

Marble Heating Co Ltd

Terms and Conditions

TERMS AND CONDITIONS OF SALE

1. Interpretation

1.1 In these Conditions

“Buyer” means the person who accepts a quotation of the Seller for the sale of the Goods or whose order for the Goods is accepted by the Seller

“Goods” means the goods (including any instalment of the goods or any parts of them) which the Seller is to supply in accordance with these Conditions

“Seller” means Marble Heating Co Ltd

“Conditions” means the standard terms and conditions of sale set out in this document and (unless the context otherwise requires) including any special terms and conditions agreed in writing between the Buyer and Seller

“Contract” means the contract for the purchase and sale of the Goods

“Writing” includes fax and e-mail

“Stock Item” shall mean those goods which are part of the Seller’s normal range whether contained in its catalogue or price lists or otherwise

“Special Items” shall mean those special products which are not stock items

1.2 The heading in these Conditions are for convenience only and shall not affect their interpretation.

2. Basis of the Sale

2.1 The Seller shall sell and the Buyer shall purchase the Goods in accordance with any written quotation of the Seller which is accepted by the Buyer, or any written order of the Buyer which is accepted by the Seller, subject in either case to these Conditions, which shall govern the Contract to the exclusion of any other terms and conditions subject to which any such quotation is accepted or purported to be accepted, or any such order is made or purported to be made, by the Buyer.

2.2 No variation to these Conditions shall be binding unless agreed in writing between the authorised representative of the Buyer and a Director of the Seller.

2.3 Any advice or recommendation given by the Seller, or its employees or agents, to the Buyer or any purchaser from the Buyer, or to either of their employees or agents, as to the storage, application or use of the Goods which is not confirmed in Writing by the Seller is followed or acted upon entirely at the Buyer’s own risk, and accordingly the Seller shall not be liable for any such advice or recommendation which is not so confirmed.

2.4 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 the Seller shall be subject to correction without any liability on the part of the Seller.

3. Orders and Specifications

3.1 No Order submitted by the Buyer shall be deemed to be accepted by the Seller unless and until confirmed in writing by the Seller's authorised representative.

3.2 The Buyer shall be responsible to the Seller for ensuring the accuracy of any Order (including any applicable specification) submitted by the Buyer giving the Seller any necessary information relating to the Goods within a sufficient time to enable the Seller to perform the Contract in accordance with its terms.

3.3 The quantity, quality and description of and any specification for the Goods shall be those set out in the Seller's quotation or confirmation (if accepted by the Buyer) or the Buyer's Order (if accepted by the Seller).

3.4 The Seller reserves the right to withdraw or alter or amend goods, products or product specifications without prior notice.

4. Cancellation or Variation of Orders

4.1 Whether the Goods are Stock Items or Special Items shall be solely determined by the Seller.

4.2 No cancellation or alteration to Orders for Stock Items will be accepted after three days from the date of the Contract. Thereafter any such cancellation or change will be accepted at the sole discretion of the Seller upon condition that the Buyer pays a restocking charge to be determined by the Seller from time to time.

4.3 The Buyer may not cancel or change any Order for Special Items, i.e. items not listed in Seller's specifications, after the date of the Contract.

5. Prices

5.1 The price of the Goods shall be the Seller's quoted price or, where no price has been quoted, (or a quoted price is no longer valid) the price listed in the Seller's published price list current at the date of acceptance of the Order.

5.2 All prices quoted are valid for 30 days only or until earlier acceptance by the Buyer, after which time they may be altered by the Seller without giving notice to the Buyer.

5.3 The price is exclusive of any applicable Value Added Tax which shall be payable in addition by the Buyer at the rate prevailing at the time of invoice.

6. Terms of Payment

6.1 In respect of Buyers who have an account with the Seller all invoices are due for payment within 30 days of the invoice date.

6.2 Pro forma Buyers who are paying cash or by credit card will be required to pay 100% of the price of the Goods prior to delivery on Stock Items. On Special Items payment of 50% of the price will be required at the time of the Contract and the remainder prior to delivery.

6.3 In default of payment by the Buyer the Seller shall be at liberty to suspend delivery until payment is made.

6.4 Any payment or part thereof remaining unpaid after the due date shall, in the absolute discretion of the Seller, be subject to compound interest at the rate of 4% per annum over Barclays plc base rate from time to time, and shall be added to the balance due from the

Buyer to the Seller and calculated on a daily basis. All costs incurred in the collection of overdue accounts are in all cases payable by the Buyer.

6.5 The Seller reserves the right to withdraw or reduce any credit facilities which may have previously been available to the Buyer.

6.6 If after the date of the Contract circumstances arise which, in the sole discretion of the Seller, affect the credit rating of the Buyer then the Seller may require cleared funds or security prior to delivery of the Goods to the Buyer.

6.7 The full invoice price for the Goods shall be payable on all Goods delivered or available for delivery even though these may be less than the amount in the Contract. Payment under these terms shall be made notwithstanding any claim that the Buyer may have by way of set off or counterclaim or any other reason whatsoever.

7. Delivery

7.1 Whilst every effort is made to deliver Goods on the dates or within the periods mentioned in the Contract such dates or periods shall be deemed to be an estimate only and shall not form part of the terms and conditions of the Contract unless specifically agreed in Writing to be "of the essence of the Contract" and in the absence of such special agreement the Seller accepts no liability whatsoever for any loss or damage of whatsoever nature and howsoever arising which may be suffered by the Buyer as a result of any failure on the part of the Seller to deliver Goods on or within the dates or periods mentioned in the Contract.

7.2 The Goods may be delivered by the Seller in advance of the quoted delivery date upon giving reasonable notice to the Buyer.

7.3 Where goods are to be delivered in instalments, each delivery shall constitute a separate Contract and failure by the Seller to deliver any one or more of the instalments in accordance with these Conditions, or any claim by the Buyer in respect of any one or more of the instalments, shall not entitle the Buyer to treat the Contract as a whole as repudiated.

7.4 If the Seller fails to deliver the Goods (or any instalment) for any reason other than any cause beyond the Seller's reasonable control or the Buyer's fault, and the Seller is accordingly liable to the Buyer, the Seller's liability shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest available market) of similar goods to replace those not delivered over the price of the Goods.

7.5 If the Buyer fails to take delivery of the Goods or fails to give the Seller adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of the Seller's fault) then, without prejudice to any other right or remedy available to the Seller, the Seller may:-

7.5.1. store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage after a period of 6 weeks from the date the Buyer is notified that the Goods are ready for delivery or

7.5.2. after a period of 6 weeks sell the Goods at the best price readily available and, after deducting all reasonable storage and selling expenses, account to the Buyer for the excess over the price under the Contract or charge the Buyer for any shortfall below the price under the Contract

7.6 Delivery will be effected by the Seller and will be deemed to have taken place when the Goods leave the Seller's premises whether carried by the Seller or an independent carrier.

7.7 Delivery will only take place to the Buyer's address unless otherwise agreed in Writing by the Seller.

7.8 A charge will be made for delivery in accordance with the Seller's current price list.

7.9 The Buyer or its duly authorised representative must sign for delivery and once such proof of delivery is so signed and subject to Clause 7.10 the Goods will be deemed to have been accepted by or on behalf of the Buyer. It shall be for the Buyer to check, before signing for delivery, that the correct quantity of Goods has been delivered and that the packaging and the Goods have not been damaged. Qualifications in signature relating to the lack of examination ("unexamined" etc) cannot be accepted by the Seller in the event of subsequent claims being made.

7.10 Notwithstanding the Buyer's obligations on delivery the Buyer shall not be required to open packaging or unpack Goods which are intended to be stored before use. Nevertheless, the Buyer must, where it has not immediately inspected the Goods and the packaging is not damaged, notify the Seller of any damage to the Goods within 3 days of inspection or 4 weeks from the delivery date whichever shall be the earlier. The Seller shall have no obligation to replace or repair damaged Goods in the event of failure by the Buyer to comply with this provision.

7.11 If, notwithstanding the signature of the Buyer on delivery, the Buyer notifies the Seller within 3 days of delivery that not all of the Goods have been delivered then the Seller will, upon being reasonably satisfied, arrange delivery of those Goods which have not been so delivered but shall be under no obligation to do so in the event that the Buyer does not notify within this time.

7.12 The Seller will accept no responsibility in respect of Goods claimed to have been lost in transit where delivery is otherwise than by the Seller unless a written complaint is received by both the carrier and the Seller within 7 days of the date of dispatch indicated on advice notes and invoices.

7.13 The Seller will accept no responsibility in respect of Goods damaged in transit where carriage is otherwise than by the Seller.

7.14 In the case of Goods being sent by post the Seller will accept no responsibility in respect of Goods claimed to have been lost, partially lost or damaged unless a written complaint is received by both the Post Office and the Seller within 7 days of the date of dispatch as indicated on advice notes and invoices.

8. Passing of Property and Risk

8.1 The risk in the Goods shall pass to the Buyer upon delivery.

8.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, the property in the Goods shall not pass to the Buyer until the Seller has received in cash or cleared funds payment in full or the price of the Goods and all other goods agreed to be sold by the Seller to the Buyer for which payment is then due.

8.3 Until such time as the property in the Goods passes to the Buyer, the Buyer shall hold the Goods as the Seller's fiduciary agent and bailee and shall keep the goods separate from those of the Buyer and third parties and properly stored, protected and insured and identified as the Seller's property, but the Buyer shall be entitled to resell or use the Goods in the ordinary course of its business.

8.4 Until such time as the property in the Goods passes to the Buyer (and provided the Goods are still in existence and have not been resold) the Seller shall be entitled at any time to require the Buyer to deliver up the Goods to the Seller and, if the Buyer fails to do so forthwith, to enter upon any premises of the Buyer or any third party where the Goods are

stored and repossess the Goods.

8.5 The Buyer shall not be entitled to pledge or in any way charge by way of security for its indebtedness any of the Goods which remain the property of the Seller, but if the Buyer does so all monies owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.

9. Returns

9.1. All Goods, whether damaged or otherwise, will only be collected by the Seller from the Buyer's address notwithstanding that delivery may have been effected at another address.

9.2. No Goods may be returned to the Seller without the prior agreement in writing of the Seller. Subject thereto any Goods returned which the Seller is satisfied were supplied subject to defects of quality or condition which would not be apparent on inspection shall either be replaced free of charge or, at the Seller's sole discretion the Seller shall refund or credit to the Buyer the price of such defective Goods but the Seller shall have no further liability to the Buyer.

9.3 No return will be accepted of any Goods which are of special size or colour.

9.4 Goods will only be accepted back in their original packaging and if such packaging and Goods are undamaged.

9.5 No return will be accepted of miscellaneous stock sold as seen.

9.6 The Seller may, at its discretion, issue a credit note for Goods which it will accept as return but it reserves the right to re-invoice the Buyer in the event that the Goods or packaging are found to be damaged.

9.8 No Goods will be accepted for return unless they are accompanied by the Seller's returns note identification label.

9.9 The Buyer will be liable to pay the price in accordance with the Conditions notwithstanding the return of any Goods unless and until the Seller has agreed to accept such returns and has issued a credit note.

10. Installation

10.1 The Goods will be deemed to have been accepted when they have been installed and thereafter no claim will be accepted by the Seller for any surface damage, other defects or any other matter

10.2 The Seller accepts no liability for any cost incurred by the Buyer or any third party relating to the cost of installation before it has had the opportunity to inspect

10.3 The Goods must be fitted in accordance with the fitting instructions accompanying the Goods and, in the case of radiators, shall be installed to current ADL 1 and British Standard Regulations by a suitably qualified installer. The Seller reserves the right to be provided with proof of such qualifications. In the case of electrical items, installation must be made in accordance with the local current IEE regulations and by persons with recognised qualifications. It shall be for the Buyer to ensure that the installations, whether electrical or otherwise, are safe.

10.4 If the Seller is asked to attend a site where the Goods have been installed and where fault is alleged and finds that such fault is as a result of the method of installation and/or the

central heating system is found to be at fault, then the Buyer shall pay the Seller's charges for making such visit. If the fault is found to be with the Goods then the Seller will arrange for a replacement of the Goods as soon as is reasonably possible either with the same Goods or a product which is as similar as is available at the time. Thereafter the reinstallation must be undertaken in a manner approved by the Seller.

10.5 Where Goods are supplied in a primer coat only it shall be for the Buyer to ensure that they are correctly finished

11. Warranties and Liability

11.1 Subject to the conditions set out below the Seller warrants that the Goods will correspond with their specification at the time of delivery and will be free from defects in detail and workmanship either at the time of delivery or from the date of their initial use whichever shall be the later.

11.2 The above warranty is given by the Seller subject to the following conditions:-

11.2.1 no liability will be accepted for minor variations between the colour chart and/or colour samples and the actual finish of the Goods

11.2.2 the Seller shall be under no liability in respect of any defect in the Goods arising from any drawing design or specification supplied by the Buyer

11.2.3 the Seller shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working condition, failure to follow the Seller's installation instructions (whether oral or in writing), misuse or alteration or repair of the Goods without the Seller's approval

11.2.4 the Seller shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total price for the Goods has not been paid by the due date for payment

11.2.5 where any valid claim in respect of any of the Goods which is based on any defect in the quality or condition of the Goods or their failure to meet specification is notified to the Seller in accordance with these Conditions, the Seller shall be entitled to replace the Goods (or the part in question) free of charge or, at the Seller's sole discretion, refund to the Buyer the price of the Goods (or a proportionate part of the price) but the Seller shall have no further liability to the Buyer. Any collection of the defective Goods or replacement thereof shall only take place at the Buyer's address

11.2.6 the Buyer must give notice of any defect in the Goods within 3 days of the date of delivery or three days from removal of the packaging where it is intended that the Goods shall be stored at the Buyer's premises until use, whichever shall be the later but in any event no liability will be accepted by the Seller after 4 weeks from the date of delivery

11.2.7 the Buyer will forfeit his right to make any claim under the terms of this clause or the Conditions upon the Goods being dismantled or modified by the Buyer or any third party

11.2.8 the Seller's Heat Calculation pamphlet is intended as a guide only and it is incumbent upon the Buyer to ensure the heat output of Goods meet its own requirements.

11.3 Subject as expressly provided in these Conditions and, except where the Goods are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977), all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

11.4 Where the Goods are sold under a consumer transaction (as defined by the Consumer Transactions (Restrictions on Statements) Order 1976) the statutory rights of the Buyer are not affected by these Conditions.

11.5 Except in respect of death or personal injury caused by the Seller's negligence, the Seller shall not be liable to the Buyer 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 any indirect, special or consequential loss or damage (whether for loss of profit or otherwise), costs, expenses or other claims for compensation whatsoever (whether caused by the negligence of the Seller, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods or their use or resale by the Buyer, and the entire liability of the Seller under or in connection with the Contract shall not exceed the price of the Goods, except as expressly provided in these Conditions.

11.6 The Seller shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing or any failure to perform, any of the Seller's obligations in relation to the Goods, if the delay or failure was due to any cause beyond the Seller's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Seller's reasonable control

11.6.1 an act of God, explosion, flood, tempest, fire or accident

11.6.2 war or threat of war, sabotage, insurrection, civil disturbance or requisition

11.6.3 acts, restrictions, regulations, by-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority

11.6.4 import or export regulations or embargoes

11.6.5 strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Seller or of a third party)

11.6.6 difficulties in obtaining raw materials, labour, fuel, parts or machinery

11.6.7 power failure or breakdown in machinery

12. Intellectual Property

12.1 If any claim is made against the Buyer that the Goods infringe or that their use or resale infringes the patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person, then:-

12.1.1. the Seller shall be given full control of any proceedings or negotiations in connection with any such claim

12.1.2 the Buyer shall give the Seller all reasonable assistance for the purposes of any such proceedings or negotiations

12.1.3 except pursuant to a final award, the Buyer shall not pay or accept any such claim or compromise any such proceedings without the consent of the Seller (which shall not be unreasonably withheld)

12.1.4 the Buyer shall do nothing which would or might invalidate any Policy of insurance or insurance cover which the Buyer may have in relation to such infringement and if indemnity shall not apply to the extent that the Buyer recovers any sums under any such Policy or cover (which the Buyer shall use its best endeavours to do)

12.1.5 the Seller shall be entitled to the benefit of and the Buyer shall accordingly account to the Seller for all damages and costs (if any) awarded in favour of the Buyer which are payable by, or agreed with the consent of the Buyer (which consent shall not be unreasonably withheld), to be paid by any other party in respect of such claim

12.1.6 without prejudice to any duty of the Buyer in common law the Seller shall be entitled to require the Buyer to take such steps as the Seller may reasonably require to mitigate or reduce any such loss, damages, costs or expenses for which the Seller is liable to indemnify the Buyer under this clause

12.2 In the event that the Seller permits the Buyer to make use of images of the Goods or other promotional material belonging to the Seller to promote the sale of the Goods by the Buyer to any third party, then such consent shall be upon the following terms:-

12.2.1 the use will be in accordance with any guidelines which may be issued by the Seller from time to time but in any event

12.2.2 such images or material shall be used by the Buyer in a way which is in keeping with the reputation associated with the Seller and the Goods

12.2.3 the Buyer's publicity material and any other use of the Seller's images shall be of good quality in design and materials and workmanship

12.2.4 all use of such images and material by the Buyer shall first be approved by the Seller

12.2.5 consent for the use of such images and material may be withdrawn by the Seller at any time and without notice

12.2.6 where the Seller's trade mark appears in the course of the use of such images or material the Buyer shall cause to appear on all publicity material a trade mark notice in such location and size as the Seller may from time to time require

12.3 All drawings and/or images issued by the Seller remain the Seller's property and must be returned on request. They may not be loaned, reproduced or copied or in any way altered wholly or in part without the Seller's authority in writing.

13. Determination and Damages

13.1 Without prejudice to its other rights under the Contract the Seller may determine the Contract, suspend any future delivery to the Buyer, and claim immediate access to the Buyer's premises for the purpose of repossession as set out in clause 8.4 of the Conditions of the Seller's products in the event of:-

13.1.1 any distress, execution or other legal process being levied upon the Buyer's assets

13.1.2 the Buyer entering into any arrangement or composition with his creditors, committing any act of bankruptcy (or being a corporation) entering into liquidation or having a winding up petition presented against it, calling a meeting of its creditors or suffering the employment of a receiver in respect of the whole or any part of its undertaking or assets

13.1.3 non payment by the Buyer of any monies due from it to the Seller

13.2 In the event of a determination by the Seller of the Contract in accordance with sub paragraph 1 of this condition or any cancellation (and/or repudiation of the Contract by the Buyer) the Seller shall be entitled to recover as damages from the Buyer the following:-

13.2.1 the value, including any work completed or goods manufactured at the date of termination

13.2.2 the value of any work begun or goods begun to be manufactured but not completed at the date of termination including the cost of materials, labour, overheads and profit connected therewith

13.2.3 a sum representing any further profit which the Seller would have made on the Contract before its determination such profit to be determined by the Seller's auditors whose decision shall be conclusive and binding on the Buyer

14. General

14.1 Any notice required or permitted to be given by either party to the other under these Conditions shall be in Writing addressed to that other party at its registered office or principal place of business or such other address as may at a relevant time have been notified pursuant to this provision to the party giving the notice.

14.2 No waiver by the Seller of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or of any other provision.

14.3 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected.

14.4 The Contract shall be governed by the laws of England and the Buyer agrees to submit to the non-exclusive jurisdiction of the English courts