

**1. INTERPRETATION**

In these conditions of sale except where the context otherwise requires - "the Company" shall mean Phoenix Whirlpools Limited; "the Buyer" shall mean any person who contracts with the Company for the supply of goods by the Company and where one person contracts with the Company on behalf of or as agent for another, shall be deemed to include all those persons; "Goods" shall mean any goods supplied by the Company including any material supplied with such goods as packaging. The enforceability of invalidity of any conditions shall not affect enforceability of the remainder.

**2. ESSENCE OF CONTRACT & CANCELLATION OR VARIATION OF CONDITIONS**

(a) Contracts are made and orders are accepted only upon and subject to these conditions of sale. All other conditions are hereby excluded unless expressly accepted in writing by the Company and signed by a Director. No other employee or agent of the Company has authority to make any representations inconsistent with the conditions or enter into a contract except on the basis of them.

(b) Unless otherwise expressly agreed in writing by the Company these conditions shall override any terms or conditions stipulated, incorporated or referred to by the Buyer in his order, negotiations or conditions of sale.

(c) In the event of the buyer cancelling the order placed herewith, the seller shall be entitled to charge a cancellation fee of 50% of the contracted price.

**3. PRICES**

Orders are accepted on the basis that Goods supplied will be charged at prices ruling at date of despatch. Firm price quotations are valid for a period of one calendar month only from the date of quotation. The Company may at its absolute discretion accept or reject any order placed by the Buyer. The Company reserves the right to correct any clerical or typographical errors made by its employees at any time. All prices quoted are exclusive of Value Added Tax which will be charged, where appropriate, at the rate applicable on the date of despatch.

**4. AVAILABILITY**

The Company shall be under no liability for not supplying Goods ordered if supplies of such Goods are not available to the Company, and will not be liable for any costs that might be incurred through non-availability.

**5. MEASUREMENTS AND SPECIFICATIONS**

(a) Goods are warranted to accord with the normal limit of industrial quality and all specifications, weights and measurements are subject to small variations and normal manufacturing tolerances. Goods delivered may show slight variations in substance, performance, colour, shade or dimensions, and quotations are given on the understanding that any unavoidable degree of variation will be accepted.

(b) All other warranties or conditions as to the quality, description or fitness for a particular purpose expressed or implied are excluded except those conditions or warranties which are necessarily implied by statute in the case of consumer sales.

**6. NON-ACCOUNT HOLDING BUYERS**

Payment must be made at the point of sale/delivery.

**7. MONTHLY ACCOUNT FACILITIES**

Monthly facilities may be offered subject to the Company's approval of the account. One bank and two approved trade references are required. Orders will not be processed until such time as satisfactory financial status has been established.

**8. PAYMENT OF ACCOUNTS**

Credit accounts are nett monthly, except where otherwise confirmed in writing; and must be paid by the end of the calendar month following the month of invoice. In all cases Value Added Tax is strictly nett. Further Goods may not be supplied if accounts remain unpaid on the seventh of the second month following date of invoice. Disputed items on an invoice shall not prejudice settlements of the remainder.

**9. OVERDUE ACCOUNTS**

From and after the date on which payment becomes due, the Company shall be entitled to charge and recover interest from the Buyer on the price of the Goods calculated at the rate of 4% above HSBC Base Rate per annum from the date upon which payment is due until date of payment. Payments by Credit Card will be subject to a 2.5% charge. Legal and Collecting expenses incurred by the collection of debts by the Company are also payable by the defaulting Buyer.

**10. RISK AND TITLE TO GOODS**

(a) The risk in the goods passes to the Buyer upon delivery but property in the goods remains vested in the Company and shall only pass from the Company to the Buyer upon full payment being made by the Buyer of all sums due on whatsoever account or grounds to the Company from the Buyer. In the event of the goods being sold by the Buyer in such manner as to pass to a third party a valid title to the goods, whilst any such sums are due as aforesaid, the Buyer shall be the trustee for the Company of the proceeds of such sale or to the claim for such proceeds and the Buyer shall place such proceeds in a separate bank account. The Company's rights under this sub-clause (a) shall attach to the proceeds of such sale. Nothing herein shall constitute the Buyer the agent of the Company for the purposes of any such sub-sale.

(b) The Buyer agrees that prior to full payment being made as aforesaid the Company may at any time repossess the goods and enter upon the Buyer's premises and remove the goods there from and dispose of the same in any manner it may decide and that prior to such payment the Buyer shall keep such goods as fiduciary agent and bailee and separate identifiable for this purpose.

(c) In the event of the goods becoming constituents of or being converted into other products whilst sums are due as provided in sub-clause (a) hereof the Company shall have the ownership of and title to such other products (but not by way of a charge as if they were the goods and accordingly this Clause 10 shall so far as appropriate apply to such other products subject to the Buyer's right to the surplus of any moneys realised by the said products in excess of those due to the Company as provided therein.

(d) Any implied authority that the Buyer shall be entitled to sell the goods and pass property in the same to third parties in the normal course of its business or manufacture products out of the same or sell such products will continue until otherwise notified to the Buyer by the Company or until the happening of any of the following events:-

(i) any notice to the Buyer that an Administrative Receiver or other Receiver or Manager is to be or has been appointed in respect of its undertaking or a material part thereof or other property or assets

(ii) any notice to the Buyer that a petition to wind up the Buyer is to be or has been presented to the Buyer under Section 518 of the Companies Act 1985 or otherwise or any notice to the Buyer or a proposal to pass a Resolution to wind up the Buyer (including any proposal by the Buyer so to do)

(iii) a decision by the Buyer to make a voluntary arrangement or composition with its creditors or any notice to the Buyer and/or any of its creditors that a proposal for the same is to be or has been made.

(iv) the Buyer becoming unable to pay its debts as such expression is defined by the Insolvency Act 1986

(v) any notice to the Buyer that it is to be the subject of a petition for an Administration Order presented to the Courts of the making of an Administration Order in respect of the Buyer and upon the happening of any such events the Buyer shall immediately notify a Director or other authorised officer of the Company

(e) On receipt of written notice from the Company or on the happening of any of the events set out in sub-clause (d) above the Buyer's implied authority to sell the Company's goods shall be immediately withdrawn and all such goods and products made there from shall immediately be delivered to the Company.

**11. RETURNS**

No Goods once despatched shall be returned to the Company unless in good order and re-saleable un-used condition and adequately packed. A restocking fee of 50% will be charged. Goods specially ordered, or cut to order, cannot be returned.

**12. NOTIFICATION OF LOSS OR DAMAGE SHORTAGES**

(a) The Company shall not be liable for the supply of damaged Goods or the loss or non-delivery of the whole or any part of the consignment of Goods unless the Company receives notification in writing of the damage, loss or non-delivery within forty-eight hours of the date of supply.

(b) All Goods must be inspected by the Buyer at the time of delivery, to ensure that the Goods are as ordered, suitable for the purpose required, and in good condition.

(c) On discovering any defects in the Goods the Buyer shall immediately give written notice to the Company and enable the Company to investigate fully the complaint before the remainder of the consignment is used or returned, and the Company shall be under no liability until this procedure has been carried out.

(d) The Company shall not be liable for any claims made in respect of costs incurred by the Buyer or any third party in replacing or refixing damaged or faulty Goods, or making good any other consequential damage. The Company's liability shall be limited to replacing damaged or faulty Goods in accordance with the manufacturers guarantee.

**13. WARRANTIES AND CONDITIONS**

(a) The Company shall be under no liability for any loss, damage or personal injury howsoever incurred which arises in respect of the Buyer's liability to any third party.

(b) Where manufacturers or suppliers of Goods have limited their liability in respect thereof, or in respect of any liability direct or indirect in connection therewith, and such limitation has been advertised or announced in trade literature, or has otherwise been deemed to have come to the Buyer's notice whether generally or specifically, the same limitations shall apply to the Company's liability on the sale of those Goods, and such limited liability shall be in lieu of all other conditions or warranties express implied or statutory, which are hereby expressly excluded.

(c) The Company's liability for any and all direct loss or damage of any kind resulting from defects in the goods supplied or any other cause shall be limited to an amount equal to the purchase price of the quantity of the Goods in respect of or in relation to which such loss or damage is claimed. Subject as aforesaid the Company shall be under no liability in contract or in tort for any loss or damage or personal injury arising directly or indirectly out of the supply or use of the Goods.

(d) In the case of failure in service of the Goods, notification shall be made in writing to the Company within fourteen days and the failed goods made available for inspection by the Company or any person on its behalf. In the event of any Goods supplied by the Company being proved to be defective or failing in service, the Buyer shall be entitled only to such restitution as the Company may receive from the manufacturer and/or supplier to the Company. The Company shall have no other further liability in respect of direct, indirect or consequential loss, damage or personal injury sustained by the Buyer or any third party arising from or in connection with any defect, failure or inaccuracy.

(e) The Company shall have the right to inspect and conduct its own tests upon Goods that are the subject of a damage or loss or quality claim, or have failed in service.

(f) The right of the Buyer to set off the value of any shortage, defective goods or Goods not otherwise conforming to Contract shall be restricted to the specific invoice for the Goods in question, and shall not apply to the previous or future invoices.

(g) Any agent or person holding himself out as an agent shall be responsible for payment in full for any and all Goods he personally removes from the Company's premises, in the event of the Buyer not accepting liability for the said Goods.

**14. INDEMNITY**

The Buyer shall indemnify the Company against all claims, in respect of all claims for loss, damage or injury incurred to any person, firm, company or property and against all actions, suits, claims, demands, charges or expenses in connection therewith for which the Company may become liable in respect of the Goods sold under Contract in the event that the loss, damage or injury shall have been occasioned otherwise than by the negligence of the Company.

**15. TECHNICAL ADVICE AND INFORMATION**

The Company may at the request of the Buyer, without being under any obligation to do so, furnish technical advice concerning the suitability, installation and usage of the Goods and such assistance will be given to the best of the Company's liability but this shall be on the express understanding that any such advice or assistance is given and accepted at the Buyer's entire risk, and the Company shall not be liable for any loss, damage or personal injury or claims arising therefrom, from the Buyer or any third party.

**16. FORCE MAJEURE**

The Company shall have the right to cancel or delay deliveries or to reduce the amount delivered if it is prevented from, or hindered in or delayed in, delivering by normal routes or means of delivering the Goods through any circumstances beyond its control, including but not limited to strikes, Acts of God, lock-outs, accidents, war, fire, or shortage or unavailability of raw materials from normal sources or routes of supply to the manufacturer.

**17. DELIVERY INSTRUCTIONS**

(a) The Buyer shall indemnify the Company against all claims for damages and liability whatsoever arising out of compliances by the Company with the Buyer's delivery instructions. Should the delivery vehicle be required to travel over private property, the Company cannot accept any claims as the result of this action.

(b) Time shall not be the essence of the Contract. Any date or time for delivery named by the company is an estimate only, and the Company shall not be liable for the consequences of any delay howsoever such delay arises.

(c) The Company reserves the right to deliver Goods by installments and in such event each installment shall be treated as a separate Contract save that the deliveries of further installments may be withheld until Goods comprised in earlier instalments have been paid for in full.

**18. UNLOADING OF GOODS**

The Buyer shall provide all necessary assistance, free of charge, to the Company in unloading and stacking Goods at the point of delivery. In all cases a signature 'unexamined' shall be deemed to be an unconditional acceptance of the Goods.

**19. INSOLVENCY, BANKRUPTCY**

The Company shall have the right to terminate the Contract forthwith where the Buyer becomes insolvent or bankrupt or makes any arrangements with its creditors or suffers a receiver to be appointed or being a body corporate enters into liquidation (other than in connection with a reconstruction or amalgamation) in any of which cases the Company shall have no further obligation hereunder and the price for all Goods delivered and work done shall become immediately due and payable.

**20. LEGAL CONSTRUCTION**

Every Contract to which these conditions of sale apply shall be construed and operate as an English Contract and in accordance with English Law.