

TITON HARDWARE LIMITED

TERMS & CONDITIONS OF SALE

DEFINITIONS

"Company" means Titon Hardware Limited, a company registered in England with company number 1071731 whose registered address and head office is at 894 The Crescent, Colchester Business Park, Colchester CO4 9YQ and whose manufacturing address is at Falconer Road, Haverhill, Suffolk, CB9 7XU; and whose email address is enquiries@titon.co.uk;

"Conditions" means these terms and conditions;

"Contract" means a contract for the sale of Products subject to these Conditions;

"Customer" means a person or business who purchases Products from the Company;

"Product" means a product for sale by the Company;

"Product Description" means information and technical details in respect of the individual Product which is provided in the Company's sales literature, catalogues, product guides or elsewhere.

1. DESCRIPTION OF PRODUCTS

1.1 Each Product purchased is sold subject to its Product Description which sets out additional information related to that Product including, without limitation, terms and conditions concerning estimated delivery dates and times, warranties and guarantees.

1.2 The Company shall provide installation instructions and (where appropriate) maintenance instructions for each Product at the point of sale. It is the Customer's responsibility to ensure it reads and follows such instructions.

1.3 No Contract governed by these terms and conditions shall be a sale by sample unless the Company expressly agrees in writing.

1.4 Where the Customer deals as a consumer (within the meaning of section 12 of the Unfair Contract Terms Act 1977), the terms implied by sections 13, 14 and 15 of the Sale of Goods Act 1979 shall be implied into this contract.

1.5 The Company takes all reasonable care to ensure that all details, descriptions and prices of Products appearing in its sales literature and catalogues are correct at the time when such documents are produced. However, all such details, including (without limitation) specifications, illustrations, colours, drawings and diagrams in the Company's catalogues, trade literature and other publications are of a generally informative nature and are approximate only. The Company shall not be liable whatsoever for inaccuracies, changes or alterations in dimensions or measurements given, quoted or made by it.

1.6 The Company reserves the right at any time to make any modification in design or specification of the Products without prior notice to the Customer if it shall reasonably consider that such modification is beneficial.

2. Pricing

2.1 Prices quoted are those effective at the date of quotation or acknowledgment of enquiry (as the case may be) and are inclusive of all packaging, delivery and insurance costs unless otherwise stated.

2.2 Prices quoted by the Company in brochures, order forms, catalogues or any other material are based on, inter alia, the cost of materials, labour, transport, import duties and levies, currency exchange rates and statutory obligations. Prices may therefore change from time to time, but changes will not affect any order which the Company has accepted under clause 4.3. Any specific written quotation given by the Company in response to a direct request by the Customer shall remain valid for a period of 30 days from the date on which it is given.

2.3 Where special materials are required for the execution of any order these will be ordered and purchased by the Company subject to the delivery periods quoted by the suppliers to the Company. In the case of special materials which cannot readily be absorbed into the Company's stock these shall be paid for by the Customer at cost price if for any reason whatsoever the relevant order is not completed other than by the Company's default. The Customer shall accept delivery of such materials, unless the Company agrees to retain them.

3. VAT

3.1 Prices are quoted exclusive of VAT and other applicable taxes, imposts and levies which are or may be levied from time to time by any governmental, statutory or local authority upon the sale of the Products and such additions (if any) shall be charged at the rate prevailing at the date of delivery or invoice as the case may be.

4. Our contract

4.1 All quotations given, orders accepted and Products delivered by the Company are subject to these Conditions (together with the Conditions of Quotation and Supply for Ventilation Systems products, where applicable). The Customer is deemed to have accepted these Conditions on placing an order with the Company.

4.2 Acknowledgement of receipt of a Customer's enquiry or order or other communication by the Company in connection therewith shall not constitute the Company's acceptance of the Customer's order for contractual purposes.

4.3 The Customer's order shall only be deemed to be accepted when the Company sends to the Customer either:

4.3.1 formal written acceptance; or

4.3.2 a despatch/collect note

and at that point the Contract shall come into existence.

4.4 Liability is not accepted by the Company for any inaccuracy in orders when placed by the Customer by telephone. The Customer shall at all times make clear that the terms of its orders and any applicable specification are complete and accurate.

5. Cancellation

5.1 Save where the Customer deals as a consumer, the Customer may not cancel a Contract without the Company's written agreement. If such agreement is given the Customer shall indemnify the Company against all losses (including loss of profit) suffered by the Company arising out of such cancellation.

5.2 If the Customer is dealing as a consumer, the Customer has the right to cancel this contract within 14 days without giving any reason and the following provisions will apply:

5.2.1 The cancellation period will expire after 14 days from the day on which the Customer acquires, or a third party other than the carrier and indicated by the Customer acquires, physical possession of the Products.

5.2.2 To exercise the right to cancel, the Customer must inform the Company of its decision to cancel this Contract by clear statement (e.g. letter sent by post, fax or e-mail). Alternatively, the Customer may fill in and submit the cancellation form which can be accessed on the Company's website at www.titon.co.uk/cancellationform.

5.2.3 To exercise the right of cancellation, it is sufficient for the Customer to send its communication concerning its exercise of the right to cancel before the cancellation period has expired.

5.2.4 If the Customer cancels this Contract, the Company will reimburse to the Customer all payments received from the Customer, including the costs of delivery (except for the supplementary costs arising if the Customer chooses a type of delivery other than the least expensive type of standard delivery offered by the Company). The Company may make a deduction from the reimbursement for loss in value of any Products supplied, if the loss is the result of unnecessary handling by the Customer.

5.2.5 The Company will make the reimbursement without undue delay, and not later than 14 days after the day the Company receives back from the Customer any Products supplied or (if earlier) 14 days after the day the Customer provides evidence that it has returned the Products; or if there were no Products supplied, 14 days after the day on which the Company is informed about the Customer's decision to cancel this Contract.

5.2.6 The Company will make the reimbursement using the same means of payment as the Customer used for the initial transaction, unless the Customer has expressly agreed otherwise; in any event, the Customer will not incur any fees as a result of the reimbursement. The Company may withhold reimbursement until it has received the Products back or the Customer has supplied evidence of having sent back the Products, whichever is the earliest.

5.2.7 The Customer shall send back the Products or hand them over to the Company without undue delay and in any event not later than 14 days from the day on which the Customer communicates its cancellation of this Contract to the Company. This deadline is met if the Customer returns the Products before the period of 14 days has expired.

5.2.8 The Customer will only bear the cost of returning the Products, unless otherwise agreed with the Company.

5.2.9 The Customer is liable to any diminished value of the Products resulting from the handling other than what is necessary to establish the nature, characteristics and functioning of the Products.

6. Payment terms

6.1 Time of payment shall be of the essence of a Contract and unless otherwise expressly stated payment shall be made within 30 days from the date of invoice.

6.2 The Customer shall not be entitled to make any deduction from any payment due to the Company in respect of any set-off, counterclaim, discount, abatement or otherwise unless both the validity and the amount thereof have been expressly admitted in writing by the Company.

6.3 No payment shall be deemed to have been received until the Company has received cleared funds.

6.4 Without prejudice to any other rights, failure to pay the price or part thereof or other monies payable by the Customer will also entitle the Company at the Company's sole discretion either to refuse to make delivery of any further consignment of any Products agreed to be supplied or to cancel any Contract either in whole or in part by notice in writing to the Customer and without incurring any liability to the Customer for any loss caused by such delay or cancellation.

6.5 If payment of the price or any part thereof or of any other sums payable by the Customer is not made on the due date the Company, without prejudice to its other rights hereunder, shall be entitled to charge in addition to any monies due hereunder interest on the outstanding amount on any part thereof at the rate of 3% per annum above the base lending rate of the Bank of England from the due date until payment is made. The Company reserves its right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.

6.6 If the Company's estimate or quotation for Products shall specify payment in a currency other than pounds sterling (GBP), the price payable by the Customer shall be increased pro-rata to any increase that may occur in the value of that currency in relation to the pounds sterling between the date of the Company's estimate or quotation and the due date for payment for the Products.

7. Limitation of Liability for sale of Products

7.1 The Company will not be liable, in contract, tort (including, without limitation, negligence), pre-contract or other representations (other than fraudulent or negligent misrepresentation) or otherwise out of or in connection with the Conditions for:

7.1.1 any economic losses (including without limitation loss of revenues, profits, contracts, business or anticipated savings); or

7.1.2 use or installation of any Products otherwise than for the purposes and within the technical parameters set out in the relevant product manuals, user guides, fixing instructions or equivalent documents related to such Product; or

7.1.3 any loss of goodwill or reputation; or

7.1.4 any special or indirect losses suffered or incurred by that party arising out of or in connection with the provisions of any matter under the Conditions;

7.1.5 shortages in quantity delivered unless the Customer notifies the Company of any such claim within 5 days of receipt of the Products;

7.1.6 damage to or loss of the Products or any part thereof in transit (where the Products are carried by the Company's own transport or by a carrier on its behalf) unless the Customer notifies the Company of any such claim within 5 days of receipt;

7.1.7 defects in the Products caused by any act, neglect or default by the Customer or of any third party;

7.1.8 other defects in the Products unless notified to the Company within 1 month of receipt of the Products by the Customer or where the defect would not be apparent on reasonable inspection within 12 months of delivery.

7.2 The Company may at its option make good any shortage or non-delivery and/or as appropriate replace or repair any Products found to be damaged or defective. Products shall be returned to the Company when it so requires carriage paid.

7.3 Nothing in these Conditions shall exclude or limit the Company's liability for:

7.3.1 death or personal injury resulting from its negligence or that of its officers, agents or employees; or

7.3.2 any sums as to title, quiet possession and freedom from encumbrance as implied by section 12 of the Sale of Goods Act 1979.

7.4 Subject to clause 7.3, the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of a Contract shall be limited to the total invoice price of the Products.

8. Warranties

8.1 Products are warranted free from defects in material and workmanship for a period of 12 months from the date of delivery, unless otherwise specified in the Product Description.

8.2 The Company shall not be liable for a breach of the warranty in clause 8.1 unless the Customer gives written notice of the defect to the Company and the Company is given a reasonable opportunity (after receiving the Customer's notice and following authorised return of the Product to the Company) to complete its own examination. The Company may at its own discretion request from the Customer the proof of purchase and a full description of the defect which the Customer must provide to the Company.

8.3 The Company shall not be liable for a breach of this warranty if any Product has been:

8.3.1 used by the Customer after the Customer has given notice to the Company of a defect;

8.3.2 tampered with in any way outside of the Company's premises;

8.3.3 stored in unsuitable conditions;

8.3.4 subject to misuse, incorrect installation, negligence or accident; or

8.3.5 maintained otherwise than in accordance with the instructions produced by the Company.

8.4 Subject to clauses 8.2 and 8.3, if any of the Products do not conform with the warranty in clause 8.1 the Company may, at its option, repair or replace such Products (or defective part) with the same or a suitable similar Product or refund the price of such Products at the pro rata rate paid by the Customer.

8.5 If the Company complies with clause 8.4, it shall have no further liability for a breach of the warranty in clause 8.1 in respect of such Products.

8.6 Subject to the foregoing all conditions, warranties and representations expressed or implied by statute, common law or otherwise in relation to the Products are hereby excluded to the fullest extent permissible under applicable law, and the Company shall be under no liability to the Customer for any loss damage or injury direct or indirect resulting from defective material faulty workmanship or otherwise howsoever arising and whether or not caused by the Company's negligence or that of its employees or agents. This does not affect the Customer's statutory rights where the Customer deals as a consumer.

8.7 For the avoidance of doubt, the Company gives no warranty as to the fitness for purpose of Products supplied and the Customer must determine the suitability of the Products.

9. Delivery

9.1 The Company will use its best endeavours to comply with the despatch collection and delivery dates but such dates are estimates only and not guaranteed and shall not be the essence of any Contract.

9.2 Delivery shall be deemed to take place on the earlier of either:

9.2.1 the physical handing over of the Products to the Customer or its delegated carrier or agent; or

9.2.2 upon removal of the Products from the Company's premises when the Company has at the request of the Customer agreed to transport the Products;

9.2.3 upon the placing of the Products in the Company's own storage facilities at the request of the Customer or upon its failure or refusal to accept delivery.

9.3 In the event of any failure to make delivery or delay in delivery (even if caused by the Company's negligence) the Customer shall have no claim whatsoever against the Company for any direct, indirect or consequential loss or damage of any kind (including, without limitation, pure economic loss, loss of profits, loss of business and depletion of goodwill) costs, damages, expenses or charges whether caused directly or indirectly by any delay in the delivery of the Products and in the event of any such delay the Customer shall not be entitled to terminate or rescind the Contract unless with the express agreement of the Company. The Company shall accept no liability whatsoever for loss or damage to the Products in transit or in storage unless the same shall be caused by the negligence of the Company in which event the Company's liability shall be limited to the value of the Products.

9.4 Without prejudice to any of the Company's rights hereunder, if the Customer shall fail to give on or before the time the Company is ready to deliver the Products all instructions reasonably required by the Company and all necessary documents, licences, consents and authorities for forwarding the Products or shall otherwise cause or request delay, the Customer shall pay to the Company all storage and other costs of whatever nature incurred or arising from such delay.

9.5 If the quantity of the Products delivered by the Company to the Customer falls below the quantity ordered by the Customer in a Contract, the Customer shall only be obliged to pay at the contract rate for the quantity of the Products delivered but such deviation in quantity shall not give rise to a right to reject on the part of the Customer and the Customer shall have no right to claim for damages for breach of contract.

10. Title and Risk

10.1 Title to the Products shall remain vested in the Company until the total invoice price for the Products, together with any other related charges, has been received in full (in cash or in cleared funds) by the Company.

10.2 Until such time as title shall pass to the Customer, the Customer shall hold the Products in a fiduciary capacity for the Company and store them separately from any other Products held by the Customer so that they remain readily identifiable as the Company's property (at no cost to the Customer) and shall if so requested forthwith return them to the Company.

10.3 Until title has passed to the Customer, the Customer must insure the Products on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company. On request the Customer shall produce the policy of insurance to the Company. The Customer must hold the proceeds of the insurance (in an amount equivalent to the value of the Products) on trust for the Company and not mix them with any other money, nor pay them into an undrawn bank account.

10.4 Until title has passed to the Customer, the Customer grants to the Company, its agents and employees an irrevocable licence at any time to enter the premises where the Products are stored, or where they are reasonably thought to be stored, in order to inspect them, or where the Customer's right of possession has terminated, to recover them.

10.5 The Company may maintain an action for the price of the Products sold notwithstanding that title to them may not have passed to the Customer.

10.6 The risk in the Products shall pass to the Customer on delivery under clause 9.2.

10.7 Whilst the Products are in the possession of the Customer and before title to the Products has passed to the Customer, the Customer shall keep the Products properly maintained in the same condition as that in which they were delivered and shall make good any damage or deterioration. The Customer shall be entitled to install the Products in his possession in accordance with the Company's installation instructions or manuals.

10.8 On termination of a Contract, howsoever caused, the Company's (but not the Customer's) rights contained in 10.1 to 10.7 shall remain in effect.

11. Storage

11.1 If for any reason the Customer fails or refuses to accept delivery of the Products at the time when the Products are due and ready for delivery the Company shall, at its storage facilities, store the Products and take reasonable steps to safeguard and preserve them until their actual delivery.

11.2 Storage of the Products shall be at the Customer's risk and expense.

11.3 If the Customer shall fail to take delivery of the Products within 28 days of notification that they are ready for delivery or that storage facilities are no longer available the Company shall have the right to sell, dispose or otherwise deal with the Products and the Customer shall be liable to the Company for loss (including profits) or damage which the Company shall suffer as a consequence of the Customer's failure to take delivery of the Products.

12. Indemnity

12.1 The Customer shall (and shall ensure that any third party to whom Products may subsequently be supplied) comply with all instructions of the Company and any other manufacturer in relation to the fitting, installation, service and use of the Products and notwithstanding such compliance, the Customer shall keep the Company fully and effectively indemnified against all costs, claims, demands, expenses and liabilities of whatsoever nature and whatsoever arising, including without prejudice to the generality of the foregoing, claims for damage to property and consequential loss (including loss of profit) which may be made against the Company or which the Company may sustain, pay or incur arising out of or in connection with the supply, fitting, installation or use of the Products.

13. Default or Insolvency of Customer

13.1 If the Customer:

13.1.1 defaults in any way in its commitments with the Company or is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 or the Customer ceases to trade or suffers any distress or execution upon its property or assets; or

13.1.2 makes or offers to make any arrangement or composition with its creditors or commits an act of bankruptcy or otherwise takes the benefit of any Act for the time being in force for the relief of insolvent debtors or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver or administrative receiver appointed of its undertaking or any part thereof, or a resolution is passed or a petition presented to any court for the winding up of the Customer or for the granting of an administration order in respect of the Customer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Customer; or

13.1.3 encumbers or in any way charges any of the Products; then the Customer's right to possession of the Products shall terminate immediately and all sums outstanding in respect of the Products shall become payable immediately and the Company shall have the right (without prejudice to any other remedies) to cancel any uncompleted order or to withhold or suspend delivery of the Products.

13.2 In the event of an order being cancelled by the Company in the above circumstances or being cancelled by the Customer (save where the Customer deals as a consumer), the Customer shall indemnify the Company against all loss (including profits), costs (including labour, materials and overheads) and all other expenses and damages incurred by the Company in connection with the order and its cancellation (the Company shall give credit for the value of any materials sold or utilised for other purposes).

14. General

14.1. Severance

If any part of the Conditions shall be deemed unlawful, void or for any reason unenforceable, then that provision shall be deemed to be severable from the Conditions and shall not affect the validity and enforceability of any of the remaining provisions of the Conditions.

14.2. Waiver

No waiver by the Company shall be construed as a waiver of any proceeding or succeeding breach of any provision of the Conditions.

14.3. Survival

Each provision of the Conditions shall be construed as separately applying and surviving even if for any reason one or other of those provisions is held to be inapplicable or unenforceable in any circumstances.

14.4. Force majeure

The Company shall not be liable for any loss or damage which may be suffered by the Customer as a direct or indirect result of the supply of Products by the Company being prevented hindered delayed or rendered uneconomic by reason of circumstances or events beyond the Company's reasonable control including but not limited to Act of God, war, riot, strike, lock-out, trade dispute, or labour disturbance, accident, break-down of plant or machinery, fire, flood, storm, difficulty of increased expense in obtaining workmen, materials or transport, or other circumstances affecting the supply of the goods, or of raw materials or thereof by its normal source of supply of the manufacture of the goods by its normal means or the delivery of the goods by its normal route or means of delivery and, if all or any part of the Contract becomes impossible to perform or otherwise frustrated.

The Company will nevertheless be entitled to reasonable remuneration for Products supplied until that occurs. If due to such events or circumstances the Company has insufficient stocks to meet all its commitments it may apportion available stocks between its customers at its sole discretion.

15. Entire agreement

These Conditions govern the relationship between the Company and the Customer. No other terms and conditions shall apply notwithstanding any provisions to the contrary which may appear on the order form or purchase order or any other document issued by the Customer whether or not the same shall be signed by or on behalf of the Company and whether issued either before or subsequent to the acceptance by the Company of the Customer's order and these Conditions must be in writing and signed by both parties. The Customer confirms that, in agreeing to accept the Conditions, it has not relied on any representation save insofar as the same has expressly been made a term of these Conditions and agrees that it shall have no remedy in respect of any representation. Nothing in this clause shall limit or exclude the Company's liability in respect of any fraudulent or negligent misrepresentation whether or not such has become a term of the Conditions.

16. Assignment

16.1 The Customer shall not assign or transfer or purport to assign or transfer any Contract to which these Conditions apply or the benefit thereof to any person whatsoever.

16.2 The Company may assign any Contract to which these Conditions apply or any part of it to any person, firm or company.

17. Consumer Sales

Nothing in these Conditions shall affect the statutory rights of any person dealing with the Company as a consumer.

18. Law

The Conditions shall be governed by and construed in accordance with the laws of England and the Customer irrevocably submits to the exclusive jurisdiction of the courts of England.