sale (January 2014)

### **1. PRICES**

- 1.1 Prices and charges quoted are subject to the addition of VAT at the rate ruling at the date of the invoice.
- 1.2 Quotations are only binding if in writing and shall remain valid for a period of 1 calendar month but no longer unless expressly agreed in writing.
- 1.3 We reserve the right to withdraw or amend a quotation at any time before acknowledging an order in the event of any manufacturers' or suppliers' price increase, any increase in the cost of labour, materials or any other overhead, or any variation in the specification of goods to be supplied by us which are manufactured by others.
- 1.4 Unless it expressly states otherwise, our quotation is given on the basis that:-
  - 1.4.1 the goods will be delivered "ex works" at our premises; and
  - 1.4.2 you will be responsible both for arranging and for the cost of the collection of the goods and their loading and transportation.
- 1.5 Unless otherwise stated in our quotation or order acknowledgement, all prices are net, unpacked ex-works and any packing, carriage, freight, insurance and/or shipping charges will be payable in addition to the quoted acknowledged price.
- 1.6 Unless otherwise stated in our quotation in the case of imported goods to be paid for in currency other than Sterling, the price quoted is based upon the rate of exchange ruling for the relevant currency at the date of our quotation. Any variation between that rate and the rate at the time of payment by you may be charged or credited.

### **2. ORDER ACKNOWLEDGEMENT AND APPLICABLE TERMS**

- 2.1 The contract will be conditional upon our sending to you a written acknowledgement of your order. Until then we will be under no obligation to perform any part of the contract and will have no obligations or liabilities to you whatsoever.
- 2.2 The effect of sending our order acknowledgement is to override and exclude any terms or conditions contained in your purchase order, confirmation of order or otherwise, and to apply these terms to the contract.
- 2.3 Your acceptance of delivery of the goods, or any part of them, or of the performance by us of any of our obligations under the contract, will be conclusive evidence of your acceptance of these terms and conditions.

### **3. CANCELLATION**

Cancellation of orders cannot be accepted without our written consent. We reserve the right to make a charge to reflect all losses and expenses incurred on any order cancelled.

### **4. SPECIFICATIONS**

- 4.1 Illustrations, descriptions and specifications in our catalogues or product sheets are subject to modification without notice.
- 4.2 All dimensions, technical and performance data given are approximate only.
- 4.3 We may at any time make changes in the specification of goods or any materials used in their production in order to improve their performance or safety, or to comply with any applicable safety or statutory requirements.
- 4.4 Where any of our suppliers withdraws or significantly varies the specification or design of any of its products after we have acknowledged your order, we may supply an alternative product of nearest equivalent quality and specification and we will not be liable for any losses suffered by you as a result of our inability to supply goods of the original specification.

### **5. HEATING TAPE LENGTHS**

- 5.1 We reserve the right to supply cable to a total length + or - 5% of the ordered quantity and to invoice pro-rata unless you state in writing, at the time of ordering, that exact quantities must be supplied.
- 5.2 All cables are supplied in the longest available lengths selected at random to total the ordered quantity + or - 5%.
- 5.3 We reserve the right to supply a minimum length equalling one third of the Maximum Recommended Circuit Lengths listed on our HPDS Heater Product Data Sheets for the ordered heating tape. Shorter lengths may be purchased by ordering such lengths when required. Any lengths shorter than one third of the Maximum Recommended Circuit Lengths may be offered to the customer at any point during the execution of the order.
- 5.4 Where cable is required to be supplied in specified minimum lengths (e.g. 100m) a premium charge may be made.

### **6. CUSTOMERS PROPERTY**

All property supplied to us by or on your behalf shall while it is in our possession or in transit to or from you be at your or the owner's risk and insured by you or the owner.

### **7. DELIVERY AND COMPLETION**

- 7.1 Any estimated delivery or completion date given is subject to confirmation by us in our order acknowledgement and to the receipt of all necessary instructions, information and materials from you to enable us to proceed.
- 7.2 We will make all reasonable efforts to meet an estimated or agreed delivery or completion date but will not be liable to you for any loss or damage if we fail to do so, and you cannot terminate this contract for that reason.
- 7.3 If delivery of any goods or the commencement or performance of any work is delayed or suspended because of any act or omission on your part, we will be entitled to charge you for any losses or expenses incurred, for any additional work, materials or services required to be provided, and for any increases in the cost of goods, equipment, labour and/or materials.
- 7.4 We may elect to deliver goods by instalments and, if we do, may invoice and require payment for each separate instalment, which shall be treated as a separate contract on these terms and conditions. Non-delivery or delay in delivery of any one instalment will not entitle you to terminate this contract or to refuse to accept or pay for any other instalment(s), nor will any complaint in relation to any one instalment.
- 7.5 Where we are to provide services we may do so in such manner, at such times, in such sequence and by such means and methods as we determine.

### **8. NON-DELIVERY OR LOSS OR DAMAGE IN TRANSIT**

- 8.1 Where we have agreed to deliver goods to you or to a person specified by you: you must notify us in writing of any non-delivery or loss of or damage to all or part of any consignment of goods whilst in transit, as soon as possible and in any event within 5 working days after the date of receipt of the consignment or the date upon which it should have been received, after which time it will be deemed to have been received; and
- 8.2 where any such complaint is validly made, our liability will be limited to (at our election) replacement of the part of the consignment lost or damaged and delivering it to you, or a refund of or credit for the part of the price of the original goods attributable to whatever has been lost or damaged.

## **9. COMPLAINTS AFTER DELIVERY**

- 9.1 It is your responsibility to carry out as soon as practicable after delivery all prudent inspections, checks and tests of any goods we supply.
- 9.2 You must give us written notice of any complaint concerning the condition or quantity of any goods supplied as soon as possible and in any event within 5 working days after the date of their delivery, after which time they will be deemed to have been accepted and free from any defect which would have been apparent on a reasonable inspection.
- 9.3 Any complaint concerning the quality of any goods supplied not apparent on reasonable inspection must be notified to us in writing within 12 months of the date of their delivery, after which time they will be deemed to have been free from any defect.

## **10. GUARANTEE AND EXCLUSIONS**

- 10.1 Except as provided in this clause all guarantees, warranties, conditions and terms relating to the condition, quality or fitness for purpose of the goods, whether implied by common law, statute, custom, usage or otherwise, are excluded from this contract.
- 10.2 Except as provided in this clause we shall have no liability for or resulting from any loss or damage, whether indirect, economic, consequential or of any other kind whatsoever as a result of any alleged breach of this contract, and you will at all times insure fully against all and any such loss or damage.
- 10.3 Where we supply goods that we have not manufactured, we will make all reasonable efforts to obtain for you the benefit of any guarantee given by the manufacturer.
- 10.4 Subject to the following sub-clauses and clause 18.1.13 we guarantee that if, within 24 months of their despatch or 18 months from the installation date whichever is sooner, any goods manufactured by us are proved to have been wholly or partly defective in construction, workmanship or materials when delivered we will, at our election:
- 10.4.1 either replace or repair the defective goods or part(s) free of charge and where we delivered the original goods to you at our expense, deliver the replacement or repaired goods or parts to you at our expense; or
- 10.4.2 repay or give credit to you for the price or part of the price paid for the goods or part(s) in question.
- 10.5 We shall have no liability to repair or replace any goods or part(s) of goods found to be defective because of misuse, neglect, incorrect storage or handling, fair wear and tear, or because alterations, modifications or repairs have been carried out by others.
- 10.6 In no circumstances shall the aggregate of our liabilities to you arising out of this contract exceed the amount paid by you to us for the goods and/or services provided under it.
- 10.7 We shall have no liability, duty or obligation to you other than as stated in these terms of contract and shall not be liable to you, your employees or your agents for any allegedly negligent or other act, omission, statement or representation concerning or connected with the goods or services provided pursuant to or our performance of this contract.
- 10.8 You acknowledge that you do not rely on our skill or judgement in determining whether any goods supplied are fit for any particular purpose.

## **11. PAYMENT**

- 11.1 You must pay all sums due to us, in the currency invoiced, at the address shown on our invoice within thirty days of the date of our invoice unless otherwise stated in our quotation or agreed in writing.
- 11.2 Where delivery of goods is to be made outside the United Kingdom or to a carrier within the United Kingdom for carriage outside the United Kingdom payment is to be by confirmed irrevocable letter, unless otherwise stated in our quotation
- 11.3 If you fail to pay an amount due to us on time, we will be entitled:
- 11.3.1 to charge interest on the amount outstanding on a daily basis at 4% per annum above the base rate for the time being of The National Westminster Bank plc from the date of the invoice until payment, whether before or after Judgment; and
- 11.3.2 to treat this contract as having been terminated by you.
- 11.4 You must pay all sums due to us in full, without any deduction or withholding by way of set-off or counterclaim or otherwise, unless expressly agreed in writing.

## **12. PAYMENT ON ACCOUNT/INTERIM PAYMENTS**

- 12.1 We may request payment of a sum on account of the contract price and in such a case until payment of that sum we will have no obligation to perform the contract.
- 12.2 We may at any stage request in writing an interim payment or interim payments on account of the contract price. If you fail to make any such payment within the time specified by us, we may elect to treat the contract as having been terminated by you.

## **13. RISK**

Once we have delivered goods to you, your employee or agent, they shall be at your risk and you will be responsible for insuring them.

## **14. RETENTION OF TITLE TO GOODS**

- 14.1 Notwithstanding delivery of goods and the passing of risk to you, we will retain legal and equitable ownership of goods supplied to you ("the Goods") until you have paid:-
- 14.1.1 all sums due to us under this contract, and
- 14.1.2 all other sums owed by you to us under any contract or otherwise.
- 14.2 While we retain legal and equitable ownership of the Goods you will:
- 14.2.1 retain possession of them as bailee and fiduciary agent for us;
- 14.2.2 keep them separate from other goods, at a location and in conditions acceptable to us and clearly identified as our property;
- 14.2.3 if so requested by us, at your own expense immediately re-deliver them to us or to our order;
- 14.2.4 at any time permit us, our employees, agents, or assignees to enter any land, building or premises to examine and/or recover possession of the Goods or any part of them (by separating them from other goods or equipment if need be).
- 14.3 While we retain legal and equitable ownership of the Goods, you will:-
- 14.3.1 have or effect suitable insurance covering their full value;
- 14.3.2 in the event of any loss of or damage to them or any part of them, make a claim under the policy of insurance and hold any proceeds of that claim on trust for us and in a separate and clearly identifiable fund, and immediately account for such proceeds to us on request;
- 14.3.3 have no power or right to use, sell, charge or dispose of them or any interest in any part of them whether in the ordinary course of your business or otherwise.
- 14.4 For the avoidance of any doubt it is agreed and declared that it is not intended that the above provisions should operate to create a charge of any kind in our favour over any property of yours.

## **15. FORCE MAJEURE**

- 15.1 We will have no liability to you if we are prevented from or delayed in carrying out any part of this contract by any event beyond our control including (without limitation) any act of God, legislation, war, fire, flood, drought, failure of power supply, lock-out, strike or trade dispute, or inability to obtain materials required for the performance of the contract.
- 15.2 If in any such case we decide that it will be impossible or uneconomic to complete the contract, we shall be entitled to treat it as having been terminated.

## **16. INTELLECTUAL PROPERTY**

- 16.1 All copyrights, design rights and intellectual property rights of any kind whatsoever in respect of any object or thing created or made by us for the purposes of or in connection with this contract will remain our property.
- 16.2 Where goods are supplied with our badge attached, you will not in any way deface, obliterate or remove that badge, nor cause or permit any other badge to be attached to the goods without our prior consent in writing.

## **17. CUSTOMERS DESIGN OR SPECIFICATION**

Where goods are made or adapted by us to or in accordance with your design, specification or requirements, you will indemnify us fully in respect of any injury, loss, expense, or damage caused to any third party for which we may be held liable as a result of our having carried out your requirement(s).

## **18. CUSTOMER'S OTHER OBLIGATIONS**

18.1 You will:

- 18.1.1 ensure that a clear, suitable and readily accessible site is available and ready for the installation of equipment;
  - 18.1.2 permit us (and our employees or agents) to enter your land or premises and, where alternative routes or means of access are available, to make use of the route or means of access which we consider to be the most practicable for the proper performance of the work;
  - 18.1.3 ensure that you or your authorised representative are or is present at the required place and time to take delivery of any goods to be delivered by us under this contract, and that you or your representative signs a delivery note when requested to do so.
  - 18.1.4 upon delivery or completion of the contract programme sign, either personally or by an authorised representative, a note confirming satisfactory delivery or completion (as the case may be) and where appropriate pay the balance of all monies then due under the contract.
  - 18.1.5 at your own expense provide satisfactory sources and unrestricted use of electricity, gas and water during the continuance of the work.
  - 18.1.6 on request, provide us with evidence of insurance cover of the type(s) and amount(s) specified by us;
  - 18.1.7 comply with any applicable statutory or other regulations, byelaws or requirements, and obtain any licences or permissions, which may be necessary for the performance of the work and/or likely to affect the health and/or safety of our employees or agents.
  - 18.1.8 ensure that all internal and external structures on or over which our employees or agents must work or pass, and all electrical, gas, water and other systems are in safe and sound condition;
  - 18.1.9 promptly provide all materials and instructions we require in order to perform the contract;
  - 18.1.10 ensure that all goods or equipment supplied or installed by us is or are operated at all times in accordance with any applicable operating instructions and all applicable laws and regulations, and that all necessary safety equipment, permissions and/or consents are obtained;
  - 18.1.11 indemnify us in respect of any loss, expense, damage, penalty or legal liability suffered by us [or any servant or agent of ours] as a result of anything done by us on your instructions or at your request;
  - 18.1.12 request a reasonable time before delivery any test certificates that may be required, and pay our reasonable charges for supplying the same;
  - 18.1.13 if you contend that any goods supplied by us are defective or damaged or otherwise not in accordance with the contract, allow us the opportunity to inspect the goods in question as soon as is practicable and permit us to carry out any repair or replacement work for which we are liable under this contract.
- 18.2 We may decline to carry out your instructions if, in our opinion, compliance would involve a contravention of the law or be likely to prejudice the health and/or safety of any of our employees or agents.
- 18.3 Where for the purposes of this contract (whether at our request or not) you provide or procure the provision by a third person of any sample of material to enable us to determine how to produce or design goods, or provide services, you warrant that the sample supplied conforms exactly to your requirements.
- 18.4 Where to enable us to perform the contract you are to provide or procure the provision by some third person of any material, it must be supplied to us in exactly the quantity and form we specify.
- 18.5 If you breach any of the above obligations or any other obligation imposed upon you by the contract, we will be entitled to treat it as having been terminated by you.

## **19. TERMINATION**

- 19.1 In addition to any other specific rights we may have under this contract or the law either to terminate it or treat it as having been terminated, we may so treat it if you commit any substantial breach of the contract, become bankrupt or are dissolved, or (if you are a corporate body) you go into liquidation, administration or receivership or make an arrangement or composition with your creditors, or have any Judgment entered against you or have distress or execution levied against your goods.
- 19.2 Where this contract is terminated or we are entitled to treat it as having been terminated:-
- 19.2.1 we will not be obliged to perform the remainder of this contract or any other contract with you;
  - 19.2.2 we will be entitled to immediate payment of the total outstanding in respect of all invoices rendered to you;
- 19.3 we will be entitled to render an invoice to you for immediate payment in respect of any goods, materials, work or services supplied or performed under the contract and any other contract with you.

## **20. INDEMNITY**

- 20.1 Without prejudice to any right we may have to terminate this agreement, you will on demand indemnify us in respect of all losses, expenses, damages, penalties or costs incurred by us:-
- 20.1.1 as a result of any breach or in order to secure proper performance by you of any provision of this contract; and
  - 20.1.2 in respect of any claim(s) or proceedings brought against us or any servant or agent of ours by any other person as a result of our performance of any obligation to you under this contract, including in the latter case any amount paid by us on legal advice in settlement of any claim.
- 20.2 You will in addition on demand indemnify us in respect of all costs, expenses, charges, fees or expenses incurred by us in connection with any proceedings or dispute between us arising out of or in connection with this contract or the recovery by us of any property or money.

## **21. SUB-CONTRACTING**

We may sub-contract any part of the contract and in such a case your obligations to us will extend to our sub-contractor(s).

## **22. ASSIGNMENT**

You may not assign any right or benefit under this contract to any other person without our prior written consent.

## **23. THIRD PARTY RIGHTS**

A person who is not a party to the contract between us shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or enjoy the benefit of any term of the contract.

## **24. LAW AND JURISDICTION**

- 24.1 This contract and any dispute arising in connection with it shall be in all respects subject to and determined in accordance with English Law.
- 24.2 In the event of any dispute:
- 24.2.1 the civil courts within whose district our principal place of business is situated shall have exclusive jurisdiction according to their respective competences; and
  - 24.2.2 you will not apply for or concur in the transfer of any proceedings between us to any other court.

## **25. ENTIRE AGREEMENT**

Our quotation and these Terms constitute the entire agreement between the two of us, and no representation or warranty made orally by any person on our behalf shall have any legal effect.

## **26. VARIATION**

No variation of these terms of contract shall be binding unless it is confirmed in writing and signed by a Director on our behalf.