

TERMS OF BUSINESS

1. Basis of the sale

- 1.1. We shall sell and you shall purchase the Goods in accordance with any written quotation which we give you and which is accepted by you, or any written order by you which is accepted by us, subject in either case to these Terms
- 1.2. These Terms shall govern the Contract to the exclusion of any other terms.
- 1.3. No variation to these Terms shall be binding unless agreed in writing between one of our authorised representatives and you.
- 1.4. Our employees or agents are not authorised to make any representations concerning the Goods unless confirmed by us in writing. In entering into the Contract you acknowledge that you do not rely on any such representations which are not so confirmed, but nothing in these Terms affects our liability for fraudulent misrepresentation.
- 1.5. Any advice or recommendation given by us or our employees or agents to you as to the storage, application or use of the Goods which is not confirmed in writing by us is followed or acted on entirely at your own risk, and accordingly we shall not be liable for any such advice or recommendation which is not so confirmed.
- 1.6. Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by us shall be subject to correction without any liability on the part of us.

2. Orders and Specifications

- 2.1. No order submitted by you shall be deemed to be accepted by us unless and until confirmed in writing by our authorised representative.
- 2.2. You shall be responsible to us for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by you, and for giving us any necessary information relating to the Goods within a sufficient time to enable us to perform the Contract in accordance with its terms.
- 2.3. The quantity, quality and description of the Goods and any specification for them shall be as set out in our quotation (if accepted by you) or your order (if accepted by us).
- 2.4. We reserve the right to make any changes in the specification of the Goods which are required to conform with any applicable statutory requirements which do not materially affect their quality or performance.
- 2.5. All technical data, physical dimensions, capacities and other properties and particulars including drawings are made in good faith as being approximately correct but deviation therefrom shall not invalidate the Contract nor be made the basis of any claim against us.
- 2.6. No order which has been accepted by us may be cancelled by you except with our agreement in writing and on terms that you shall indemnify us in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by us as a result of cancellation.

3. Price of the goods

- 3.1. The price of the Goods shall be the quoted price or, where no price has been quoted (or a quoted price is no longer valid), the price listed in our published price list, brochure or catalogue current at the date of acceptance of the order.
- 3.2. All prices quoted are valid for 30 days only or until earlier acceptance by you, after which time they may be altered by us without giving notice to you.
- 3.3. We reserve the right, by giving written notice to you at any time before delivery, to increase the price of the Goods to reflect any increase in the cost to us which is due to any factor beyond our control (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Goods which is requested by you, or any delay caused by any instructions from you or failure by you to give us adequate information or instructions.
- 3.4. Except as otherwise stated in a written quotation or in any price list of ours, and unless otherwise agreed in writing between you and us, all prices are given by us exclusive of transport packaging and transit insurance.

4. Terms of payment

- 4.1. Subject to any special terms agreed in writing between you and us you will pay the price of the Goods when a written quotation which we give you is accepted by you, or any written order by you is accepted by us.
- 4.2. If we have agreed in writing with you to allow you a period of credit in respect of the price:

- 4.2.1. that period shall be 30 days from the date of the invoice;
- 4.2.2. if you fail to make any payment on the due date then, without limiting any other right or remedy available to us, we may:
 - 4.2.2.1. cancel the Contract or suspend any further deliveries to you;
 - 4.2.2.2. appropriate any payment made by you to such of the Goods (or the goods supplied under any other contract between you and we) as we may think fit (notwithstanding any purported appropriation by you); and
 - 4.2.2.3. charge you interest (both before and after any judgment) on the amount unpaid, at the rate of 5 per cent per annum above Barclays Bank Plc's base rate from time to time, until payment in full is made.

5. Delivery

- 5.1. Delivery of the Goods shall be made by you collecting the Goods at our premises at any time after we have notified you that the Goods are ready for collection or, if some other place for delivery is agreed by us, by us delivering the Goods to that place.
- 5.2. Unless agreed otherwise in writing, the cost of transit of any Goods shall be paid by you and any associated risk shall be yours.
- 5.3. Any dates quoted for delivery of the Goods are approximate only and we shall not be liable for any delay in delivery of the Goods however caused.
- 5.4. Time for delivery shall not be of the essence of the Contract unless previously agreed by us in writing.
- 5.5. The Goods may be delivered by us in advance of the quoted delivery date on giving reasonable notice to you.
- 5.6. Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure by us to deliver any one or more of the instalments in accordance with these Terms or any claim by you in respect of any one or more instalments shall not entitle you to treat the Contract as a whole as repudiated.
- 5.7. If we fail to deliver the Goods (or any instalment) for any reason other than any cause beyond our reasonable control or your fault, and we are accordingly liable to you, our liability shall be limited to the excess (if any) of the cost to you (in the cheapest available market) of similar goods to replace those not delivered over the price of the Goods.
- 5.8. If you fail to take delivery of the Goods or fail to give us adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond your reasonable control or by reason of our fault) then, without limiting any other right or remedy available to us, we may:
 - 5.8.1. store the Goods until actual delivery and charge you for the reasonable costs (including insurance) of storage; or
 - 5.8.2. sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to you for the excess over the price under the Contract or charge you for any shortfall below the price under the Contract.
- 5.9. If any Goods are charged for in circumstances where we have agreed in writing that they are returnable, an allowance will only be made for them when they have been received back at our premises in good condition and carriage paid. Unless specified by us in writing, packaging is not returnable.

6. Risk and property

- 6.1. Risk of damage to or loss of the Goods shall pass to you:
 - 6.1.1. in the case of Goods to be delivered at our premises, at the time when we notify you that the Goods are available for collection; or
 - 6.1.2. in the case of Goods to be delivered otherwise than at our premises, at the time of delivery or, if you wrongfully fails to take delivery of the Goods, the time when we have tendered delivery of the Goods.
- 6.2. Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Terms, the property in the Goods shall not pass to you until we have received in cash or cleared funds payment in full of the price of the Goods and all other goods agreed to be sold by us to you for which payment is then due.
- 6.3. Until such time as the property in the Goods passes to you, you shall hold the Goods as our fiduciary agent and bailee, and shall keep the Goods separate from your goods and those of any third parties and properly stored, protected and insured and identified as our property.
- 6.4. Until such time as the property in the Goods passes to you (and provided the Goods are still in existence and have not been resold), we may at any time require you to deliver up the Goods to us and, if you fail to do so immediately, enter

on any premises belonging to you or any third party where the Goods are stored and repossess the Goods.

7. Warranties and liability

- 7.1. Subject to the provisions in clause 7.4 below, we warrant that the Goods will correspond with their specification at the time of delivery and will be free from defects in material and workmanship.
- 7.2. All stoves are covered by a manufacturer's warranty. The warranty covers the stove body castings only and does not include consumable items such as grates, door rope and glass. The Warranty is only valid for items and systems installed in accordance with current Building Regulations and must only be operated as specified in the instruction manual.
- 7.3. The benefit of any warranty is only given to the first retail purchaser of the Goods and is not assignable.
- 7.4. we shall be under no liability:
 - 7.4.1. in respect of any defect in the Goods arising from any drawing, design or specification supplied by you;
 - 7.4.2. in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow instructions (whether oral or in writing), misuse or alteration or repair of the Goods without our approval;
 - 7.4.3. if the total price for the Goods has not been paid by the due date for payment;
 - 7.4.4. for failure of any Goods to attain any performance figure unless we have specifically warranted that figure or unless that figure is quoted in our official catalogue or brochure in force at the date of delivery;
 - 7.4.5. in respect of minor blemishes and imperfections in the Goods unless they are covered by a manufacturer's warranty;
 - 7.4.6. for the type of Goods purchased or for the capacity of the Goods to deal with the proposed application;
 - 7.4.7. for the manner in which any Goods are installed or fitted which is solely the responsibility of the person who carried out the work whether or not such person was introduced to you by us;
 - 7.4.8. for any breach of governmental other regulations relating to the use of the Goods by you; or
 - 7.4.9. for incorrect calculations, incompatible designs or advice which may result in the Goods not being suitable for the purpose for which they were purchased.
- 7.5. Subject as expressly provided in these Terms, and except where the Goods are sold to a person dealing as a consumer, all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- 7.6. Where the Goods are sold under a consumer transaction your statutory rights are not affected by these Terms.
- 7.7. A claim by you which is based on any defect in the quality or condition of the Goods or their failure to correspond with specification shall (whether or not delivery is refused by you) be notified to us within seven days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure. If delivery is not refused, and you do not notify us accordingly, you shall not be entitled to reject the Goods and we shall have no liability for such defect or failure, and you shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.
- 7.8. Where a valid claim in respect of any of the Goods which is based on a defect in the quality or condition of the Goods or their failure to meet a specification is notified to us in accordance with these Terms, we may replace the Goods (or the part in question) free of charge or, at our sole discretion, refund to you the price of the Goods (or a proportionate part of the price), in which case we shall have no further liability to you.
- 7.9. Except in respect of death or personal injury caused by our negligence, or liability for defective products under the Consumer Protection Act 1987, we shall not be liable to you by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for loss of profit or for any indirect, special or consequential loss or damage, costs, expenses or other claims for compensation whatsoever (whether caused by our negligence, our employees or agents or otherwise) which arise out of or in connection with the supply of the Goods (including any delay in supplying or any failure to supply the Goods in accordance with the Contract or at all) or their use or resale by you, and our entire liability under or in connection with the Contract shall not exceed the price of the Goods, except as expressly provided in these Terms.
- 7.10. We shall not be liable to you or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of our obligations in relation to the Goods, if the delay or failure was due to any cause beyond our reasonable control. Without limiting the foregoing, the following shall be regarded as causes beyond our reasonable control:

- 7.10.1. Act of God, explosion, flood, tempest, fire or accident;
- 7.10.2. war or threat of war, sabotage, insurrection, civil disturbance or requisition;
- 7.10.3. acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;
- 7.10.4. import or export regulations or embargoes;
- 7.10.5. strikes, lock-outs or other industrial actions or trade disputes (whether involving our employees or those of a third party);
- 7.10.6. difficulties in obtaining raw materials, labour, fuel, parts or machinery; or
- 7.10.7. power failure or breakdown in machinery.

8. Insolvency of buyer

8.1. This clause 8 applies if:

- 8.1.1. you makes a voluntary arrangement with your creditors or (being an individual or firm) becomes bankrupt or (being a company) become subject to an administration order or go into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or
- 8.1.2. an encumbrancer takes possession, or a receiver is appointed, of any of your property or assets; or
- 8.1.3. you cease, or threaten to cease, to carry on business; or
- 8.1.4. we reasonably apprehend that any of the events mentioned above is about to occur in relation to you and notify you accordingly.

8.2. If this clause applies then, without limiting any other right or remedy available to us, we may cancel the Contract or suspend any further deliveries under the Contract without any liability to you, and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

9. General

- 9.1. A notice required or permitted to be given by either party to the other under these Terms shall be in writing.
- 9.2. No waiver by us of any breach of the Contract by you shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 9.3. If any provision of the Contract is held by a court or other competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of the Contract and the remainder of the provision in question shall not be affected.
- 9.4. Any disputes arising from the Contract shall be determined in the Courts of England or, at our discretion, shall be referred to a single arbitrator in accordance with the provisions of the Arbitration Act 1996.

10. Definitions and Interpretation In these Terms :

- 10.1. "you" means the person who accepts our quotation for the sale of the Goods or whose order for the Goods is accepted by us and "your" shall be construed accordingly;
- 10.2. "Contract" means the contract for the purchase and sale of the Goods;
- 10.3. "Goods" means the goods (including any instalment of the goods or any parts for them) which we are to supply in accordance with these Terms;
- 10.4. 'we' means Ebben & Yorke Retail Limited;
- 10.5. 'Terms' means the standard terms set out in this document and (unless the context otherwise requires) includes any special terms agreed in writing between you and us; and
- 10.6. 'writing' includes facsimile transmission email and comparable means of communication and written shall be construed accordingly;
- 10.7. any reference in these Terms to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time;
- 10.8. the headings in these Terms are for convenience only and shall not affect their interpretation; and
- 10.9. unless the context otherwise requires words denoting the singular shall include the plural and vice versa and words denoting persons shall include bodies corporate, unincorporated associations and partnerships.

