

## TERMS AND CONDITIONS

### **PARTIES**

- (1) Wells Spa Plumbing and Heating Limited a company incorporated in England and Wales under company number 09559591 and whose registered office is at The Joinery, The Estate Yard, Eridge Road, Eridge Green, East Sussex, TN3 9JR (**Us, We Our**); and
- (2) The Customer whose name appears in the Quotation (**You, Your**).

### **BACKGROUND**

- A You wish to receive plumbing and heating services from Us.
- B We are willing to carry out these services, all subject to the provisions of these Terms and Conditions.

### **THE PARTIES AGREE:**

#### **1 Definitions and interpretation**

##### **1.1 Definitions**

In these Terms and Conditions:

<b>Client Action</b>	has the meaning given in clause 2.4;
<b>Completion Date</b>	means the date set out in the Quotation;
<b>Conditions</b>	has the meaning given in clause 11.4;
<b>Goods</b>	means the goods to be purchased by the Us on your behalf as set out in the Quotation;
<b>Payment Date</b>	means those dates set out in the Quotation or in clause 4.1.1 in the absence of any dates being set out in the Quotation;
<b>Services</b>	means those services as set out in the Quotation;
<b>Quotation</b>	has the meaning given in clause 2.2 and the document attached to these Terms and Conditions;
<b>Survey</b>	has the meaning given in clause 2.4; and
<b>Work</b>	means the Services and the Goods that We shall provide for and to You.

## 1.2 Interpretation

In these Terms and Conditions unless the context otherwise requires:

- 1.2.1 words importing the singular number include the plural number and vice versa;
- 1.2.2 words importing persons include firms, companies and corporations and vice versa;
- 1.2.3 references to numbered clauses and schedules are references to the relevant clause in or schedule to these Terms and Conditions;
- 1.2.4 reference in any schedule to these Terms and Conditions to numbered paragraphs relate to the numbered paragraphs of that schedule;
- 1.2.5 any obligation on any Party not to do or omit to do anything is to include an obligation not to allow that thing to be done or omitted to be done; and
- 1.2.6 where the word **including** is used in these Terms and Conditions, it shall be understood as meaning **including without limitation**.

## 2 Work and materials

2.1 We have agreed to provide:

2.1.1 the Services; and

2.1.2 the Goods,

to You subject to the provisions of these Terms and Conditions.

2.2 At the commencement of the Work, We shall send You a Quotation for the Goods and Services to be provided. The Quotation shall include:

2.2.1 The amount of any deposit required;

2.2.2 the Services to be undertaken;

2.2.3 the time estimates for the provision of the Services;

2.2.4 the Goods to be ordered; and

2.2.5 the sums payable for the Services and for the Goods,

(the **Quotation**).

2.3 On receipt of the Quotation, You will sign a copy and return that copy to Us or confirm your acceptance by way of email to signify Your agreement as to the Work and send any other sums payable to Us for the Services and the Goods. You acknowledge and agree that no Services will be provided, and no Goods ordered until We have received acceptance of the Quotation and any sums required prior to commencement as set out in the Quotation. You must sign and return a copy of the Quotation or confirm your acceptance by email within 14 days of receipt.

2.4 We may need to carry out a survey and inspection of Your buildings, electrical supply, water supply and other facilities (the **Survey**). The Survey will be incorporated into the Quotation. You

acknowledge and agree that the matters detailed in the Survey and the Quotation (**Client Action**) which require action on Your Part shall be carried out before any Work is carried out or by the timeframe required.

2.5 If it becomes apparent that further Services or Goods are required which are not included in the Quotation then the following will happen:

2.5.1 If the costs of the further Services required to complete the Work does not exceed £1,000.00 of the amount stated in the Quotation then we will inform you verbally and provide the further Services

2.5.2 If the cost of the further Goods required in addition to those included in the Quotation do not exceed £1,000.00 then we will agree this with you verbally. In the event that the Goods will exceed this amount then we will confirm this to you in writing before acquiring the Goods on your behalf.

2.6 We may unilaterally change the Quotation in relation to the sums payable for the Goods if between the time of acceptance of these terms and the date of ordering the Goods, the cost of the Goods has increased. In these circumstances We will give You notice of the increase in the price of the Goods and will require you to pay any price increase prior to completing the Order.

### 3 **Performance of the Work**

3.1 **Goods:** Once you have signed the Quotation and paid any money due We shall order the Goods.

3.2 **Services:** The Parties shall agree the time and place (if not specified in the Quotation) when the Services shall be performed, subject to the availability of Our staff and agents and the availability and delivery of the Goods.

3.3 We shall use reasonable endeavours to complete the Services by the Completion Date or meet such other dates as agreed by the Parties.

3.4 Time shall not be of the essence:

3.4.1 for ordering of the Goods;

3.4.2 for the delivery of the Goods;

3.4.3 for any times for when the Services are to be performed, whether given or agreed to by Us;

3.4.4 for the length of time that any of the Services are to take, whether specified in the Quotation or otherwise; or

3.4.5 for the Completion Date or such other date as agreed by the Parties.

### 4 **Sums to be paid and payment**

4.1 Payment terms and dates will usually be set out in the Quotation. In the event that such terms are not set out in the Quotation the following terms will apply:

4.1.1 For jobs totalling £1,000 or more, a 10% deposit will be due upon acceptance of these terms and conditions to secure the booking, followed by a further 15% two weeks

before the commencement date, the balance shall be payable upon completion of the Works

- 4.1.2 For jobs totalling less than £1,000.00 payment will not usually be required until completion of the works, however we reserve the right to request payment of the full amount by giving you not less than 7 days notice
- 4.2 All amounts stated are exclusive of VAT and/or any other applicable taxes or levy, which shall be charged in addition at the rate in force at the date any payment is required from You.
- 4.3 If payment of any sum due under these Terms and Conditions is not received by any due date specified for that sum, We shall be entitled to:
- 4.3.1 charge interest on the outstanding amount at the rate of 8% a year above the base lending rate of the Bank of England plc, accruing daily;
  - 4.3.2 charge an administration fee of £50 to cover the costs associated with recovering the debt;
  - 4.3.3 require that You make a payment in advance of any Services or part of the Services not yet supplied;
  - 4.3.4 not provide any further Services or part of the Services; or
  - 4.3.5 terminate these Terms and Conditions as provided for in clause 15.
- 4.4 All payments shall Quotation Our invoice number and other reference numbers including (where applicable) the Quotation reference number.

## 5 **Delivery of the Goods**

- 5.1 We shall deliver or arrange for delivery of the Goods to Your address on the date that We shall specify for the delivery (the **Delivery Date**).
- 5.2 For the avoidance of doubt, the Delivery Date or other date given under these Terms and Conditions is no more than an estimate and shall not be of the essence.

## 6 **Risk**

The risk in the Goods shall pass to You on the Delivery Date.

## 7 **Property**

The property in the Goods shall not pass to You until We have received the payment of the sums due with regard to the Goods (and any other sums that are due or owing to Us) in full, whether or not delivery has been made.

## 8 **Acknowledgment of examination**

- 8.1 You will be deemed to have accepted the Goods unless you notify us within 24 hours of the Delivery Date to the contrary
- 8.2 You acknowledge and agree that:

- 8.2.1 We have given You a reasonable opportunity to inspect the Goods;
- 8.2.2 You have inspected the Goods;
- 8.2.3 You have satisfied yourself as to the condition of the Goods;
- 8.2.4 We have not given any warranty or condition as to the quality or fitness for any purpose of the Goods;
- 8.2.5 all conditions or warranties, express or implied (whether by statute or otherwise), are expressly excluded;
- 8.2.6 Your failure to notify us within the period specified in clause 8.1 that you are not accepting the Goods shall be conclusive evidence that You have examined the Goods and that the Goods are in conformity with the contract description, in good order and condition, of satisfactory quality and fit for any purpose for which they may be required.

## 9 **The Client's obligations**

- 9.1 You acknowledge and agree that in order for Us to be able to provide the Services You shall:
  - 9.1.1 permit Us, Our employees and agents to carry out the Survey, if required, at such times as We may reasonably specify;
  - 9.1.2 carry out the Client Action as specified in the Quotation and by the times and dates set out in that document;
  - 9.1.3 provide such co-operation as We reasonably require;
  - 9.1.4 provide such information and documentation as We reasonably require;
  - 9.1.5 obtain all permissions, consents (including, but not limited to, planning permission), and health and safety approvals from such organisations and authorities required for the Goods to be installed and for the Services to be carried out;
  - 9.1.6 make available to Us the facilities, resources, and working space as specified in the Quotation and/or as We reasonably require from time-to-time.
- 9.2 We may charge You for any additional reasonable costs and expenses that We incur caused by Your instructions, failure to provide instructions, or failure to comply with clause 9.1.

## 10 **Defects in the Goods**

- 10.1 If the Goods have the benefit of a manufacturer's warranty, We will use all reasonable endeavours to assist You with a claim under such a warranty. It will be Your obligation to register for any such manufacturer's warranty and to ensure that notification to the manufacturer is made within any relevant period. We will not be liable for any loss caused to You as a result of Your failure to register for a warranty or notify a warranty claim.
- 10.2 If the Goods are not covered by a manufacturer's warranty, We will, at Our option, either make good by repair or by the supply of a replacement, defects which, under proper use, appear in the Goods within a period of 2 months after the Goods have been delivered and installed, provided that:

- 10.2.1 You notify Us in writing of the claimed defects immediately on their appearance;
- 10.2.2 We are satisfied that the defects arise solely from faulty design (other than a design made, furnished, or specified by You for which We have disclaimed responsibility in writing), materials or workmanship; and
- 10.2.3 if We require, the Goods claimed to be defective are returned to Us.
- 10.3 The repaired or replacement Goods will be delivered to You at the original place of delivery, but otherwise subject to the provisions of these Terms and Conditions.
- 10.4 As an alternative to clause 10.2, We shall be, in Our absolute discretion, entitled to return the sums paid by You for the Goods to You if You have already paid such sums when the claimed defect is notified by You to Us.
- 10.5 The remedy provided in this clause 11 is without prejudice to the other provisions of these Terms and Conditions, including, without limitation, clause 12 below.
- 11 **Liability for the Goods**
  - 11.1 We shall not incur or accept any liability concerning any representation made by Us (or made on Our behalf) to You (or any person acting on Your behalf) prior to the making of these Terms and Conditions where such representation was made or given in relation to the Conditions.
  - 11.2 We do not accept any liability to You concerning any express term or provision of these Terms and Conditions relating to the Goods where such a term relates to the Conditions.
  - 11.3 All terms, conditions or warranties implied by statutory or common law relating to the Conditions concerning the Goods are excluded from the Agreement to the fullest extent permitted by law.
  - 11.4 **Conditions** means:
    - 11.4.1 the correspondence of the goods with any description; and/or
    - 11.4.2 the quality of the goods; and/or
    - 11.4.3 the fitness of the goods for any purpose(s) whatsoever (whether made known to Us or not).
- 12 **Warranties, liability and indemnities for the Services**
  - 12.1 We warrant that we will use reasonable care in performing the Services to a standard which conforms to generally accepted industry standards and practices.
  - 12.2 If any part of the Services is performed negligently or in breach of the provisions of these Terms and Conditions then, at Your request (if the request is given in writing within 12 months of the Completion Date), We will re-perform the relevant part of the Services, always subject to clauses 13.1 and 13.2 below.
  - 12.3 We do not warrant that any result or objective, whether stated in these Terms and Conditions or not, shall be achieved, be achievable or be attained at all or by a given Completion Date or any other date.

**13 Liability generally**

- 13.1 Except in the case of death or personal injury caused by Our negligence, Our liability under or in connection with these Terms and Conditions whether arising in contract, tort, negligence, breach of statutory duty or otherwise howsoever, shall not exceed the sums paid to Us under these Terms and Conditions.
- 13.2 Neither Party shall be liable to the other Party in contract, tort, negligence, breach of statutory duty or otherwise for any loss, damage, costs, or expenses of any nature whatsoever incurred or suffered by that other Party of an indirect or consequential nature including without limitation any economic loss or other loss of turnover, profits, business or goodwill.
- 13.3 Each of the Parties acknowledges that, in entering into these Terms and Conditions, it does not do so in reliance on any representation, warranty or other provision except as expressly provided in these Terms and Conditions, and any conditions, warranties or other terms implied by statute or common law are excluded from these Terms and Conditions to the fullest extent permitted by law.

**14 Termination**

- 14.1 We may terminate these Terms and Conditions if:
  - 14.1.1 You do not accept the Quotation and upon Us giving You 7 days' notice following the end of the period specified in clause 2.3;
  - 14.1.2 You do not pay the amount(s) specified in the Quotations for the Goods on date specified for the payment in the Quotation or in clause 4.1;
  - 14.1.3 You fail to carry out the Client Action and upon Us giving You 7 days' notice following the end of the period specified by Us under clause 9.1.2.
- 14.2 Without prejudice to clause 15.1 and any other remedies or rights, either Party may terminate these Terms and Conditions at any time by written notice to the other Party (**Other Party**) the notice taking effect as specified in the notice:
  - 14.2.1 if the Other Party is in material breach of its obligations under these Terms and Conditions, and where a breach is capable of remedy within 7 days, if the breach is not remedied within 7 days by the Other Party receiving notice which specifies the breach and requiring the breach to be remedied: or
  - 14.2.2 if the Other Party becomes insolvent or if an order is made or a resolution is passed for the winding up of the Other Party (other than voluntarily for the purpose of solvent amalgamation or re-construction), or if an administrator, administrative receiver or receiver is appointed in respect of the whole or any part of the Other Party's assets or business, or if the Other Party makes any composition with its creditors or takes or suffers any similar or analogous action in consequence of debt.
- 14.3 If these Terms and Conditions are terminated because of a reason specified in clause 15.1 above, then You shall pay for all Work carried out up to the date of termination and all sums due for payment after the date of termination which arise from commitments entered by Us for the performance of the Work prior to the date of termination.

**15 General**

**15.1 Force majeure**

Neither Party shall have any liability under or be deemed to be in breach of these Terms and Conditions for any delays or failures in performance of these Terms and Conditions that result from circumstances beyond the reasonable control of that Party. The Party affected by such circumstances shall promptly notify the other Party in writing when such circumstances cause a delay or failure in performance and when they cease to do so. If such circumstances continue for a continuous period of more than 6 months, either Party may terminate these Terms and Conditions by written notice to the other Party.

**15.2 Amendments**

These Terms and Conditions may be amended only in writing signed by duly authorised representatives of the Parties.

**15.3 Assignment**

Subject to the following sentence, neither Party may assign, delegate, sub-contract, mortgage, charge or otherwise transfer any or all of its rights and obligations under these Terms and Conditions without the prior written agreement of the other Party. A Party may, however, assign and transfer all its rights and obligations under these Terms and Conditions to any person to which it transfers all of its business, provided that the assignee undertakes in writing to the other Party to be bound by the obligations of the assignor under these Terms and Conditions.

**15.4 Entire agreement**

These Terms and Conditions contains the whole agreement between the parties and supersedes and replaces any prior written or oral agreements, representations, or understandings between them. The parties confirm that they have not entered into these Terms and Conditions on the basis of any representation that is not expressly incorporated into these Terms and Conditions. Nothing in these Terms and Conditions excludes liability for fraud.

**15.5 Waiver**

No failure or delay by Us in exercising any right, power or privilege under these Terms and Conditions shall impair the same or operate as a waiver of the same nor shall any single or partial exercise of any right, power or privilege preclude any further exercise of the same or the exercise of any other right, power or privilege. The rights and remedies provided in these Terms and Conditions are cumulative and not exclusive of any rights and remedies provided by law.

**15.6 Agency, partnership etc**

These Terms and Conditions shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the Parties other than the contractual relationship expressly provided for in these Terms and Conditions. Neither Party shall have, nor represent that it has, any authority to make any commitments on the other Party's behalf.

**15.7 Further assurance**

Each Party to these Terms and Conditions shall at the request and expense of the other or any of them execute and do any deeds and other things reasonably necessary to carry out the provisions of these Terms and Conditions or to make it easier to enforce.



**15.8 Severance**

If any provision of these Terms and Conditions is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from these Terms and Conditions and rendered ineffective as far as possible without modifying the remaining provisions of these Terms and Conditions, and shall not in any way affect any other circumstances of or the validity or enforcement of these Terms and Conditions.

**15.9 Notices**

15.9.1 Any notice to be given under these Terms and Conditions shall be in writing and shall be sent by email to the address of the relevant Party set out in the Quotation.

15.9.2 Notices sent as above shall be deemed to have been received on the next working day after transmission.

15.9.3 To prove that notice has been given, it shall be sufficient to prove that the email was properly addressed and despatched and despatch of the transmission was confirmed and/or acknowledged as the case may be.

**15.10 Law and jurisdiction**

The validity, construction and performance of these Terms and Conditions shall be governed by English law and shall be subject to the exclusive jurisdiction of the English courts to which the Parties submit.

**15.11 Third parties**

For the purposes of the Contracts (Rights of Third Parties) Act 1999 these Terms and Conditions is not intended to, and does not, give any person who is not a party to it any right to enforce any of its provisions.