

BAXI COMMERCIAL - TERMS AND CONDITIONS OF SUPPLY

1. DEFINITIONS AND INTERPRETATION

- 1.1 In these conditions: "**Business Hours**" means 8.30am to 5pm Monday to Friday; "**Contract**" means the contract comprising these conditions and any matters referred to in the Quotation and/or the Service Schedule, for supply of Goods and/or Services; "**Consumer**" means any customer who is purchasing outside the course of his or her business or trade; "**you**" / "**your**" means the person submitting an order for Goods and/or Services; "**Goods**" means the goods supplied by us to you including any parts supplied; "**Labour**" means the time taken by us to provide the Services; "**Materials**" means the parts used in order to supply the Services and related Goods; "**Quotation**" means our written quotation document setting out the cost of the Goods and Services and other related matters; "**Services**" means the services relating to the installation and commissioning of the Goods and/or the servicing and repair of the same; "**Service Schedule**" means our formal document detailing certain Services to be supplied by us to you; "**we**" / "**us**" / "**our**" means Baxi Heating UK Limited whose registered office is at Brooks House, Coventry Road, Warwick CV34 4LL (registered with company number 03879156 and registered for VAT purposes with number 604 6658 37); "**Writing**" means letter, fax or email.
- 1.2 These conditions will apply to all your purchases of Goods and/or Services (as those terms are defined below) from us.
- 1.3 The Contract will be formed when you accept our Quotation and we receive a written order from you.
- 1.4 In deciding whether to accept your order we may carry out a credit check and will only accept your order if we are satisfied with the results of such check. You confirm that you are happy for us to carry out such check.
- 1.5 Quotations are only valid for a period of 30 days from the date shown on the Quotation.
- 1.6 These conditions may only be changed in a document signed by one of our directors.
- 1.7 These conditions and any matters referred to on our Quotation and Service Schedule form the entire understanding between you and us and supersede any prior promises, representations (unless fraudulent) or undertakings.
- 1.8 Any omission or error in any sales literature, web page or site, order form, Quotation, Service Schedule, price list, order acknowledgement, despatch note, invoice or other document issued by us may be corrected by us without liability.
- 1.9 The provisions of the Contracts (Rights of Third Parties) Act 1999 are expressly excluded from the Contract so that no third party may claim any rights under this contract.
- 1.10 Clause headings are for convenience only and do not affect the interpretation of these conditions. Words in the singular include the plural and vice versa.

2. PRICE

- 2.1 The price for the Goods and/or Services is stated on our Quotation or, if no price is stated by us to you, our then current list price for the same. All prices are in £ sterling, but are exclusive of delivery and VAT, which will be added to or charged on invoices at the appropriate rates and paid by you. Where we perform Services which comprise servicing and/or repair of Goods, we will inform you of the actual cost of Labour and Materials once we have performed those Services and this cost shall be added to the price payable by you.
- 2.2 We may vary the price where the cost to us of acquiring or supplying the Goods and/or Services is increased between the date of Quotation and supply and including, without limitation, increases in the cost of carriage, packaging or insurance or arising from a change in exchange rate, a change in delivery date, quantities or specifications for Goods and/or Services requested by you (or, in the case of the Services, necessitated by something that you failed to notify us of) or delay caused by your instructions.

3. PAYMENT

- 3.1 We may invoice you for the Goods and/or Services upon their supply and/or in accordance with the payment terms set out in the Quotation. Where Goods are delivered in instalments, we may invoice you separately in respect of each such instalment. Unless we agree otherwise in Writing, you must pay for the Goods and Services in accordance with the Service Schedule, or, if there is no Service Schedule, upon completion of the Services. In these circumstances, payment must be made within 30 days of the end of the month in which our invoice is raised.
- 3.2 Where you do not make any payment to us under the Contract by its due date, we may, in addition to any other rights which we have under this Contract and in law, withhold further deliveries or supplies, or suspend performance of the Contract until arrangements as to payment or credit have been established on terms which are satisfactory to us.

4. DELIVERY OF GOODS AND SUPPLY OF SERVICES

- 4.1 We will deliver the Goods and/or supply the Services during normal Business Hours, unless otherwise specifically agreed by us, to the place noted in the Quotation.
- 4.2 Unless otherwise expressly agreed in writing, any delivery or supply date or time specified by us in any Quotation, despatch note or otherwise is a best estimate only and we will not be liable to you for any loss or damage sustained by you if we fail to meet that time scale because of circumstances beyond our reasonable control.
- 4.3 If you become unable to pay your debts (or have no reasonable prospect of so doing), make an arrangement with your creditors, suffer a bankruptcy order or breach your payment obligations and/or the obligations set out at condition 6 under the Contract, then we may, as well as any other rights which we have under this Contract, immediately terminate the Contract and suspend or cancel further delivery or supply.
- 4.4 Goods supplied in accordance with the Contract cannot be returned without our prior written authorisation. Authorised returns shall be sent to our premises at your expense unless in our discretion we have agreed to collect the Goods, in which case you will pay our standard handling charge.
- 4.5 No liability for any claim that any Goods delivered under the Contract are damaged, defective or are lost or are otherwise not in accordance with the Contract will attach to us unless claims are notified in writing to us within seven days of delivery.
- 4.6 Goods ordered in error may be subject to a full inspection and a restocking charge of 20% of the net value.

5. RISK AND TITLE

- 5.1 Risk of damage to or loss of the Goods shall pass to you at the time of delivery by us or our agents or collection by you or your agents or, if you wrongly fail to take delivery, at the time when we have tendered delivery of the Goods.
- 5.2 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 you until we have received in full (in cleared funds) all sums due to us in respect of the Goods and all other sums which are or which become due to us from you on any account.
- 5.3 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 those goods of yours and any third parties and properly stored, protected and insured and identified as our property.
- 5.4 Until such time as the property in the Goods passes to you, we shall be entitled at any time to require you to deliver up the Goods to us and, if you fail to do so forthwith, to enter upon any of your premises or those of any third party where the Goods are stored and repossess the Goods.

- 5.5 If you fail to pay for any Goods in accordance with these conditions we may, without prejudice to our other rights and remedies, bring action against you for the price of the Goods at any time.

6. YOUR RESPONSIBILITIES

- 6.1 You warrant to us that you:
 - 6.1.1 have the right to contract with us for the Goods and/or Services at the premises where they are to be delivered to and/or installed;
 - 6.1.2 have obtained all necessary licences and/or approvals from any third party to allow us to supply the Goods and/or Services;
 - 6.1.3 will supply us with such information, rights of access, parking availability, mains electricity and water services that we may reasonably require in order to deliver the Goods and/or perform the Services;
 - 6.1.4 have notified us in Writing prior to the formation of this Contract of any matter relating to the premises at which the Goods and/or Services are to be supplied which may affect our ability to supply those Goods and/or Services;
 - 6.1.5 will ensure that we and our representatives have full and free access to the premises at which the Goods and/or Services are to be supplied;
 - 6.1.6 will use your best endeavours to ensure the health and safety of our employees, agents or subcontractors who visit the premises and ensure that the supply of Goods and/or Services does not pose a risk to our employees', agents' or subcontractors' health and safety;
 - 6.1.7 accept that where in our sole opinion the above health and safety provision is inadequate, or in case you fail to fulfil any of your responsibilities set out in this clause 6, we shall be entitled to reject, suspend, or cancel the supply of the Goods and/or Services.

7. WARRANTY

- 7.1 Subject as expressly provided in these conditions, all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law. This condition 7.1 shall not apply if you are a Consumer.
- 7.2 The Goods which we supply to you under this Contract have the benefit of the warranty and warranty periods set out in Writing by us to you (in the Quotation and/or in the documentation supplied by us with the Goods). If, during the relevant warranty period, those Goods are faulty or do not do what we say in Writing that they will do, you should notify us in Writing. We will arrange to examine the Goods and, if the Goods are faulty or do not do what we say in Writing that they will do, will either remedy the defect in question, replace the defective Goods or, at our sole discretion refund the price of the defective Goods (or part of the Goods as the case may be).
- 7.3 The warranties noted in condition 7.2 above set out certain exclusions (for example, for faults or defects which have been caused by your misuse and/or neglect of the Goods, or by accidents caused while the Goods are in your possession or as a result of incorrect installation).
- 7.4 We will supply the Services under this Contract with reasonable skill and care and in accordance with any specification set out in the Quotation which we have provided to you for those Services.
- 7.5 If the Services supplied by us are not in accordance with clause 7.4, above, or do not do what we say in Writing that they will do, you should notify us in Writing within 28 days of their supply or within a reasonable time from their supply for defects which are not apparent to you following supply of the Services. If the Services are not in compliance with this condition 7.5, or do not do what we say in Writing that they will do, we will, either remedy the defect in question, re-supply the defective Services or refund the price (or the relevant part of the price) of the defective Services (or the relevant part of the Services).
- 7.6 Full warranty details are available on request.

8. DATA PROTECTION

- 8.1 In the event that you are a business, you and we shall enter into a separate data processing agreement if required;
- 8.2 In the event that you are a consumer, we shall process personal data in accordance with our privacy policy.

9. LIMITATION OF LIABILITY

- 9.1 We will not be liable to you (whether in contract, tort or negligence) by way of representation (unless fraudulent), common law duty or under any express or implied term of the contract for:
 - 9.1.1 any losses which are not foreseeable by both Parties when the Contract is formed arising in connection with the supply of Goods and related Services or their use by you;
 - 9.1.2 any losses which are not caused by any breach by us;
 - 9.1.3 business or trade losses (including, without limitation, loss of profits and consequential losses such as loss of business, loss of goodwill and loss of reputation); or
- 9.2 Subject to condition 8.3, our entire liability in connection with the Contract (whether in contract, tort, negligence or otherwise) will not exceed the purchase price of the Goods and/or Services in question.
- 9.3 Nothing in this Contract excludes or limits our liability for:
 - 9.3.1 death or personal injury resulting from our negligence or that of our employees, agents or subcontractors;
 - 9.3.2 liability for damage to property or injury to persons under the Consumer Protection Act 1987;
 - 9.3.3 fraud; or
 - 9.3.4 any other matter that we cannot by law exclude or restrict.

10. DELAY OR FAILURE TO PERFORM

We shall not be liable to you if we are prevented or delayed in the performing of any obligations to you if this is due to any cause beyond our reasonable control including, without limitation: an act of God, explosion, flood, fire or accident; war or civil disturbance; strike, industrial action or stoppages of work; any form of government intervention; a third party act or omission; failure by you to give us a correct delivery address or notify us of any change of address.

11. GENERAL

- 11.1 No waiver by us of any breach of the Contract by you is considered as a waiver of any subsequent breach of the same or any other provision.
- 11.2 Each provision of this Contract shall be construed separately and notwithstanding that the whole or any part of any such provision may prove to be illegal or unenforceable the other provisions of this Contract and the remainder of the provision in question shall continue in full force and effect.
- 11.3 If you are a Consumer, there are certain terms implied into your contract with us which we cannot exclude or limit (for example, under the Sale of Goods Act 1979 we have to supply goods to you which are fit for their purpose). It is important for you to know that nothing in these terms affects these statutory rights.
- 11.4 We may freely assign, sub-contract or otherwise transfer in whole or in part the Contract PROVIDED THAT the quality of Goods and/or Services supplied to you is not affected. You may not however do so without our written agreement.
- 11.5 The Contract is governed by the laws of England and the English courts shall have the non-exclusive jurisdiction to resolve any disputes arising out of or under it.