

BAXI RESIDENTIAL - TERMS AND CONDITIONS OF SUPPLY

1. DEFINITIONS AND INTERPRETATION

- 1.1 In these Conditions save where the context otherwise requires, the following expressions shall have the meanings hereby assigned to them:
- “**Baxi**” means Baxi Heating UK Limited, company number 03879156, registered in England and Wales, registered office Brooks House, Coventry Road, Warwick, CV34 4LL
- “**Customer**” means the buyer or prospective buyer of the Goods and/or Services from Baxi.
- “**Specification**” means the document or documents in writing (excluding plans, maps and markings or notes thereon) setting out the description of the goods and/or services to be supplied by Baxi.
- “**Conditions**” means the terms and conditions of sale set out in this document and any special terms and conditions agreed in writing by Baxi
- “**Contract**” means the contract to supply the Contract Works
- “**Contract Works**” means the supply of Goods and/or Services described in the Specification.
- “**Contract Sum**” means the prevailing price to be paid by the Customer to Baxi for carrying out the Contract Works, including the price of any variations and/or fluctuations as provided in condition 4.
- “**Goods**” means the goods described in the Specification which are to be sold by Baxi under the Contract.
- “**Indicated Delivery Date**” means the date which Baxi has notified the Customer as the date on which Baxi anticipates making delivery of the goods. Where the anticipated date of delivery is changed by Baxi, the new date immediately becomes the “**Indicated Delivery Date**”. The Indicated Delivery Date is not altered by any failure of the Customer to accept or enable delivery to be made on the date provided by Baxi.
- “**Services**” means the services described in the Specification (including, but not limited to installation, repair, commission, commission supervisions and/or provision of other service) which are to be supplied by Baxi under the Contract
- 1.2 In these Conditions if reference is made to any document being signed on behalf of Baxi or agreed in writing by Baxi that document must be signed by a director of Baxi or by another person authorised by Baxi to sign on its behalf.
- 1.3 Any reference to an Act of Parliament or any Order, Regulation, Statutory Instrument or the like shall include implicitly a reference to any amendment or re-enactment of the same.
- 1.4 Except where the context otherwise requires, words denoting the singular include the plural and vice versa; words denoting any gender include all genders; words denoting persons include firms and incorporated bodies and vice versa.
- 1.5 Condition headings are for ease of reference only and do not affect the construction of these Conditions.
- 1.6 Unless otherwise specifically agreed by Baxi in writing to be so in the event of any apparent contradiction between the wording of any of the Conditions and of the Contract or between any part of the Specification and any other part of the Contract, the wording of these Conditions shall take precedence over the wording of the Specification, and the wording of these Conditions and the Specification shall take precedence over the wording of any other part of the Contract.
- 1.7 Any drawings diagrams, photographs plans, maps and markings and notes on any documentation issued by Baxi are for illustration purposes only and are subject to change by Baxi. Any errors or accidental omissions by Baxi relating to any part of the Contract documents may be rectified by Baxi at no extra cost to Baxi.
- 1.8 Quotations issued by Baxi do not constitute an offer capable of acceptance by the Customer to form a Contract, or create any binding obligation upon Baxi. Any quotation issued constitutes an invitation to treat.
- 1.9 Any order or instruction to Baxi must be in writing or by email to Baxi and no confirmation of any such orders or instructions shall be binding on Baxi unless confirmed by Baxi in writing or by email.
- 1.10 This Contract shall in all respects be construed and operate in accordance with English Law, and the parties hereby submit to the non-exclusive jurisdiction of the English courts.

2. VARIATION OF CONTRACT

- 2.1 The Contract shall incorporate these Conditions and govern the supply of the Contract Works by Baxi to the Customer and prevail over any term or condition put forward by the Customer, unless Baxi expressly agrees in writing to the contrary. No other conduct of Baxi, its employees or agents constitutes acceptance of any term or condition put forward by the Customer.
- 2.2 Without prejudice to any other conditions hereof, no deletion, omission or exception from, addition to or variation of the Contract shall be valid or of any effect unless it is agreed in writing by Baxi.
- 2.3 No employee or agent of Baxi (other than a director, in writing) is authorised to make any representation on behalf of Baxi, whether orally, in writing or by conduct. No such representation (other than as specifically agreed by Baxi, in writing) is to be binding upon Baxi.

3. CONTRACT WORKS

The Contract is for the supply of the Contract Works as set out in the Specification.

4. CONTRACT SUM

- 4.1 Baxi reserves the right to vary the Contract Sum for the Contract Works where parts, materials and/or labour costs increase due to factors that are beyond Baxi's reasonable control.
- 4.2 Unless otherwise agreed by Baxi in writing, the Contract Sum is exclusive of delivery charges, packaging, insurance, and of any lifting tackle, specialist tools or machinery and rough labour required for the off-loading, positioning or erection of the Goods. All such charges and costs are to be borne by the Customer. The Customer shall be responsible for the disposal of all packaging.
- 4.3 Except where stated otherwise, all prices are exclusive of VAT which shall be due at the rate ruling on the date of the VAT invoice and of any other sales taxes, import or export taxes.
- 4.4 For the avoidance of doubt any rebate offered by Baxi for the benefit of or expressed to be payable by Baxi to the Customer's own customers shall not be payable by Baxi to the Customer.
5. **PAYMENT**
- 5.1 Baxi may, at its absolute discretion, allow the Customer to pay on an account or other basis. In all other cases, payment must be made in full upon placing the order unless otherwise agreed by Baxi in writing.
- 5.2 Receipt or banking by Baxi of a deposit does not constitute acceptance of the Customer's order. Except where the Customer's order is not accepted by Baxi (or where the Contract is subsequently cancelled by Baxi in accordance with Clause 10.2), any Deposit paid is non-refundable.
- 5.3 If Baxi has agreed to payment on an account basis the Customer shall pay the Contract Sum:
- 5.3.1 by such instalments and at the times specified by Baxi in the specification or any quotation provided by Baxi the time of each payment specified being the due date for such payment (the “**Due Date**”); or
- 5.3.2 if no instalment or times for payment are specified by Baxi pursuant to clause 5.3.1 then the balance of the Contract Sum shall be payable before delivery this being the Due Date.
- 5.4 If the Customer fails to pay any sum in full by the Due Date for payment, then:
- 5.4.1 the Customer shall pay to Baxi interest on such unpaid sum at whichever shall be the greater of 8% per year and the rate per year equivalent to 5% above the base lending rate of Lloyds TSB Bank Plc; and
- 5.4.2 Baxi may, at its absolute discretion:
- (i) require the Customer to pay the whole of the outstanding balance of the Contract Sum (including any variations) within 14 days of demand; and/or
- (ii) withhold further performance of the Contract Works by Baxi until all due sums are paid and charge to the Customer any additional costs or losses thereby incurred; and/or
- (iii) determine the Contract in accordance with Clause 10.3

6. DELIVERY, COMMISSIONING & ASSEMBLY

- 6.1 Unless otherwise agreed by Baxi in writing, the place of delivery of the Goods will be the premises of the branch of Baxi where the Customer submitted its order. Where delivery is agreed to be made to any other premises, this will be to ground level and Baxi shall not be required to deliver to any specific place in the Customer's premises.
- 6.2 Time for delivery by Baxi is not of the essence and the Indicated Delivery Date or any other dates whilst given in good faith are an estimate only of the approximate date of delivery.
- 6.3 Where Goods are to be delivered to the Customer and Baxi has provided an Indicated Delivery Date, the Customer must provide all necessary access, labour, equipment and machinery to accept delivery on the Indicated Delivery Date, save only to the extent that Baxi has agreed in the Contract to provide the same.
- 6.4 In the event of the Customer's failure, within 2 working days after notification of readiness by Baxi, either to collect the Goods from Baxi's premises where delivery is to be from Baxi's premises or, where delivery to the Customer's premises has been agreed, to accept such delivery, the Customer will be liable to pay a storage charge to Baxi of £100 per day (or such higher charge, including insurance, as may be incurred by Baxi) until actual delivery or until the Customer puts Baxi in a position where Baxi is able to make such delivery.
- 6.5 Unless otherwise agreed in writing by Baxi, Baxi shall not be required to carry out any assembly or commissioning of any Goods other than at the agreed delivery address in mainland United Kingdom.
- 6.6 If the Contract provides for assembly and commissioning, unless otherwise agreed in writing by Baxi, the Customer will be responsible for the connection of all services to the Goods before being commissioned by Baxi.
- 6.7 Risk in the Goods passes to the Customer upon delivery.

7. INSPECTION & ACCEPTANCE

- 7.1 The Customer will inspect the Goods at the point of delivery, to ensure that they are complete, in good order and in accordance with the Contract.
- 7.2 Any missing parts, defect or non-conformity with the Contract that is capable of discovery on reasonable inspection must be notified to Baxi in writing on the delivery note.
- 7.3 Signature of a delivery note by or on behalf of the Customer constitutes acceptance that the Goods have been delivered complete, in good order and in conformity with the Contract, except:
- 7.3.1 where the delivery note is endorsed to the contrary, or
- 7.3.2 in respect of missing parts, defects or non-conformity with the contract not capable of discovery on reasonable inspection (when the same must be notified to Baxi in writing within 2 working days of delivery (time being of the essence), which the Customer agrees to be a reasonable period given the nature and type of Goods supplied).

8. CUSTOMER'S RESPONSIBILITIES

- 8.1 The Customer shall warrant that warrant that the Customer:
- 8.1.1 has the right to contract with Baxi for the Contract Works at the premises where they are to be delivered to and/or supplied;
- 8.1.2 has obtained all necessary licences and/or approvals from any third party to allow Baxi to supply the Contract Works;
- 8.1.3 will supply Baxi with such information, rights of access, parking availability, mains electricity and water services that Baxi may reasonably require in order to deliver the Contract Works;
- 8.1.4 has notified Baxi in Writing prior to the formation of the Contract of any matter relating to the premises at which the Contract Works are to be supplied which may affect Baxi's ability to supply those Contract Works;
- 8.1.5 will ensure that Baxi and its representatives have full and free access to the premises at which the Contract Works are to be supplied;
- 8.1.6 will use its best endeavours to ensure the health and safety of Baxi's employees, agents or subcontractors who visit the premises and ensure that the supply of the Contract Works does not pose a risk to Baxi's employees', agents' or subcontractors' health and safety;

8.1.7 accept that where in Baxi's sole opinion the above health and safety provision is inadequate, or in case the Customer fails to fulfil any of its responsibilities set out in this clause 8, Baxi shall be entitled to reject, suspend, or cancel the supply of the Contract Works.

9. CONFORMITY OF GOODS & WARRANTIES

- 9.1 Baxi warrants that, unless otherwise specifically notified to the Customer, all Goods will comply with their manufacturer's specification for a period of 12 months from the actual date of delivery by Baxi or for such other period as specified in writing by Baxi.
- 9.2 Baxi warrants that any Service provided will be supplied with reasonable care and skill.
- 9.3 Baxi will not be liable for any defect or damage caused by any failure of the Customer to comply with the manufacturer's written instructions.
- 9.4 The Customer agrees that in selecting the Goods the Customer has placed no reliance on any opinion expressed by Baxi as to the suitability of the Goods for any proposed use, unless such opinion is in writing signed on behalf of Baxi.
- 9.5 During the warranty period, the Customer will afford to Baxi (at Baxi's option) a reasonable opportunity to inspect the Goods either on site or elsewhere and to carry out any works necessary to bring the Goods up to the required specification. Unless otherwise agreed in writing by Baxi, Baxi shall not be liable for any warranty on the Goods if:
- 9.6.1 any part is fitted to the Goods which is not the manufacturer's genuine part; or
- 9.6.2 if the Goods are outside mainland United Kingdom.
- 9.7 Except where the Customer is dealing as a consumer as defined in the Unfair Contract Terms Act 1977 Section 12 and/or the Unfair Terms in Consumer Contracts Regulations 1999 Regulation 3(1) all other warranties, conditions or terms relating to fitness for purpose, quality or condition of the Goods or Services, whether expressed or implied by statute or common law or otherwise are excluded to the fullest extent permitted by law.
- 9.8 All warranties given are subject to the manufacturer's warranty conditions which are available on request from Baxi10.
- 10 **LIABILITY OF BAXI**
- 10.1 Save as referred to in this Contract, and to the maximum extent permitted by law, Baxi shall not under any circumstances be liable to the Customer whether in contract, tort or otherwise, for any loss, damage or injury however caused or arising out of, or in the course of, or in connection with, the provision by Baxi of the Services or the use or occupation by Baxi or it's servants or agents of any premises or site made available under this contract.
- 10.2 Baxi shall not be liable to the Customer for any loss of profit, business or production or for any similar loss or damage whether direct, indirect or consequential however caused.
- 10.3 Baxi's liability for damage to property caused by its negligence is hereby limited to £2,000,000 for any one event or series of connected events. Baxi's liability for the supply of any Contract Works is otherwise limited to 125% of the Contract price of the relevant Contract Works. The Customer agrees that this is reasonable, having regard to the nature of the Contract Works.
- 10.4 Sub-clause 10.1 to 10.3 above shall not apply so as to exclude liability arising out of any deliberate or negligent act or omission of Baxi or any of its employees giving rise to death or personal injury.

11. CANCELLATION & TERMINATION

- 11.1 Where the Customer wishes to withdraw from the Contract, Baxi may in its absolute discretion allow the Customer to do so on the immediate payment of the value of any work already undertaken by Baxi, including but not limited to material costs, labour costs, third party costs, profit costs on work done, any abortive delivery costs and/or storage costs, together with a cancellation administration charge specified by Baxi but not being less than 20% of the Contract Sum.
- 11.2 In the event that Baxi is unable to provide the agreed goods or services, Baxi's liability will be limited to a full refund to the Customer of all sums paid by the Customer under the Contract and which will in any event only be refundable if the inability of Baxi to provide the agreed goods or services is otherwise than due to the default of the Customer.
- 11.3 If the Customer:
- 11.3.1 fails to make any payment due to Baxi (including any VAT) on or before the Due Date;
- 11.3.2 interferes with or obstructs the issue of any certificate due under the Specification or interferes with or obstructs the carrying out of the Contract Works by Baxi or fails (whether by failing to make suitable arrangements to accept or take delivery from Baxi or otherwise) to permit, accept or take delivery on the Indicated Delivery Date;
- 11.3.3 suffers an execution to be levied on his goods or, if the Customer consists of one or more individuals, if any such individual dies, enters into a composition or arrangement for the benefit of his creditors or has a receiving order in a bankruptcy made against him;
- 11.3.4 has a liquidator, receiver, or manager of his business or undertaking duly appointed or is the subject of a resolution or order for winding up (except for an amalgamation or reconstruction of a limited company);
- 11.3.5 has an administrative receiver, as defined in the Insolvency Act 1986, appointed; or
- 11.3.6 has possession taken, by or on behalf of the holders of any debentures secured by a floating charge, of any property comprised in, or subject to, the floating charge,
- then Baxi may, without prejudice to its other rights or remedies, determine the Contract forthwith by written notice. Upon such determination or upon any other breach by the Customer of the terms and conditions of this Contract, all sums under the Contract become immediately due and the Customer will immediately allow or pay to Baxi the full amount of any losses, costs or expenses incurred by Baxi as a result of such determination or breach, including but not limited to material costs, labour costs, abortive delivery costs, storage costs and loss of profit.

12. SET OFF

Baxi shall be entitled to set off against any sums due from Baxi to the Consumer any sum due from the Customer to Baxi.

13. SALVAGE

In the event of the cancellation or termination of the Contract, it is agreed that there is no salvage or disposal value to Baxi other than scrap value in any non-stock items purchased by Baxi for the purpose of the Contract Works, nor in any worked items (whether from stock or otherwise), nor in the goods themselves (or part thereof), whether complete or incomplete at the date of cancellation or termination.

14. TITLE TO GOODS

- 14.1 Title to the goods will remain with Baxi and does not pass to the Customer until the Customer has paid all sums due to Baxi in respect of such goods and on any other account. Even though title has not passed, Baxi will be entitled to sue for their price once payment is due.
- 14.2 Until title in the goods has passed to the Customer, the Customer will hold them as bailee for Baxi and will keep them properly protected and insured and store them separately from any similar goods of the Customer or any other person in such a way that they remain easily identifiable as Baxi's property.
- 14.3 The Customer may resell the goods in the ordinary course of business before title passes in accordance with Clause 13.1, provided that any sale is not effected by the Customer as agent for Baxi (with the Customer having no authority to create privity of contract between Baxi and the buyer, nor to make any representations or give any warranty on behalf of Baxi), and further provided that the Customer holds the proceeds of any such resale as trustee for Baxi, separate from its own monies in a separate, identifiable bank account and provides Baxi with full details of the same at its request.
- 14.4 If, before title passes to the Customer, any of the goods supplied to the Customer are incorporated in or used as an addition to other goods not supplied by Baxi, the property in the whole of such goods will be and remain with Baxi until full payment has been received and all Baxi's rights pursuant to these terms and conditions will extend to those other goods.
- 14.5 If any payment is overdue in whole or in part then until title in the goods has passed to the Customer, Baxi may (without prejudice to any of its other rights) recover or resell the goods or any part of them. The Customer hereby grants Baxi, its servants or agents, an irrevocable licence to enter upon any premises of the Customer or any third party where the goods are stored, to repossess the goods.

15. NOTICES AND INSTRUCTIONS

- 15.1 No notice served upon Baxi shall be valid or effective unless sent by recorded delivery, pre-paid post or delivered by hand (but not by fax or e-mail) to Baxi at its registered office.
- 15.2 Any notice served upon the Customer shall be valid and effective from the date of receipt if addressed to the Customer and sent by recorded delivery, pre-paid post or delivered by hand to the registered office, principal place of business or to the premises referred to in the Contract or is delivered by hand to a director, proprietor, contract manager, or other nominated representative of the Customer.

16. CONFIDENTIALITY

- 16.1 The Customer shall not at any time make use for its own purposes of, or disclose to any person (except as may be required by law), any information contained in any material provided to him by Baxi pursuant to the Contract, all of which information shall be deemed confidential.
- 16.2 The Customer shall not dispose nor part with possession of any material provided to him by Baxi pursuant to the Contract or prepared by Baxi pursuant to the Contract, other than in accordance with the express written instructions of Baxi.

17. WAIVER

Failure by Baxi at any time to enforce the provisions of the Contract or to require performance by the Customer of any of the provisions of the Contract shall not be construed as a waiver of any such provision and shall not affect the validity of the Contract or any part thereof or the right of Baxi to enforce any provision in accordance with its terms and conditions.

18. SEVERANCE

If any provision of the Contract shall become or shall be declared by any court of competent jurisdiction to be void invalid or unenforceable as drawn but would be valid if its application was reduced or if some part of the Condition was deleted the Condition shall apply with such modifications as to make it valid and effective but subject thereto if it is still found to be invalid or unenforceable it shall be deemed to be deleted from the Contract and the remaining provisions of the Contract shall remain in full force and effect.

19. CONSUMER SALES

These terms and conditions do not affect the statutory rights of any Customer dealing as a consumer within the meaning of the Unfair Contract Terms Act 1977 Section 12 and/or the Unfair Terms in Consumer Contracts Regulations 1999 Regulation 3(1)

20. FORCE MAJEURE

Baxi will not be liable for any failure to perform any of its obligations under these terms and conditions where such failure is due to any event beyond the reasonable control of Baxi.

21. THIRD PARTY RIGHTS

Unless otherwise agreed in writing by Baxi, nothing in the Contract confers or purports to confer on any person not a party to the Contract any right to enforce any term or condition of the Contract, and the Contracts (Rights of Third Parties) Act 1999 does not apply.