

STANDARD TERMS AND CONDITIONS OF SALE

1. DEFINITIONS

“The Company”: Guthrie Douglas Group Limited

“The Customer”: The Customer of the Company

“The Contract”: Any contract for the sale of goods by the Company to the Customer subject to these terms and conditions.

“The Goods”: Any Goods forming the subject of the Contract including parts and component of or materials incorporated in them.

2. THE CONTRACT

No contract shall come into existence until the Customer’s order is accepted by the Company issuing written acceptance/confirmation of that order and shall (subject to the provisions for earlier termination) continue in force thereafter unless and until the Company completes the delivery of the Goods. These terms and conditions shall be incorporated into the Contract to the exclusion of any terms or conditions stipulated or referred to by the Customer. No variations or amendments of this Contract shall be binding on the Company unless confirmed by the Company in writing. The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

3. QUOTATION

Quotations by the Company unless otherwise stated therein shall be valid for thirty days from the date of the quotation.

4. REPRESENTATIONS

The Customer agrees that in relation to the Contract no reliance has been placed on any representation made by or on behalf of the Company. Any samples, drawings, descriptive matter or advertising produced by the Company and any descriptions or illustrations contained in the Company’s catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods referred to in them. They shall not form part of the Contract nor have any contractual force.

5. VERBAL ORDERS

All orders must be confirmed in writing by the Customer and the Company retains the right to refuse a verbal order.

6. PRICES

The price of the Goods shall be the price set out in the Company’s acceptance of the Customer’s order, or, if no price is quoted, the price set out in the Company’s published price list in force as at the date of delivery. The Company reserves the right to increase the price of the Goods, by giving notice to the Customer at any time before delivery. Further, the Company shall have the right to adjust its prices for any increase in costs of any kind arising for any reason after the date of the Contract. All prices quoted exclude V.A.T., carriage, package and insurance. The Company may make additional charges for any additions, alterations or tests ordered by the Customer. The minimum charge for implementing any additions, alterations to the Goods or the delivery date or tests ordered by the Customer shall be £75.00 unless agreed by the Company in writing.

7. DELIVERY

Goods are deemed to have been delivered to the Customer when the Company makes them available for collection by the Customer at the Company’s premises or such other delivery point agreed by the Company, and risk in the Goods passes when they are made available to the Customer. The Company may at its discretion deliver the Goods by instalments, and in such a case each instalment shall be deemed to be the subject of a separate contract and no default or failure by the Company in respect of any one or more instalments shall vitiate the Contract in respect of the Goods previously delivered or undelivered Goods. Any dates quoted by the Company for making the Goods available to the Customer are given in good faith, but do not form part of the Contract and time is not of the essence.

The Company shall not be liable for any loss, damage or expense arising from any delay in delivery or failure to deliver from any cause at all (other than where this is directly caused due to its own negligence) nor shall any such delay or failure entitle the Customer to refuse to accept any delivery or repudiate the Contract. If the Company fails to deliver the Goods directly due to its own negligence, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. If ten (10) working days after the day on which the Company notified the Customer that the Goods were ready for collection, the Customer has not collected them, the Company may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, charge the Customer for any shortfall below the price of the Goods.

8. PAYMENT

The Company may invoice the Customer for the Goods on or at any time after the Contract has been entered into. All invoices are payable in full and cleared funds to a bank account nominated in writing by the Company and without set-off, counterclaim, deduction, withholding or discount of any kind within 30 days of the date of the invoice. Time for payment shall be of the essence of the Contract. Without prejudice to any other rights of the Company if the Customer fails to pay the invoice price by the due date the Customer shall pay interest of any overdue amount from the date on which payment was due to that on which it is made at a rate of 2.5% per calendar month or part thereof and shall reimburse to the Company all costs and expenses including legal costs incurred in the collection of any overdue amount.

9. DAMAGE OR LOSS IN TRANSIT

The Company will not accept responsibility for damage to or loss of the Goods during transit and, as such, the Customer shall bear the risk in the Goods whilst they are in transit and be responsible for taking out and maintaining in place at its own cost such insurance in respect of the Goods during transit for their full price against all risks. The Goods are to be examined promptly and without delay on receipt by the Customer or his agent. Any claim that the Goods are damaged, defective or not of the right quantity shall be notified by the Customer to the Company within three days of delivery. Any claim under this condition must be in writing and must contain full details of the claim, and the packing and contents should be retained for inspection by the Company. The Company shall not be liable for the Goods being damaged, defective or not of the right quantity if:

- i) the Customer makes any further use of such Goods after giving notice in accordance with this clause;
- ii) the defect arises because the Customer failed to follow the Company's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;
- iii) the Customer does not register the Company's warranty for the Goods by giving notice to the Company of the named supervising installer for the Goods to sales@guthriedouglas.com prior to commencement of installation;
- iv) the defect arises because the Goods have been installed or maintained without supervision by an installer with appropriate training as registered on the Company's installer register
- v) the defect arises as a result of the Company following any drawing, design or specification supplied by the Customer;
- vi) the Customer alters or repairs such Goods without the written consent of the Company;
- vii) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
- viii) the Goods differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

10. TITLE

Notwithstanding the earlier passing of risk, title in the Goods shall remain with the Company and shall not pass to the Customer until the amount due under the invoice for them has been paid in full and in cleared funds. The Company shall be entitled to maintain an action for the price of any Goods notwithstanding that title in them has not passed to the Customer. Until title to the Goods has passed to the Customer, the Customer shall:

- i) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Company's property;

- ii) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- iii) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
- iv) notify the Company immediately if it becomes subject to any of the insolvency events described in clause 14; and
- v) give the Company such information as the Company may reasonably require from time to time relating to:
 - a) the Goods; and
 - b) the ongoing financial position of the Customer.

11. CANCELLATION OF ORDER BY THE CUSTOMER

The Contract may not be cancelled by the Customer unless the Company consents in writing to such cancellation. As a condition of giving such consent, the Company may require payment from the Customer of such sum as will indemnify it against all direct and indirect losses, claims, liabilities, expenses and costs which the Company may suffer as a result of such cancellation.

12. MODIFICATION TO DRAWINGS

All drawings and other design work are subject to improvement and modification by the Company.

13. SPECIFICATION

Unless a particular specification for the Goods is ordered by the Customer and agreed by the Company in writing, all Goods shall conform in all material respects with their description in the appropriate specification as shown on the relevant price list of the Company. Where no specification is given, the Goods will be made in accordance with the recognised trade requirements.

14. CANCELLATION OF ORDER BY THE COMPANY

The Company may at its discretion suspend or terminate the Contract if the Customer fails to make any payment when and as due or otherwise defaults on any of its obligations under the Contract or becomes insolvent, enters into administration, provisional liquidation or any composition or arrangement with its creditors, obtains a moratorium, has a receiver appointed of its business or is compulsory or voluntarily wound up, or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction. In the case of termination, the Customer shall be deemed to have forfeited any deposit it has paid. Such termination shall be without prejudice to any claim which the Company may have against the Customer.

15. CONSEQUENCES OF TERMINATION

On termination of the Contract for any reason the Customer shall immediately pay to the Company all of the Company's outstanding unpaid invoices and interest and, in respect of Goods supplied but for which no invoice has been submitted, the Company shall submit an invoice, which shall be payable by the Customer immediately on receipt. Termination or expiry of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry. Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

16. CUSTOMER MATERIAL

Where a Customer's materials or parts are supplied to the Company in order for the Company to perform its obligations under the Contract, the Company's liability in respect of any loss of or damage to such materials shall, subject to clause 21, be limited to the cost of replacing such materials supplied by the Customer.

17. CUSTOMER'S UNDERTAKING

- i) The Customer undertakes to the Company:-
 - a) that it will familiarise itself with and will at all times comply with all statutory or other requirements relating to the Goods or the use thereof;
 - b) that it will indemnify the Company against any direct and indirect losses, claims, liabilities, expenses and costs resulting from a breach of any such requirements
 - c) that it will comply with the Company's instructions relating to the Goods.

- ii) If the Company's performance of any of its obligations in respect of the Goods is prevented or delayed by any act or omission of the Customer or any failure by the Customer to perform any relevant obligation ("Customer Default"):
 - a) the Company shall without limiting its other rights or remedies have the right to suspend the delivery of the Goods until the Customer remedies the Customer default, and to rely on the Customer default to relieve it from the performance of any of its obligations to the extent the Customer default prevents or delays the supplier's performance of any of its obligations;
 - b) the Company shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Company's failure or delay to perform any of its obligations as set out in this clause 17; and
 - c) the Customer shall reimburse the Company on written demand for any direct and indirect losses, claims, liabilities, expenses and costs sustained or incurred by the supplier arising directly or indirectly from the Customer default.

18. INTELLECTUAL PROPERTY & IMAGERY RIGHTS

No right or licence is granted to the Customer under any patent copyright, registered design or other industrial property right except the right to use or to re-sell the Goods. All intellectual property rights in or arising out of or in connection with the Goods shall be owned by the Company and/or the applicable third party. The Customer grants an irrevocable license to the Company to use all imagery of and information relating to the Contract at all stages for marketing and other general purposes.

19. INFRINGEMENT OF PATENTS AND COPYRIGHTS

The Company does not accept responsibility and shall have no liability to the Customer if Goods which are supplied and/or manufactured subject to the specific instructions of the Customer are subject to any third party claim that the Goods infringe any of such third party's patent, registered design, trade mark, copyright or other intellectual property rights. The Customer shall indemnify the Company against any direct and indirect losses, claims, liabilities, expenses and costs the Company suffers or incurs in respect of any such third party intellectual property rights infringement claim.

20. WARRANTY

- i) The Company shall have no liability to the Customer for any loss or damage of any nature arising from any breach of any express or implied warranty or condition of the Contract or any negligence, breach of statutory or other duty on the part of the Company or in any other way out of or in connection with the performance or reported performance of or failure to perform the Contract except in accordance with this condition. The Company warrants:
 - a) that the Goods shall conform in all material respects with their description in the appropriate specification as shown on the relevant price list of the Company; and
 - b) subject to clause 9, the Goods shall be free of defective materials and faulty workmanship for a period of twenty four (24) months from the date of delivery. Such materials or workmanship which subject to proper use and maintenance shall upon examination be proved to the Company's satisfaction to be defective will be rectified at the Company's works free of charge, but the cost of such rectification shall be limited to the cost of materials only and shall not include extraction or dismantling costs on site nor delivery charges to or from the Customer.
- ii) The Company shall not be liable to the Customer under the warranty provided in this clause 20 if:
 - a) the Customer makes any further use of such Goods after giving notice in accordance with this clause;
 - b) the defect arises because the Customer failed to follow the Company's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;
 - c) the Customer does not register the Company's warranty for the Goods by giving notice to the Company of the named supervising installer for the Goods to sales@guthriedouglas.com prior to commencement of installation;
 - d) the defect arises because the Goods have been installed or maintained without supervision by an installer with appropriate training as registered on the Company's installer register
 - e) the defect arises as a result of the Company following any drawing, design or specification supplied by the Customer;
 - f) the Customer alters or repairs such Goods without the written consent of the Company;
 - g) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
 - h) the Goods differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

For the avoidance of doubt all other warranties in relation to the Goods, whether express or implied, are specifically excluded.

21. LIMITATION OF LIABILITY:

THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

- i) Nothing in these terms and conditions shall limit or exclude the Company's liability for: death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors; fraud or fraudulent misrepresentation; breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession); breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession); or defective products under the Consumer Protection Act 1987.
- ii) Subject to clause 21, i), the Company shall under no circumstances whatsoever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, loss of sales or business, loss of agreements or contracts, loss of anticipated savings, loss of use or corruption of software, data or information, loss of or damage to goodwill or any indirect or consequential loss arising under or in connection with the Contract.
- iii) Subject to clause 21 i) and clause 21, ii), the Company's total aggregate liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed 100% of the price paid and/or payable for the Goods pursuant to such Contract.
- iv) The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- v) This clause 21 shall survive termination of the Contract.

22. DISPUTE RESOLUTION

- i) For the purposes of this clause 22, "Authorised person" shall mean the individual nominated by each party to resolve any dispute with regard to the Contract. If a dispute arises between the Company and the Customer during the term of the Contract, either party may refer the matter for determination in accordance with the following procedure:
 - a) by referral in the first instance to the decision of their respective authorised persons; and
 - b) if a dispute is not resolved within 14 days of its referral pursuant to clause 22, i) a), such dispute shall be referred to a director of the Company and a director of the Customer. Such directors shall use their best endeavours to resolve such dispute within 14 days of its referral to the directors.
- ii) Both parties reserve the right to seek redress from the courts, or if the parties agree expert determination, mediation or any other form of dispute resolution, for disputes which in the reasonable opinion of either party are not suitable or capable of resolution, or which have not been resolved, via the procedure in clause 22, i). For the avoidance of doubt nothing in this clause 22, shall prevent or in any way hinder either party's right to seek injunctive relief in any court.

23. FORCE MAJEURE

Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from an event, circumstance or cause beyond a party's reasonable control. In such circumstances the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed. If the period of delay or non-performance continues for four (4) weeks, the party not affected may terminate the Contract by giving written notice to the affected party.

24. CONFIDENTIALITY

- i) Each party undertakes that it shall not at any time during the Contract and for a period of two (2) years after termination or expiry of the Contract, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 24, ii).

- ii) Each party may disclose the other party's confidential information:
 - a) to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under the Contract. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause Confidentiality; and
 - b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- iii) Neither party shall use the other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.

25. ASSIGNMENT & OTHER DEALINGS

The Company may at any time assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract. The Customer may not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of the Company (not to be unreasonably withheld or delayed).

26. NOTICES

- i) Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be:
 - a) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
 - b) sent by email to the address specified in the Customer's order or the Company's acceptance/confirmation of the Customer's order.
- ii) Any notice or communication shall be deemed to have been received:
 - a) if delivered by hand, at the time the notice is left at the proper address;
 - b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second working day after posting; or
 - c) if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause, 26 ii) c), business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.
- iii) This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

28. THIRD PARTIES

A person who is not a party to the Contract shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

29. LAW AND JURISDICTION

The Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed in all respects by English Law and the parties submit to the exclusive jurisdiction of the English Courts in respect of the same.