

## **1. Interpretation:**

- 1.1 In these Terms the following terms shall (unless the context requires otherwise) bear the meanings set out opposite them: "SMART" Smart Heating Technology s.r.o., a company registered in Czech Republic with number 28616774; "Contract" the contract between SMART and the Customer for the supply and purchase of the Products. "Contract Price" the total price for Products specified on the relevant Quotation; "Customer" a person whose written order for Products is accepted by SMART or (as the case may be) who has accepted SMART written quotation for Products. "Customer Information" any information concerning the Customer which is disclosed by the Customer to SMART or otherwise obtained by SMART in the course of the supply of the Products; "Customer Order Form" the order form attached to a copy of the Quotation, for signature by the Customer; "Order Confirmation" written confirmation from SMART to the Customer of the Order; "Products" the Products which SMART is to supply to the Customer in accordance with these Terms as detailed on the relevant Customer Order Form or Quotation; "Quotation" a written quotation in respect of Products prepared by SMART for a Customer; "Terms" the standard terms of supply set out in this document and (unless the context otherwise requires) includes any special terms agreed in Writing between the Customer and SMART; "Writing" includes facsimile transmission, electronic mail and other forms of electronic communication.
- 1.2 A reference in these Terms to a provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.
- 1.3 A reference in these Terms to any gender shall be deemed to include all genders.
- 1.4 The headings in these Terms are for convenience only and shall not affect their interpretation.

## **2. Basis of Supply**

- 2.1 SMART shall supply and the Customer shall purchase those Products set out on the relevant Quotation, subject to these Terms, which shall govern the Contract to the exclusion of any other terms upon which any order for Products is made or purported to be made by the Customer, or any quotation from SMART is accepted or purported to be accepted by the Customer.
- 2.2 No variation to these Terms shall be binding unless agreed in writing between the Customer and SMART.
- 2.3 SMART's employees or agents are not authorised to make any representations concerning the Products unless confirmed by SMART in Writing. In entering into the Contract the Customer acknowledges that he does not rely on any such representations which are not so confirmed.
- 2.4 Any advice or recommendation given by SMART employees or agents to the Customer as to the storage, application or use of the Products which is not confirmed in Writing by SMART is followed or acted on entirely at the Customer's own risk, and accordingly SMART shall not be liable for any such advice or recommendation which is not so confirmed.
- 2.5 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 SMART shall be subject to correction without any liability on the part of SMART.

### **3. Orders and Specifications**

- 3.1 No order submitted by the Customer shall be deemed to be accepted by SMART unless and until confirmed in writing by SMART. Such confirmation shall usually be given by means of an Order Confirmation.
- 3.2 The quantity and description of the Products and any specification for them shall be as set out in SMART's quotation.
- 3.3 SMART reserves the right to acquire similar Products from alternative manufacturers and/or to make any changes in the specification of the Products which are required to conform with any applicable statutory or safety requirements which do not materially affect the nature quality or performance of the Products.
- 3.4 No order which has been accepted by SMART may be cancelled by the Customer except with the agreement in Writing of SMART and on terms that the Customer shall indemnify SMART 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 SMART as a result of cancellation.

### **4. Price of Products**

- 4.1 The price of the Products shall be SMART's quoted price (as set out in the Quotation) or where a quoted price is no longer valid, the price listed in SMART's published price list current at the date of acceptance of the order. All prices quoted are valid for 30 days only from receipt by the Customer of the Quotation after which time they may be altered by SMART without giving notice to the Customer.
- 4.2 SMART reserves the right, by giving Written notice to the Customer at any time before delivery, to increase the price of the Product, any increase in cost to SMART which is due to any factor beyond the control of SMART (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 Products which are requested by the Customer, or any delay caused by any instructions of the Customer or failure of the Customer to give SMART adequate information or instructions.
- 4.3 The price quoted for the Products is (unless otherwise stated) exclusive of any applicable value added tax, which the Customer shall be additionally liable to pay to SMART.

### **5. Terms of Payment**

- 5.1 Subject to any special terms agreed in Writing between SMART and the Customer, the Customer shall pay to SMART:
  - 5.1.1 50% of the price of the Products (plus value added tax where applicable), as specified on the Customer Order Confirmation Form, upon submission of the order by the Customer; a further 50% of the contract value (plus value added tax where applicable), as specified on the Smart Order Confirmation Form, 15 days prior to delivery.
  - 5.1.2 On approved credit accounts, payment of invoices must be made in full without any deduction or set-off within 30 days of the date of the invoice. Any extension of credit allowed to the customer may be changed or withdrawn at any time.
- 5.2 The time of payment of the price shall be of the essence of the Contract. Receipts for payment will be issued only on request.

- 5.3 If the Customer fails to make any payment on the due date then, without limiting any other right or remedy available to SMART, SMART may charge the Customer interest (both before and after any judgment) on the amount unpaid, at the rate of 3 per cent per annum above Czech National Bank base rate from time to time, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).

## **6. Delivery of Products**

- 6.1 Any dates given for delivery of the Products are approximate only and SMART shall not be liable for any delay in delivery of the Products however caused. Time for delivery shall not be of the essence of the Contract unless previously agreed by SMART in Writing. The Products may be delivered by SMART in advance of the quoted delivery date on giving reasonable notice to the Customer.
- 6.2 If the Customer fails to take delivery of the Products or fails to give SMART adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Customer's reasonable control or by reason of SMART's fault) then, without limiting any other right or remedy available to SMART, SMART may:
- 6.2.1 Store the Products until actual delivery and charge the Customer for the reasonable cost (including insurance) of storage; or
- 6.2.2 sell the Products at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Customer for the excess over the price under the Contract or charge the Customer for any shortfall below the price under the Contract.

## **7. Risk and Property**

- 7.1 Risk of damage to or loss of the Products shall pass to the Customer at the time of delivery, or if the Customer wrongfully fails to take delivery of the Products, the time when SMART has tendered delivery of the Products.
- 7.2 Notwithstanding delivery and passing of risk in the Products, or any other provision of these Terms, the property in the Products shall not pass to the Customer until SMART has received in cash or cleared funds payment in full of the price of the Products and all other Products agreed to be sold by SMART to the Customer for which payment is then due.
- 7.3 Until such time as the property in the Products passes to the Customer, the Customer shall hold the Products as SMART's fiduciary agent and bailee, and shall keep the Products separate from those of the Customer and third parties and properly stored protected and insured and identified as SMART's property, but the Customer may resell or use the Products in the ordinary course of its business.
- 7.4 Until such time as the property in the Products passes to the Customer (and provided the Products are still in existence and have not been resold), SMART may at any time require the Customer to deliver up the Products to SMART and, if the Customer fails to do so forthwith, enter on any premises of the Customer or any third party where the Products are stored and repossess the Products.
- 7.5 The Customer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Products which remain the property of SMART, but if the Customer does so all moneys owing by the Customer to SMART shall (without limiting any other right or the remedy of SMART) forthwith become due and payable.

## **8. Warranties and Liability**

- 8.1 Except as expressly provided in these Terms and except where the Products are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms 1977), all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- 8.2 Where the Products are sold under a consumer transaction (as defined by the Consumer Transactions (Restrictions on Statements) Order 1976) the statutory rights of the Customer are not affected by these Terms.
- 8.3 A claim by the Customer which is based on the quality or condition of the Products or their failure to correspond with specification shall (whether or not delivery is refused by the Customer) be notified to SMART 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 of Products is not refused, and the Customer does not notify SMART accordingly, the Customer shall not be entitled to reject the Products and SMART shall have no liability for such defect or failure, and the Customer shall be bound to pay the price as if the Products had been delivered in accordance with the Contract.
- 8.4 Except in respect of death or personal injury caused by SMART's negligence, or liability for defective products under the Consumer Protection Act 1987, SMART shall not be liable to the Customer 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 the negligence of SMART, its employees or agents or otherwise), which arise out of or in connection with the supply of the Products (including any delay in supplying or any failure to supply the Products in accordance with the Contract or at all) or the use or resale of the Products by the Customer, and the entire liability of SMART under or in connection with the Contract shall not exceed the total Contract price except as expressly provided in these Terms.
- 8.5 SMART shall not be liable to the Customer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of SMART's obligations in relation to the Products, if the delay or failure was due to any cause beyond SMART's reasonable control. Without limiting the foregoing, the following shall be regarded as causes beyond SMART's reasonable control:
- 8.5.1 act of God, explosion, flood, tempest, tsunami, fire or accident;
  - 8.5.2 war or threat of war, sabotage, insurrection, civil disturbance or requisition;
  - 8.5.3 acts, restrictions, regulations, by-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;
  - 8.5.4 import or export regulations or embargoes;
  - 8.5.5 strikes, lock-outs or other industrial actions or trade disputes (whether involving registered installers or employees of SMART or of a third party);
  - 8.5.6 power failure or breakdown in machinery.

## **9. Data and Know-How Protection**

- 9.1 By entering into the Contract the Customer acknowledges that his Customer Information will be processed by SMART and agrees that such Customer Information may be passed by SMART to its employees, installers, sub contractors, service providers and agents (including marketing agents), assignees and/or any relevant trade bodies (together referred to in this clause as "Relevant Third Parties"), in order to enable SMART to carry out its obligations and pursue its rights under the Contract and for the purposes of risk assessment, after sales service, system testing, account history analysis, the detection and prevention of fraud, market research and (unless the Customer has completed the opt-out box on the Customer Order Form) the marketing of any products of SMART or of any Relevant Third Parties.
- 9.2 We will make a search with a credit reference agency, which will keep a record of that search and will share the information with other businesses. We may also make enquiries about the principal directors with a credit reference agency.
- 9.3 In view of the fact that the Customer is acquainted with the SMART know-how, technology and technological procedures, the Customer shall be obliged to prevent that the SMART's know-how and technological procedures are copied, exploits or obtained by any third parties. The Customer shall be obliged to ensure that its employees who have access to the SMART's relevant know-how and technological procedures do not copy, disclose, breach or provide the know-how or technological procedures to any third parties. Should the Customer fail to ensure the protection of the SMART's know-how or technological procedures that were provided to the Customer, the Customer shall be obliged to pay a contractual penalty to SMART in the amount of EUR 100 000,- (in words: one hundred thousand Euros) for each individual breach of its obligation. The contractual penalty shall be payable at the moment when the Customer will breach the obligation. The Payment of the Contractual penalty shall be without prejudice to the right to compensation for damage.

## **10. General**

- 10.1 A notice required or permitted to be given by either party to the other under these Terms 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 the relevant time have been notified pursuant to this provision to the party giving the notice.
- 10.2 No waiver by SMART of any breach of the Contract by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 10.3 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.
- 10.4 The Contract shall be governed by the laws of Czech Republic, and the Customer agrees to submit to the non-exclusive jurisdiction of the Czech Republic courts.