

Terms and Conditions of Sale Aquacut Limited – These Terms & Conditions relate to trade sales only and not consumer sales

In these Conditions “the Company” means Aquacut Limited (No 3492068); “these Conditions” means these terms and conditions; “the Customer” means the person, firm or company purchasing the Goods; “the Contract” means the contract for sale of the Goods made between the Customer and the Company; “the Goods” means the goods, materials or services (including samples, where relevant) which are the subject of the Contract and a “Consumer” means a person who is buying the Goods other than in the normal course of a business. The statutory rights of a Customer are not affected by these Conditions.

1. The Contract/Order Acceptance

- a) These Conditions shall apply to the Contract and all orders placed and accepted by the Company to the exclusion of any other terms and conditions stipulated, incorporated or referred to by the Customer in any order, letter, form of contract or any other document or negotiations.
- b) No variation to these Conditions shall be binding without the express written agreement of a director of the Company.
- c) Even if the Company has given a quotation, no order placed by the Customer is binding on the Company until it has been accepted by the Company.
- d) In placing an order with the Company the Customer and its representatives warrant and represent that each of them has the necessary authority to bind the Customer in contract. The Customer must ensure that the terms of its order and any applicable specifications are complete and accurate given the Company shall be relying on that information.

2. Estimates/Quotations

- a) Where fine or specific tolerances are required in Goods beyond those generally accepted in the building trade no liability will attach to the Company unless tolerances are notified in writing to the Company at the time of order and the Company has agreed in writing to supply Goods that meet those tolerances.
- b) Quotations are usually on the basis that the material is supplied free of charge by the Customer unless stipulated otherwise in writing.
- c) Waterjet cutting can be effected on an average, slow or fast speed of cutting. A slow speed will generally result in a more costly but smoother cut while a fast speed will have a rougher, but cheaper cut. Unless requested otherwise, the Company will estimate based upon average speeds.

3. Prices

- a) The price of the Goods (“the Price”) shall be the price quoted to the Customer provided the Customer accepts the quotation within thirty days of its date. Where no price has been quoted (or a quote price is no longer valid) the Price shall be the Company’s trade price on the date the goods are delivered.
- b) All prices quoted are exclusive of VAT and delivery charges unless otherwise stated.
- c) If the Company agrees to deliver goods to the Customer, the Company will, unless agreed otherwise in writing, recharge the cost of the delivery plus an administration charge.

4. Accounts/Payments

- a) Credit accounts may be opened at the discretion of the Company, subject to satisfactory credit references being obtained. Unless otherwise agreed in writing, payment for Goods supplied on credit accounts shall become due and payable no later than the last business day of the month following the date of invoice.
- b) For Customers who do not have a Credit account or whose Credit account is suspended, the Customer shall pay the Company prior to the Goods being despatched from the Company’s premises.
- c) Any queries on an invoice must be raised in writing within 21 days of the invoice date, otherwise the invoiced amount shall be deemed to be accepted by the Customer
- a) The Company shall provide evidence (such as a delivery note) of Goods supplied in response to a request from the Customer provided it is received within three months of the delivery date. If the Customer does not raise any query about delivery within such period, the Goods concerned shall be deemed to have been delivered in accordance with the Contract.
- b) The Company shall not accept liability for shortage in quantities delivered unless the Customer notifies the Company of any claim for short delivery of the Goods within 2 days of the delivery to the Customer. In such circumstances the Company’s liability shall be restricted to making good the shortage. Any delivery book or note marked “NOT EXAMINED” will not prevent the operation of these clauses nor constitute express or implied notice in writing of any potential or actual shortage.

5. Performance

The Customer shall ensure that: (i) the Goods are sufficiently suitable and fit for the purpose intended and comply with all applicable requirements whether statutory, regulatory, municipal or otherwise; (ii) its premises are safe and suitable for the delivery, installation, use and operation of the Goods and comply both before and after such delivery, installation and during such operation with all relevant legislation (including without limitation safety legislation); (iii) any items of equipment provided by it which relates to the installation or operation of the Goods or is ancillary to or is for use in connection with the Goods shall not adversely affect their suitability or fitness for purpose.

6. Warranty

Subject to Condition 8 a) the Company agrees (in its absolute discretion) to repair (if possible), replace free of charge or refund any sums paid by the Customer for any Goods which in the reasonable opinion of the Company are defective due to a manufacturing fault of the Company's, but only if: (i) such fault is notified to the Company within 7 days of delivery; and (ii) the Company and/or its representative is given a reasonable opportunity after receiving the notice of examining such Goods in situ or the Customer (if asked to do so by the Company) returns such Goods to the Company for the examination to take place there.

7. Haulage

The Company will take reasonable precautions to pack Goods suitable for transport or as agreed with the Customer. The Company recommends that the Customer insures their goods in transit for a suitable value. In the event of damages during transit, subject to Condition 8 a), the Company will not compensate for any damages unless caused by the Company's failure to properly pack the Goods for transport. In any event any claim for damages caused by the Company's failure to package securely will be restricted in amount to the value of the Contract.

8. Surplus material

- a. We will usually send surplus materials back with finished work unless we agree otherwise
- b. In the event we agree to store surplus materials, we do so at our customers' risk
- c. In the event we store customers' materials we will dispose of these after three months without notice

9. Liability

- a) Nothing in these terms shall be deemed to exclude or restrict the Company for: (i) death or personal injury resulting from its negligence; (ii) fraudulent misrepresentation, or (iii) any breach on its part of any undertaking as to title implied by Section 12 of the Sale of Goods Act 1979 (as amended) or by Section 8 of the Supply of Goods (Implied Terms) Act 1973 (as amended).
- b) Subject to Condition 9a), the Company's total aggregate liability under or in connection with the Contract (howsoever such liability arises, whether in contract or tort or otherwise, including for negligence) shall be limited to the value of the Goods supplied under the Contract.
- c) Subject to Condition 9a), the Company shall not be liable (howsoever such liability arises, whether in contract or tort or otherwise, including negligence) for any indirect or consequential loss or for damage to or for loss of profit, business, savings, production or goodwill which arises out of or in connection with the Contract
- d) These Conditions set out the Company's entire liability in respect of the Goods and rights granted under them are in lieu and to the exclusion of all other warranties, conditions and other terms express or implied by statute, common law or a course of business except for any which cannot legally be excluded.

10. Ownership

Unless credit terms have been agreed in writing, the Company shall be entitled to retain the Goods until payment is made by the Customer, and in the event of protracted non-payment, the Company may sell the goods to recover all costs and unpaid invoices, accounting to the Customer for any sums received and paid away in costs.

11. Pallets and Packaging

The Company may charge for any packaging provided on a time and materials basis. Charges levied by the Company for crates, cases or pallets.

12. Force Majeure

The Company may defer the date of delivery or cancel the Contract or reduce the volume of Goods ordered by the Customer (without liability) if it is prevented from or delayed in performing due to circumstances beyond its reasonable control including, without limitation, acts of God, government actions, war or national emergency, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's labour force), or constraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, or due to catastrophic machine breakdown.

13. Notices

Any notice under or in connection with the Contract shall be in permanent readable form and shall be deemed properly delivered if addressed to the party concerned at its principal place of business or last known address and sent by first class post. Such notice shall be deemed to be delivered 48 hours after posting.

14. Disputes and Set Off

Any liability of the Company under the Contract shall be subject to and conditional upon the due performance and observance by the Customer of all its obligations under these Conditions and the Customer may not withhold or delay payment or exercise any rights of set-off whatsoever arising which might otherwise be available to it.

15. Waiver

No failure or delay on the part of the Company to exercise any of its rights under the Contract shall waive any of those rights, nor shall any single or partial exercise of such rights preclude their further exercise. Any waiver by the Company of any breach by the Customer of any of its obligations under the Contract shall not affect the rights of the Company if there is any further or additional breach.

16. Severability

Each and every obligation contained under these Conditions is a separate obligation and if any provision of these Conditions is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining Conditions and the remainder of such provision shall continue in full force and effect.

17. Headings

The headings on these Conditions are for convenience only and shall not affect their interpretation.

18. Governing Law

The Contract shall be governed and construed in accordance with English law and all disputes arising in connection with the Contract shall be submitted to the non-exclusive jurisdiction of the English courts.

19. Assignment

The Customer may not assign the Contract.

20. No Rights to Third Parties

The parties to the Contract do not intend that any of its terms are enforceable by virtue of the Contract (Rights of Third Parties) Act 1999 by any person, firm or company.