



## 1. Definitions and Interpretation

- a) In these Conditions, the following definitions apply:
- 'Supplier' means Fixmart Limited, a company registered in England and Wales under number 08147401 whose registered office is at Unit 5 Springhead Enterprise Park, Springhead Road, Northfleet, Kent, DA11 8HJ.
  - 'Purchaser' means the individual, individuals, firm or company purchasing Goods from or otherwise dealing with the Supplier.
  - 'Business Day' means a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.
  - 'Conditions' means the terms and conditions set out in this document, as amended from time to time in accordance with clause 13.
  - 'Contract' means the contract between the Supplier and the Purchaser for the sale and purchase of the Goods in accordance with these Conditions.
  - 'Force Majeure Event' has the meaning given in clause 12.
  - 'Goods' means any and all items supplied by the Supplier to the Purchaser.
  - 'Order' means the Purchaser's order for Goods made either at the trade counter of the Supplier or via telephone, fax, e-mail or the internet.
- b) A reference to a particular law is a reference to it as it is in force for the time being, taking account of any amendment, extension, application or re-enactment, and includes any subordinate legislation for the time being in force made under it.
- c) Words imparting the singular number include the plural and vice-versa.
- d) A reference to one gender includes a reference to the other gender.
- e) The headings in these Terms and Conditions are for convenience only and will not affect their interpretation.

## 2. Basis of Contract and Application of Terms

- a) These Conditions apply to the Contract to the exclusion of any other terms that the Purchaser seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- b) The Order constitutes an offer by the Purchaser to purchase the Goods in accordance with these Conditions. The Purchaser is responsible for ensuring that the terms of the Order are complete and accurate.
- c) The Order shall only be deemed to be accepted when the Supplier issues either a written (via e-mail or otherwise) or verbal acceptance of the Order.
- d) The Contract constitutes the entire agreement between the parties. The Purchaser acknowledges that it may not rely on any statement, promise or representation made or given by or on behalf of the Supplier which is not set out in the Contract.
- e) Any samples, drawings, descriptive matter or advertising produced by the Supplier, and any descriptions or illustrations contained in the Supplier's catalogues or brochures, are produced for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract nor have any contractual force.
- f) Any typographical error or clerical omission in any sales literature, quotation, price list or other document issued by the Supplier may be corrected without liability on the Supplier's part.
- g) A quotation for the Goods given by the Supplier shall not constitute an offer. Unless otherwise stated by the Supplier either in writing or verbally, a quotation shall only be valid for a period of 7 days from its date of issue.
- h) All Orders hereafter made by the Purchaser shall be deemed to be made subject to these Conditions.

## 3. The Goods

- a) The Supplier shall have no responsibility for providing any ancillary guard or protection necessary to comply with any statutory requirements in connection with the use of any of the Goods by a Purchaser.
- b) Changes may occur to sizes and specifications of Goods and in this event the Supplier may provide an approximate equivalent.
- c) Some items sold by the Supplier are sold by weight based upon the Supplier's experience and knowledge that those items when sold by weight will equal a certain quantity. In cases where a Purchaser orders a quantity of such items which are sold by weight the Supplier gives no guarantee or warranty that the precise number of items will be supplied.
- d) Many products are supplied to the Supplier by manufacturers in boxed quantities. The Supplier gives no guarantee or warranty that such quantities are accurate and accepts no responsibility for any discrepancies. Any box quantities stated are approximate and may change without notice.

## 4. Delivery

- a) The Supplier shall deliver the Goods to the location set out in the Order or such other location as the parties may agree.
- b) Unless otherwise stipulated all Goods for delivery will be despatched by the conveyance of the Supplier's choice. Where the Purchaser requires a different means of conveyance any extra cost must be paid by the Purchaser.
- c) A copy of the Supplier's delivery note, or the carrier or consignor's delivery note must be signed by or on behalf of the Purchaser at the time of collection or delivery of the Goods. Subject to clause 5 hereof, signature of such a delivery note shall be final and conclusive proof that the Purchaser has received the Goods in good order and condition.
- d) Whilst every effort will be made to avoid delay, no responsibility is undertaken for meeting any specific delivery times or dates and the Supplier shall not be liable for any delay or failure to deliver caused by a Force Majeure Event or the Purchaser's failure to provide the Supplier with adequate delivery instructions or other instructions relevant to the supply of the Goods.
- e) If the Supplier fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Purchaser in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. The Supplier shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Purchaser's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- f) If, 10 Business Days after the day on which the Goods were to be delivered pursuant to the Order, the Purchaser has not accepted delivery of them, the Supplier may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Purchaser for any excess over the price of the Goods or charge the Purchaser for any shortfall below the price of the Goods and such sum shall be paid within 14 days.
- g) After 3 failed delivery attempts (inside the M25), where the Purchaser is at fault, the Supplier reserves the right to charge up to 40% of the order value.

## 5. Quality

- a) The Supplier warrants that, on delivery, the Goods shall:
- subject to clause 3, conform to their description; and
  - be free from material defects in design, material and workmanship.
- b) Subject to 5(c), if:
- the Purchaser immediately gives notice to Supplier by telephone and further confirms such notice in writing to the Supplier within 90 days that some or all of the Goods do not comply with the warranty set out in clause 5(a);
  - the Supplier is given a reasonable opportunity of examining such Goods; and
  - the Purchaser (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Supplier's expense, the Supplier shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.
- c) The Supplier shall not be liable for the Goods' failure to comply with the warranty set out in clause 5(a) in any of the following events:
- the Purchaser makes any further use of such Goods after giving notice in accordance with clause 5(b);
  - the defect arises because the Purchaser failed to follow the Supplier'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;
  - the Purchaser itself, or via a third party, alters or repairs such Goods without the written consent of the Supplier;
  - the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
  - the Goods differ from their description as a result of changes made to ensure that they comply with applicable statutory or regulatory requirements.
- d) Except as provided in this clause 5, the Supplier shall have no liability to the Purchaser in respect of the Goods' failure to comply with the warranty set out in clause 5(a).
- e) The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.
- f) These Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.

## 6. Guarantees

- a) The Supplier shall assign to the Purchaser the benefit of the warranties and/or guarantees in relation to the Goods which the Supplier receives from its own suppliers.
- b) Guarantees shall not be applicable outside the United Kingdom unless expressly stated otherwise by the Supplier in writing.
- c) Any guarantee given will be invalidated if the Goods supplied by the Supplier are subjected to misuse or accidental damage after the Purchaser has taken delivery of them.

## 7. Title and Risk

- a) The risk in the Goods shall pass to the Purchaser on completion of delivery when the Supplier's own vehicles are used to deliver the Goods.
- b) Where a third party carrier is used to deliver the Goods the risk in the Goods shall pass to the Purchaser at the moment when the Goods leave the Supplier's premises and the risk shall remain the Purchaser's regardless of whether the Goods have been received by the Purchaser.
- c) Title to the Goods shall not pass to the Purchaser until all sums owed to the Supplier on any account whatsoever have been paid notwithstanding that delivery has already taken place.
- d) Until title to the Goods has passed to the Purchaser, the Purchaser shall:
- hold the Goods on a fiduciary basis as the Supplier's bailee;
  - store the Goods separately from all other goods held by the Purchaser so that they remain readily identifiable as the Supplier's property;
  - not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
  - maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
  - notify the Supplier immediately if it becomes subject to any of the events listed in clause 9; and
  - give the Supplier such information relating to the Goods as the Supplier may require from time to time, but the Purchaser may resell or use the Goods in the ordinary course of its business.
- e) The Supplier shall be entitled to all rights of access to the Purchaser's premises to enforce its rights hereunder.
- f) If before title to the Goods passes to the Purchaser the Purchaser becomes subject to any of the events listed in clause 9, or the Supplier reasonably believes that any such event is about to happen and notifies the Purchaser accordingly, then, provided that the Goods have not been resold, or irrevocably incorporated into another product, and with out limiting any other right or remedy the Supplier may have, the Supplier may at any time require the Purchaser to deliver up the Goods and, if the Purchaser fails to do so promptly, enter any premises of the Purchaser or of any third party where the Goods are stored in order to recover them.

## 8. Prices and Payment

- a) The Goods will be invoiced on or at any time after the completion of delivery and shall be paid for at the applicable prices at the time of despatch.
- b) The price list provided by the Supplier is for guidance only and all prices are subject to variation at any time without notice to the Purchaser.
- c) The Supplier may, by giving notice to the Purchaser at any time before delivery, increase the price of the Goods set out in any Order to reflect any increase in the cost of the Goods that is due to:
- any factor beyond the Supplier's control (including foreign exchange fluctuations, increases in taxes and duties and increases in labour, materials and other manufacturing costs);
  - any request by the Purchaser to change the delivery date, quantities or types of Goods ordered;
  - any delay caused by any instructions of the Purchaser or failure of the Purchaser to give the Supplier adequate or accurate information or instructions; or
  - any failure of the Purchaser to take delivery of the Goods.
- d) The price of the Goods is exclusive of amounts in respect of value added tax ("VAT"). The Purchaser shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Goods.

- e) Payment will be due in accordance with the agreed terms of the Purchasers account. If payment in full is not received by the specified due date the Supplier reserves the right to charge interest on the outstanding balance at 3% above the Barclays Bank base rate from time to time. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the outstanding balance, whether before or after judgment. The Purchaser shall pay the interest together with the outstanding balance.

#### 9. Purchaser's Insolvency or Incapacity

- a) If the Purchaser becomes subject to any of the events listed in clause 9(b), or the Supplier reasonably believes that the Purchaser is about to become subject to any of them and notifies the Purchaser accordingly, then, without limiting any other right or remedy available to the Supplier, the Supplier may cancel or suspend all further deliveries under the Contract or under any other contract between the Purchaser and the Supplier without incurring any liability to the Purchaser, and all outstanding sums in respect of Goods delivered to the Purchaser shall become immediately due.
- b) For the purposes of clause 9(a), the relevant events are:
- the Purchaser suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply;
  - the Purchaser commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where the Purchaser is a company) where these events take place for the sole purpose of a scheme for a solvent amalgamation of the Purchaser with one or more other companies or the solvent reconstruction of the Purchaser;
  - (being a company) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Purchaser, other than for the sole purpose of a scheme for a solvent amalgamation of the Purchaser with one or more other companies or the solvent reconstruction of the Purchaser;
  - (being an individual) the Purchaser is the subject of a bankruptcy petition or order;
  - a creditor or encumbrancer of the Purchaser attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
  - (being a company) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Purchaser;
  - (being a company) a floating charge holder over the Purchaser's assets has become entitled to appoint or has appointed an administrative receiver;
  - a person becomes entitled to appoint a receiver over the Purchaser's assets or a receiver is appointed over the Purchaser's assets;
  - any event occurs, or proceeding is taken, with respect to the Purchaser in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 9(b)(i) to clause 9(b)(viii) (inclusive);
  - the Purchaser suspends, threatens to suspend, ceases or threatens to cease to carry on all or substantially the whole of its business;
  - the Purchaser's financial position deteriorates to such an extent that in the Supplier's opinion the Purchaser's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; and
  - (being an individual) the Purchaser dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.
- c) Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination. Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.
- d) In the event that there are inter-company dealings and supplies between the Supplier and the Purchaser as at the date of the Purchaser's insolvency then the Purchaser agrees that any monies that are owing to the Supplier may be fully offset against monies due to the Purchaser by the Supplier. Any excess sum due from the Supplier to the Purchaser over and above the sum being offset shall still be payable by the Supplier less reasonable administrative charges incurred of £25.00 + Vat per invoice outstanding up to a maximum of £200.00 + Vat per insolvency. This clause shall apply, but is not limited to, all companies associated with the Purchaser, companies within the Purchasers Group or control and any associated companies linked to the Purchaser by common directorship or majority shareholding.

#### 10. Returned Goods

- a) Subject to 10(d) below, Goods may be returned to the Supplier for credit or exchange for up to fourteen days after the date of delivery provided that the delivery note or invoice number is quoted.
- b) Save for Goods returned under clause 5(b) above, returned Goods will only be accepted by the Supplier if they are in a sound and resellable condition. Whether Goods are sound and resellable shall be the sole decision of the Supplier. Any Goods which the Supplier deems not to be resellable will only be returned to the Purchaser at the specific request of the Purchaser and at the Purchaser's expense. Notwithstanding the discretion of the Supplier in deciding whether the Goods are sound and resellable, Goods will not be deemed resellable if they are returned in anything but their original packaging or the quantities of the Goods returned are different from those originally supplied.
- c) Where Goods returned for credit or exchange are Goods which have been supplied in boxes or in quantities, credit notes or exchange of Goods will only be given if the Goods are returned in their boxes and/or in the same quantities supplied to the Purchaser. Credit notes will only be issued if the Supplier's collection note has been issued to the Purchaser.
- d) Save for Goods returned under the clause 5(b) above, the Supplier reserves the right to make a charge for handling and restocking equal to up to 30% of the sale price of the Goods returned.
- e) Goods which are not in the Supplier's catalogue and have been specially sourced for the Purchaser may not be returned for credit or exchange.

#### 11. Limitation of Liability

- a) Nothing in these Conditions shall limit or exclude the Supplier's liability for:
- death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
  - fraud or fraudulent misrepresentation;
  - breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
  - defective products under the Consumer Protection Act 1987.
- b) Subject to clause 11(a):
- The Supplier shall under no circumstances whatever be liable to the Purchaser, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
  - the Supplier's total liability to the Purchaser 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 the maximum limit of coverage set out in the insurance policy maintained by the Supplier which covers such breach and where no such insurance cover is available, shall not exceed the price of the Goods paid for by the Purchaser under the Contract at the time of the breach.

#### 12. Force Majeure

The Supplier shall not be liable for breach of contract or for late or non-delivery of any of the Goods arising from an act of God, force majeure, riots, civil commotion, military or usurped power, government order, direction or legislation, fire, strikes, lockouts, labour disturbances, adverse weather conditions or other matter whatsoever (whether similar or otherwise) over which the Supplier may have no control or from any abnormal conditions arising from any of the foregoing matters; nor (to the extent to which the same may be beyond the Supplier's control) from shortage of labour, stoppage of machinery or from shortage of material.

#### 13. Variation

Except as set out in these Conditions, any variation to the Contract, including the introduction of any additional terms and conditions, shall only be binding when agreed in writing and signed by the Supplier.

#### 14. Miscellaneous

- a) If any provisions of the Contract shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability shall not affect the other provisions of the Contract, which shall remain in full force and effect.
- b) For the purposes of the Contracts (Rights of Third Parties) Act 1999, the parties do not intend any person other than a party to the Contract to be able to enforce any term of the Contract.
- c) Any failure by the Supplier to enforce any or all of these conditions shall not be construed as a waiver of any of the Supplier's rights hereunder.
- d) The Purchaser shall not be entitled to assign the Contract or any part of it without the prior written consent of the Supplier.
- e) The Supplier reserves the right to sub-contract an Order or any part thereof.
- f) Any request by the Purchaser for a credit account, will typically only be considered by the Supplier for acceptance, if the Purchasers' account spend is likely to exceed £10,000 per annum and/or will have an order frequency of at least once a month. All credit accounts are regularly reviewed against these criteria, and if not met may be closed without notice by the Supplier.

#### 15. Use of Personal Information

- a) The Supplier may pass information about the Purchaser to its agents and service providers to search files of credit reference agencies to help administer any accounts, services and products provided by the Supplier, now or in the future. The Supplier may share information about how the Purchase deals with its accounts with other financial institutions, and with credit agencies, to detect fraud or recover loss. It may also be used to inform the Purchaser about services and products which may be of interest to them unless requested otherwise.
- b) The Supplier from time to time may insure its sales ledger and any payments not made within a reasonable time may be notified to the credit underwriters. This could result in the Purchaser's credit rating being adversely affected by the Supplier's credit insurer as well as credit reference agencies.
- c) When a credit account with the Supplier is applied for, the Supplier may check the following records relating to the Purchaser:
- The Supplier's own records.
  - Records held by Credit Reference Agencies, who, when they receive a search request from the Supplier, may leave a search footprint on the Purchaser's personal credit file (including Company Directors), that may be seen by other Lenders/Organisations. These agencies supply both public (including the electoral register) and shared credit and fraud prevention information. Such information may be used for assessing applications, verifying identity to prevent crime and money laundering. The Supplier may also make periodic searches at such agencies to manage the credit account with the Supplier. The Purchaser's data may also be used for other purposes when required by law or where permitted under the terms of the Data Protection Act 1998.

#### 16. Communications

- a) All notices under these Terms and Conditions must be in writing and signed by, or on behalf of, the party giving notice (or a duly authorised officer of that party).
- b) Notices will be deemed to have been duly given:
- when delivered, if delivered by courier or other messenger (including registered mail) during the normal business hours of the recipient;
  - when sent, if transmitted by fax or email and a successful transmission report or return receipt is generated;
  - on the fifth business day following mailing, if mailed by national ordinary mail; or
  - on the tenth business day following mailing, if mailed by airmail.
- c) All notices under these Terms and Conditions must be addressed to the most recent address, email address or fax number notified to the other party.

#### 17. Governing Law and Jurisdiction

The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.



**MEP & HVAC FIXING SPECIALISTS**  
 ✓ RIGHT PRODUCTS ✓ RIGHT PLACE ✓ RIGHT TIME