

## TERMS OF SALE

### 1 Interpretation

#### 1.1 In these Terms:

“BUYER” means the person who accepts the Seller’s Written, or oral quotation for the sale of the Goods or whose Written or oral order for the Goods is accepted by the Seller;

“GOODS” means the goods (including any instalment of the goods or any parts for them) which the Seller is to supply in accordance with these Terms;

“HOME VISIT FORM” means the form containing information about any visual inspection annexed hereto and referred to in clause 6.11;

“SELLER” means COLWYN FIREPLACE CENTRE LIMITED (Company No. 4836427) whose registered office is at Bron-y-Nant Road, Mochdre, Colwyn Bay, LL28 4YL;

“CONTRACT” means the contract for the sale and purchase of the Goods;

“CUSTOMER SATISFACTION NOTE” means the note of acceptance of delivery and installation of the Goods to be signed by the Buyer in the form annexed;

“PRODUCT INFORMATION SHEET” means the sheet containing information on certain Goods as detailed in clause 3.4;

“TERMS” means the standard terms of sale set out in this document and (unless the context otherwise requires) includes any special terms agreed in Writing between the Buyer and the Seller;

“WRITING”, and any similar expression, included facsimile transmission and comparable means of communication, but not electronic mail.

1.2 A reference in these Terms to a provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

1.3 The headings in these Terms are for convenience only and shall not affect their interpretation.

### 2 Basis of the sale

2.1 The Seller shall sell and the Buyer shall purchase the Goods in accordance with the Seller’s Written or oral quotation (if accepted by the Buyer), or the Buyer’s Written or oral order (if accepted by the Seller), subject in either case to these Terms, which shall govern the Contract to the exclusion of any other terms subject to which any such quotation is accepted or purported to be accepted, or any such order is made or purported to be made, by the Buyer.

2.2 No variation to these Terms shall be binding unless agreed in Writing between the authorised representatives of the Buyer and the Seller.

2.3 The Seller’s employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Seller in Writing. In entering into the Contract the Buyer acknowledges that it does not rely on any such representations which are not so confirmed, but nothing in these Terms affects the liability of either party for fraudulent misrepresentation.

2.4 Any advice or recommendation given by the Seller or its employees or agents to the Buyer or its employees or agents as to the application or use of the Goods which is not confirmed in Writing by the Seller is followed or acted on entirely at the Buyer’s own risk, and accordingly the Seller shall not be liable for any such advice or recommendation which is not so confirmed.

2.5 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.

### 3 Orders and specifications

3.1 No order submitted by the Buyer shall be deemed to be accepted by the Seller unless and until the Seller or an authorised representative of the Seller has signed the order form annexed to these Conditions.

3.2 The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Buyer, and for giving the Seller any necessary information relating to the Goods within a sufficient time to enable the Seller to perform the Contract in accordance with its terms.

3.3 The quantity, quality and description of the Goods and any specification for them shall be as set out in Buyer’s order (if accepted by the Seller) subject to the matters set out in the Product Information Sheet.

3.4 The Buyer acknowledges that the terms of the Product Information Sheet apply in relation to Goods which comprise marble, granite, limestone, grit stone sandstone, reconstructed stone, conglomerate, man-made conglomerate, glazed tiles, ceramic fibres, slate, timber, veneers, compressed fibre (MDF), stone or other natural materials.

3.5 Any samples, drawings, descriptive matter or advertising produced by the Seller and any descriptions or illustrations contained in the Seller's catalogues, brochures or the Product Information Sheet are produced for the sole purpose of giving an approximate idea of the Goods described in them. Subject to Clause 3.4, they shall not form part of the Contract or have any contractual force and no sale under any Contract shall be a sale by sample.

3.6 No order which has been accepted by the Seller may be cancelled by the Buyer except with the agreement in Writing of the Seller and on terms that the Buyer shall indemnify the Seller in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Seller as a result of cancellation. Any cancellation of an order by the Buyer relating to items that can be returned to the manufacturer will be subject to a re-stocking charge. This charge will be a minimum of 20% of the price of the Goods. Transport and handling charges will also apply. The Seller will advise the Buyer of these charges.

#### 4 Price of the goods

4.1 The price of the Goods shall be the Seller's quoted price or, where no price has been quoted (or a quoted price is no longer valid), the price listed in the Seller's published price list current at the date of acceptance of the order. All prices quoted are valid for 30 days only or until earlier acceptance by the Buyer, after which time they may be altered by the Seller without giving notice to the Buyer.

4.2 The Seller reserves the right, by giving Written notice to the Buyer at any time before delivery, to increase the price of the Goods to reflect any increase in the cost to the Seller which is due to any factor beyond the control of the Seller (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Goods which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions.

4.3 Except as otherwise stated in the Seller's Written or oral quotation or in any price list of the Seller, and unless otherwise agreed in Writing between the Buyer and the Seller, all prices are given by the Seller on an ex works basis, and where the Seller agrees to deliver the Goods otherwise than at the Seller's premises, the Buyer shall be liable to pay a delivery charge to cover the Seller's charges for transport, packaging and insurance.

4.4 The price is exclusive of any applicable value added tax, which the Buyer shall be additionally liable to pay to the Seller.

#### 5 Terms of payment

5.1 Subject to any special terms agreed between the Buyer and the Seller, a deposit of 50% of the Contract price shall be paid by the Buyer to the Seller upon the formation of the Contract in accordance with clause 2.1. The balance of the Contract price shall be due for payment when all ordered items have arrived at the Seller's premises and in accordance with clauses 5.2 and 6.1 of these Terms.

5.2 Final invoice (Contract) payment must be received a minimum of 7 days prior to any agreed or confirmed, collection, delivery installation dates and time of payment shall be of the essence of the Contract.

5.3 If the Buyer fails to make any payment on the due date then, without limiting any other right or remedy available to the Seller, the Seller may:

5.3.1 cancel the contract or suspend any further deliveries to the Buyer;

5.3.2 appropriate any payment made by the Buyer to such of the Goods (or the goods supplied under any other contract between the Buyer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer); and

5.3.3 charge the Buyer interest (both before and after any judgment) on the amount unpaid, at the rate of 4 per cent per annum above Barclays Bank plc base rate from time to time, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).

#### 6 Delivery and installation

6.1 The Buyer will have the opportunity to inspect the Goods either on collection or delivery. If the Buyer chooses not to inspect the Goods they shall be deemed to conform to the Contract and the Buyer shall be bound to accept them. If the Goods conform to the Contract the Buyer shall sign the Customer Satisfaction Note to confirm this. If the inspection reveals the Goods not to be in accordance with the Contract the Seller

shall arrange for the Goods to be replaced or shall rectify the defect after which a further inspection shall take place under the same conditions as aforesaid. The Buyer shall have 24 hours from the date of collection/delivery/installation to lodge any complaint. The complaint must be made by telephone or fax and confirmed in writing. The Seller reserves the right to refuse any refunds or replacements after that time period has lapsed.

6.2 Any dates quoted for delivery, collection or installation of the Goods are approximate only and the Seller shall not be liable for any delay in delivery or installation of the Goods however caused. Time for delivery shall not be of the essence of the Contract unless previously agreed by the Seller in Writing. The Goods may be delivered by the Seller in advance of the quoted delivery date on giving reasonable notice to the Buyer. If any payments are made by cheque the Buyer must be aware that no collection, delivery or installation dates can be confirmed until such time as the cheque has cleared.

6.3 If the Seller fails to deliver the Goods (or any instalment) for any reason other than any cause beyond the Seller's reasonable control or the Buyer's fault, and the Seller is accordingly liable to the Buyer, the Seller's liability shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest available market) of similar goods to replace those not delivered over the price of the Goods.

6.4 If the Buyer fails to take delivery of the Goods or fails to give the Seller adequate delivery instructions at the time stated for delivery within 90 days of receipt of the Goods by the Seller (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of the Seller's fault) then, without limiting any other right or remedy available to the Seller, the Seller may retain the Deposit and the Goods shall remain the property of the Seller.

6.5 Any installation of the Goods by the Seller, its employees or agents at the premises of the Buyer shall be undertaken by trained and competent installers in accordance with NFA guidelines and all work requiring either gas or multi fuel installations must be carried out by either Hetas or Corgi Gas Safe registered engineers who hold valid certificates covering the relevant elements relating to the work being undertaken.

6.6 Any work required to be undertaken prior to installation as a result of a change in the installation site after a quotation has been provided may be completed for additional charges to be agreed between the parties. Such changes include (but shall not be limited to) the following:

6.6.1 an existing gas leak prohibiting installation;

6.6.2 collapse or failure of the structural integrity of the supporting structure at the installation site where such collapse or failure is not attributable to the Seller, its employees or agents;

6.6.3 damage to the decorated/plastered area surrounding the fireplace if the Goods are of different dimensions to the previous fireplace;

6.6.4 the integrity or poor performance of the flueway.

6.7 The Buyer under no circumstances should undertake installation of the Goods unless they or their appointed installers are fully qualified, e.g. Corgi Gas Safe or Hetas registered and trained to N.F.A. guidelines if appropriate. Be aware that installations carried out by non registered operatives can be construed as a criminal offence.

6.8 Where the Goods are installed by the Seller, its employees or agents, the Buyer shall sign the Customer Satisfaction Note indicating that the installation has been completed to its satisfaction, failing which the Seller shall make any reasonable changes to the installation to enable the Customer Satisfaction Note to be signed. If the Buyer chooses not to sign the Satisfaction Note to indicate it is happy with the installation the Buyer shall be deemed to accept the installation as satisfactory.

6.9 Where the Goods are not installed by the Seller, its employees or agents, the Buyer must be aware that goods incorrectly installed may be a serious danger to people and property. The Buyer shall be responsible for the proper installation of the Goods and the Seller cannot accept any liability in respect of any omissions errors or failures on the part of the Buyer to install the Goods in accordance with the rules in force or with any installation advice given by the Seller. Any installation advice given by the Seller is given by way of guidance only. The Buyer should in no circumstances undertake installation of the Goods unless they are suitably qualified in such installation.

6.10 The home visit (details of which are contained in the Home Visit Form) only includes a visual inspection of the gas service pipe, surrounding area and flue if appropriate. The home visit must not be construed as either a Structural, Corgi or Hetas survey and is only intended to establish a costing for any installation work that may be carried out by the Seller to advise on the suitability of the product or products to be purchased. If a smoke test is carried out it is only intended to indicate if the flue is free of any blockages and will also show if any remedial work may be necessary to the chimneystack or pot. The smoke test does not guarantee that either a new gas

fire or stove will pass the final emissions checks. The Corgi Engineer can only carry out the emissions checks when the appliance has been installed and has been running for several minutes. The smoke test also does not guarantee that the existing flue does not need lining or that structural work may be needed. Only a fully qualified Corgi or Hetas Engineer or Structural Surveyor could make the final recommendations. With regards to gas fires and stoves. If final emissions checks do fail, no refunds on installation charges will be offered. Also refunds on appliances will only apply if the Seller cannot offer an alternative appliance, either gas or electric. Also re-stocking charges may apply.

## 7 Risk and property

7.1 Risk of damage to or loss of the Goods shall pass to the Buyer:

7.1.1 in the case of Goods to be delivered at the Seller's premises, at the time when the Seller notifies the Buyer that the Goods are available for collection; or

7.1.2 in the case of Goods to be delivered otherwise than at the Seller's premises, at the time of delivery or, if the Buyer wrongfully fails to take delivery of the Goods, the time when the Seller has tendered delivery of the Goods.

7.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Terms, the property of the Goods shall not pass to the Buyer until the Seller has received in cash or cleared funds payment in full of the price of the Goods and all other goods agreed to be sold by the Seller to the Buyer for which payment is then due.

7.3 Until such time as the property of the Goods passes to the Buyer, the Buyer shall hold the Goods as the Seller's fiduciary agent and bailee, and shall keep the Goods separate from those of the Buyer and third parties and properly stored, protected and insured and identified as the Seller's property, but the Buyer may resell or use the Goods in the ordinary course of its business.

7.4 Until such time as the property of the Goods passes to the Buyer (and provided the Goods are still in existence and have not been resold), the Seller may at any time enter on any premises of the Buyer or any third party where the Goods are stored and repossess the Goods and shall be entitled to recover the costs associated with such repossession from the Buyer.

7.5 The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Seller, but if the Buyer does so all moneys owing by the Buyer to the Seller shall (without limiting any other right or remedy of the Seller) forthwith become due and payable.

## 8 Warranties and liability

8.1 Subject to the following provisions the Seller warrants that the Goods will correspond with their specification at the time of delivery and will be free from defects in material and workmanship for a period of 12 months from the date of their initial use or months 12 from delivery, whichever is the first to expire.

8.1a The Buyer will not be offered by the Seller any warranty on ex-showroom displays and should thoroughly inspect them prior to purchasing. Notices in the showroom will confirm this.

8.2 The above warranty is given by the Seller subject to the following conditions:

8.2.1 the Seller shall be under no liability in respect of any defect in the Goods arising from any drawing, design or specification supplied by the Buyer or any natural defects as detailed in the Product Information Sheet;

8.2.2 the Seller shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Seller's instructions (whether oral or in Writing) including those contained in the Product Information Sheet, misuse or alteration or repair of the Goods without the Seller's approval;

8.2.3 the Seller shall be under no liability in respect of any localised damage to decorated surfaces during installation of the Goods;

8.2.4 the Seller shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total price for the Goods has not been paid by the due date for payment;

8.2.5 the above warranty does not extend to parts, materials or equipment not manufactured by the Seller, in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Seller.

8.3 In respect of Goods manufactured and supplied to the Seller by third parties the Seller will pass on to the Buyer (in so far as possible) the benefit of any warranty given to the Seller by such third parties and will (on request) supply to the Buyer details of the terms and conditions of such warranty and copies of any relevant

product information sheets, technical data sheets or product leaflets issued by such third parties and the Buyer shall be solely responsible to the entire exclusion of the Seller for complying with all of these.

8.4 Subject as expressly provided in these Terms, and except where the Goods are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977), all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

8.5 Where the Goods are sold under a consumer transaction (as defined by the Consumer Transactions (Restrictions on Statements) Order 1976) the statutory rights of the Buyer are not affected by these Terms.

8.6 A claim by the Buyer which is based on any defect in the quality or condition of the Goods or their failure to correspond with specification shall (whether or not delivery is refused by the Buyer) be notified to the Seller within seven days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure. If delivery is not refused, and the Buyer does not notify the Seller accordingly, the Buyer shall not be entitled to reject the Goods and the Seller shall have no liability for such defect or failure, and the Buyer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.

8.7 Where a valid claim is notified to the Seller within the stipulated period in respect of any of the Goods which are defective or do not meet the required specification the Seller will be given the opportunity of inspecting the Goods and providing the Seller is in agreement with the Buyer regarding the defect or incorrect specification the Seller will offer a replacement. No additional charge will be made unless the Buyer changes the specification. No refund will be offered unless the Seller cannot provide a replacement.

NOTE: None of the above will apply if the Buyer has already installed the purchased items. Any refunds offered will be at the Seller's own discretion and a re-stocking charge may apply (see clause 3.5).

8.8 Except in respect of death or personal injury caused by the Seller's negligence, or liability for defective products under the Consumer Protection Act 1987, the Seller shall not be liable to the Buyer by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for loss of profit or for any indirect, special or consequential loss or damage, costs, expenses or other claims for compensation whatsoever (whether caused by the negligence of the Seller, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods (including any delay in supplying or any failure to supply the Goods in accordance with the Contract or at all) or their use or resale by the Buyer, and the entire liability of the Seller under or in connection with the Contract shall not exceed the price of the Goods, except as expressly provided in these Terms.

8.9 The Seller shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Seller's obligations in relation to the Goods, if the delay or failure was due to any cause beyond the Seller's reasonable control. Without limiting the foregoing, the following shall be regarded as causes beyond the Seller's reasonable control:

8.9.1 act of god, explosion, flood, tempest, fire or accident;

8.9.2 war or threat of war, sabotage, insurrection, civil disturbance or requisition;

8.9.3 acts, restrictions, regulations, bye laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;

8.9.4 import or export regulations or embargoes;

8.9.5 strikes, lock outs or other industrial actions or trade disputes (whether involving employees of the Seller or of a third party);

8.9.6 difficulties in obtaining raw materials, labour, fuel, parts or machinery;

8.9.7 power failure or breakdown in machinery.

## 9 Insolvency of Buyer

9.1 This clause 9 applies if:

9.1.1 the Buyer makes a voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or

9.1.2 an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer; or

9.1.3 the Buyer ceases, or threatens to cease, to carry on business; or

9.1.4 the Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.

9.2 If this clause applies then, without limiting any other right or remedy available to the Seller, the Seller may cancel the Contract or suspend any further deliveries under the Contract without any liability to the Buyer, and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

## 10 General

10.1 A notice required or permitted to be given by either party to the other under these Terms shall be in Writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.

10.2 No waiver by the Seller of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.

10.3 If any provision of the Contract is held by a court or other competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of the Contract and the remainder of the provision in question shall not be affected.

10.4 Any dispute arising under or in connection with the Contract or the sale of the Goods shall be referred to arbitration by a single arbitrator appointed by agreement or (in default) nominated on the application of either party by the President for the time being of the Law Society of England and Wales.

10.5 The Contract shall be governed by the laws of England, and the Buyer agrees to submit to the non exclusive jurisdiction of the English courts.