

## **TERMS AND CONDITIONS OF SALE DRUGASAR Ltd.**

### **1. Definitions**

In these conditions: "the Company" means Drugasar Ltd, Deans Road, Swinton, Manchester M27 0JH, United Kingdom; "the Goods" means any item of whatsoever nature which is sold from time to time by the Company; "the Customer" means the person or Company to whom this document is addressed; "the Service" is defined as either the installation, repair or service (or any combination of the three) of the Goods or other appliance agreed by the Company as specified overleaf; "the Territory" means Wales, England and Scotland

### **2. Conditions**

- I. These conditions shall only form the basis of the contract between the Company and the Customer, and shall apply to every sale by the Company without addition or alteration.
- II. Notwithstanding anything to the contrary in the Customer's standard conditions of purchase, these conditions shall apply except so far as expressly agreed in writing by the general manager at the head office of the Company.
- III. No servant or agent of the Company has power to vary these conditions orally, or to make representations or promises about the condition of Goods / and or Services, their fitness for any purpose or any other matter whatsoever.
- IV. These conditions will become effective for all deliveries by the Company as from August 1<sup>st</sup> 2009 and replace all previous conditions.

### **3. Territory**

- I. The Customer is only permitted to use or resell the Goods in the Territory since the specification for such goods varies in different European regions with differences in gas type, local building regulations, fitting safety specifications etc...
- II. The Company accepts no responsibility nor liability whatsoever for any Goods used or resold outside the Territory. If the Customer supplies or uses Goods outside the Territory it will be responsible for all consequences and claims concerning these delivered Goods without any limitation.
- III. The Company reserves the right to refuse to accept/complete orders where it reasonably believes that Goods are to be used or resold outside the Territory

### **4. Acceptance**

- I. Unless otherwise expressly stated in writing all quotations, price lists and estimates issued by the Company are invitations to treat and not unconditional offers to sell.
- II. Unless previously withdrawn any tender issued by the Company shall remain valid for 30 days from the date of issue.
- III. Price lists issued by the Company will be valid for the period indicated on the price list. The Company is at all times allowed to change prices or issue a new price list and declare the old prices or price list void.
- IV. The Customer's order shall constitute an offer subject to these terms and conditions and will become binding upon the Company posting its order acknowledgement.
- V. An acknowledgement order may also be cancelled or varied with the Company's consent. The giving of the Company's consent shall not in any way prejudice the Company's right to recover from the Customer

full compensation for any loss or expense arising from such cancellation or variation.

## **5. Prices**

- I. Where it is found that an accidental error omission has been made then notwithstanding the quotation estimate, price list or tender given, the Company shall be entitled to invoice the Customer and receive payment as if no accidental error or omission had occurred.
- II. The price of the Goods and/or Services is the price on the most recent quotation or price list issued by the Company. The price is in pound sterling, exclusive of any VAT or other applicable tax which the Customer shall pay in addition when it is due to pay for the Goods and/or Services. The price is given on an ex warehouse of the Company basis and unless otherwise agreed by the Company in writing the Customer shall in addition pay the Companies charges for transport, packaging and insurance when it is due to pay for the Goods and/or Services.
- III. Packaging for transportation to the Customer within mainland UK is included in the price. The packaging will not be taken back by Company.
- IV. All prices for Goods and/or Services assume that a level, clear site is available. Delays and additional visits by failure to provide this will result in additional charges being incurred by the Customer.
- V. All spares, replacement parts and ancillary equipment not ordered and delivered with heaters are subject to an extra charge for postage, packaging and insurance.
- VI. The Company reserves the right to increase the contract price at any time prior to dispatch of the Goods and/or Services and prices invoiced will be those ruling at the date of dispatch unless otherwise agreed in writing prior to the date of acknowledgement.

## **6. Payment**

- I. Subject to clause 6.2 the Customer shall strictly pay the invoice value within 30 days after the date of the invoice, unless the Company has agreed in writing to the contrary. Where it has been agreed by both parties that the delivery of the Goods is to be made by instalments, the Company reserves the right to invoice the Customer for each instalment separately.  
Each invoice will become due for payment within thirty days of their separate dates and future deliveries will be withheld until all payments due have been fulfilled.
- II. Orders will only be accepted on a cash with order or cash on delivery basis unless a credit account has been opened after suitable references have been submitted and approved by the Company.
- III. Customers with a credit account will pay only by means of bank transfer directly to the bank account of the Company, within 30 days after the date of the invoice.
- IV. The Customer is to pay for all the Goods and/or Services without deduction for any reason whatsoever, unless prior written permission from the Company has been given.
- V. If the Customer has not paid the full amount due in time, the Company has the following rights:
  - a. To suspend all further commitments with/deliveries to the Customer.
  - b. To charge an interest rate of 8% over the prevailing base lending rate of the Company's bankers

- c. To charge to the Customer all expenses incurred by the Company for the collection of the outstanding debt.
- d. To collect the Goods from the Customer or a third party which still are the property of the Company (see also § 14).

## 7. Warranty

- I. The warranty period for each item of the Goods is that applicable as set by the Company for its individual products. If this is not the case than the warranty period is 24 months. The Company warrants that upon delivery and for a period of twenty four months from the delivery, the Goods will be of satisfactory quality and reasonably fit for the purpose for which they are commonly used. The Company will, at its absolute discretion, repair or replace any part supplied by it which is found to be defective as a result of a fault in manufacture, provided that the defective part is returned to the Company carriage prepaid, but no such greater liability than such repair or replacement shall attach to the Company under this guarantee. Any parts repaired or replaced free of charge under this guarantee will be subject to the guarantee during the remainder of the said period only. Where Services are found to be defective they shall be reperformed.
- II. No warranty shall apply to defects that occur, partly or wholly as a result of:
  - a. Installation by an unqualified installer.
  - b. Installation that is not in accordance with the latest installation instructions.
  - c. Not following operating and maintenance instructions.
  - d. Insufficient maintenance.
  - e. Normal wear and tear.
  - f. Improper repairs by others.
  - g. The use of Goods for another purpose than they were designed for.
  - h. Negligence, carelessness or abuse of the Goods.
  - i. Tampering with the factory settings.
  - j. Making changes to the Goods.
  - k. Improper transport or handling of the Goods.
- III. Warranty claims should be sent to the Company in writing within 10 working days of the discovery of the defect. If this period is exceeded all claims against the Company or its suppliers in reference to these defects will become void.
- IV. If the Company decides to replace parts in order to comply with its warranty, the replaced parts become the property of the Company.
- V. If according to the Customer, the Company is not meeting its warranty obligations, this does not relieve the Customer of its obligations hereunder.
- VI. Where the Customer sells the Goods as part of his business to third parties such as consumers or installers it is obliged to provide first line warranty and to correct small warranty problems itself (i.e. replace a glass window or log when it is broken, replace a part, etc) and the Company shall NOT be liable to reimburse the Customer in respect of such warranty claims. The compensation for such work is incorporated in the margin the Customer receives from the Company. The Customer has to:
  - a. Inspect the Goods and identify if it is a manufacturing defect or a defect from another cause.
  - b. where it is identified as a manufacturing defect contact the Company as to how the problem can be dealt with in the

most efficient way. In case of warranty, parts will be supplied by the Company free of charge. Labour costs will be borne by the Customer.

- VII. Transportation damage is only accepted under warranty when the Customer has acted in accordance with § 9 of these conditions.
- VIII. This warranty shall not extend to proprietary goods manufactured by any person other than the Company and the Company shall in no way be liable for any loss caused in any way by such defective parts but so far as is possible the Company will pass on to the Customer the benefits of any manufacturer's guarantee given by such other person.

## **8. The Company's liability**

- I. The Company accepts liability for death or personal injury to the extent that results from the negligence of the Company or its employees and any liability arising out of the Consumer Protection Act 1987.
- II. Subject to clause 3 above the total liability of the Company to the Customer over and above any liability under the guarantee contained in Clause 7 hereof (whether in contract or in tort including negligence) in respect of any one cause of or loss or damage claimed as a result from any breach of the Company's obligations hereunder shall be limited to actual money damages which shall not exceed the greater of £500,00 or the cost of the Goods and/or Services supplied provided that such monetary limit shall not apply to any liability on the part of the Company referred to in paragraph (I) above.
- III. Except as provided in paragraph (I) above but otherwise notwithstanding any other provision herein contained the Company shall not be liable for the following loss or damage howsoever caused and even if foreseeable by or in the contemplation of the Company:
  - a. Economic loss which shall include loss of profits, business revenue, goodwill or anticipated savings.
  - b. Damages in respect of special indirect or consequential loss of damage.
  - c. Any claim made against the Customer by any other party.
- IV. No claim may be made against the Company except in respect of any claim made pursuant to paragraph (I) above in respect of any Goods supplied by the Company more than one year after the date of the invoice for the relevant goods.

## **9. Delivery**

- I. The Company undertakes to use its reasonable endeavours to dispatch the Goods within the time specified but shall not be liable for any failure or delay in dispatch or delivery. Time of delivery shall not be of the essence of the contract unless expressly so stipulated in writing.
- II. The Company may notify the Customer that it is unable to fulfil the Customer's order and may cancel the contract without being liable for any loss or damage of whatsoever nature and howsoever caused if delivery is likely to be delayed for a period of three months from the date specified in the order or the Company is unable to manufacture the Goods due to causes beyond its control or is unable to obtain all or any of the raw materials necessary for the manufacture of the Goods or the Company has reasonable cause to believe that the Customer is or will be unable to pay for the Goods at the time mentioned in § 6.
- III. The Company shall not be under any liability to the Customer for any failure to perform or delay in performance of the Company's obligations which shall be attributed to anything outside the Company's control or to

any act of God, force majeure, steps taken by any Government or Authority having jurisdiction (whether de jure or de facto) over the Company, or the occurrence of war, civil war or strife or disturbance, rebellion strike, lockout or sabotage.

- IV. The Company may deliver the Goods in instalments unless otherwise stipulated in writing. Where the Goods are delivered in instalments each instalment constitutes a separate independent contract.
- V. Where the Company has agreed to deliver at an address other than the Company's premises the Company will deliver to the UK mainland site as requested and as near as possible to the site as a safe road permits but only to the ground floor. The Customer shall provide at its own expense the labour for unloading and stacking, such labour to be available during normal working hours on the day notified by the Company for delivery. The Customer shall unload with reasonable dispatch. Damage due to inadequate site access or careless unloading shall be at the Customer's risk
- VI. Where the Goods are not delivered by the Company, but by an independent carrier, delivery to the carrier shall constitute delivery to the Customer. Goods are normally dispatched within ten/fourteen days from receipt of order or credit clearance but should the Goods not have been received within twenty one days of the receipt of the acknowledgement of order the Customer shall notify the Company forthwith.
- VII. If the Customer fails to take delivery on the agreed delivery date or, if no specified date has been agreed, when the Goods are ready for dispatch, the Company shall be entitled to store and insure the Goods and to charge the Customer such costs and liabilities incurred by the Company.
- VIII. Unless otherwise agreed by the Company in writing all prices are ex works and delivery will take place at the Company's premises. The Company will charge separately for delivery to any other address (see also §5.III).
- IX. Goods damaged in transit will only be replaced within a reasonable time, subject to the damaged Goods being returned immediately.
- X. The return of Goods by the Customer can only be allowed after written permission of the Company. The Customer has to return the Goods carriage paid and has to follow the administrative procedures in place for the return of Goods. The Company has the right to reject the Goods or return the Goods at the expense of the Customer when these conditions have not been met.
- XI. Requests for additional or special packaging may be made at the time of ordering, for which a charge shall be incurred.

#### **10. Approval and acceptance of Goods by the Customer**

- I. The Customer is obliged to check the Goods immediately upon reception on correctness of the ordered Goods (types, etc), visible transportation damage and quantities. In case of incorrectness of the Goods, quantities or transportation damage the Customer has to report this in writing on the original bill of lading, have it signed of by the lorry driver and report it to the Company within 48 hours. In case the Customer signs the bill of lading without corrections he is supposed to have received and accepted the Goods in good order. If short delivery does take place the Customer undertakes not to reject the goods but to accept the goods delivered as a part performance of the Contract.
- II. Other claims have to be reported to the Company within 5 working days after receipt of the Goods. The claim has to be sent in writing indicating

clearly the type of complaint and the number of the bill of lading on which the Goods were delivered.

#### **11. Design**

- I. All illustrations, drawing, diagrams, pictures, etc. in the Company's catalogues, trade literature, web sites and other ways of publication are of a generally informative nature only, and notwithstanding that all attempts are made to maintain their accuracy and validity at all times, no conditions or warranty or representation is expressed or implied that the goods shall correspond therewith.
- II. The Company will, wherever it considers possible, manufacture Goods to its latest published specifications or those stipulated by the Customer but no conditional warranty or representation is expressed or implied that the Goods shall correspond therewith.
- III. It is the Customer's responsibility to ensure that all necessary regulations have been adhered to prior to installation.
- IV. Any design work, drawings, calculations or specifications prepared by the Company in connection with the intended use or deployment of the Goods are suggestions only submitted for approval by the Customer. It is the Customer's responsibility to satisfy itself that the designs, drawings, calculations or specifications are correct and/or appropriate as the Company will have no responsibility for errors or omissions after the Customer has approved the details submitted by placing an order. The Company's responsibility is in any event solely confined to its own manufactured components and does not extend to other products or components or overall structural or architectural consideration.

#### **12. Intellectual property**

- I. All illustrations, drawing, diagrams, pictures, etc as used in the Company's catalogues trade literature, web sites and other ways of publication are the intellectual property of the Company. The DRU logo and the DRU name as well as the Dik Geurts logo and the Dik Geurts name as well as the Drugasar name are the intellectual property of the Company. The Customer is only allowed to make use of these materials as long as the agreement between the Company and the Customer lasts. The Customer is only allowed to use these materials in such a way that they do not undermine the good reputation of the Company and are in accordance with the Company's image as a manufacturer of high end quality Goods. As such the Company explicitly forbids the use of these materials in combination with discounted pricing in magazines, newspapers, web sites or other ways of publication.
- II. The Customer is not allowed to change the Goods wholly or partially or to change the brand name or their packaging or to use the brand names of the Company; Drugasar, DRU and Dik Geurts in a different way or to register these names, parts of these names, or combinations with these names in the Customer's own name.

#### **13. Promotional materials**

- I. All promotional materials supplied by the Company to the Customer (with or without charge) remain the property of the Company. The Customer shall, immediately upon first request therefor by the Company, put all materials at the disposal of the Company.
- II. When the agreement ends the Customer shall stop immediately using the intellectual property of the Company, and all promotional materials which contains the same.

- III. When the Customer offers other products than those of the Company it shall in no way give the impression that these other products are supplied by the Company.

#### **14. Retention of title**

- I. Notwithstanding delivery, property in the Goods supplied remain with the Company until the purchase price has been paid by the Customer in full, and until property passes in accordance with this term:
- II. Risk in the Goods shall pass on delivery and the Customer shall store the Goods separately or in such a way as will show clearly that they are the Company's property and the Customer will ensure that they are kept in good condition and insured against loss or damage for the Company's benefit.
- III. The Customer shall hold the Goods as bailee for the Company who without prejudice to any other of its rights may if the purchase price remains outstanding repossess the Goods and for this purpose may enter upon the Customer's premises.

#### **15. Customer's warranty**

- I. The Customer warrants that it will not itself and will not permit any third party to install or use the Goods in contravention of any Gas Safety (Installation and Use) Regulations or other statutes, statutory instruments or regulations from time to time in force relating to the Goods and will indemnify the Company against any liability whatsoever arising from any such contravention.
- II. The Customer warrants that it will take care of proper installation of the Goods in accordance with the installation instruction of the Company and in accordance with the information presented in training sessions organized by the Company or supervise such installation, as well as giving the proper first line service (see § 7.VI) and after sales service.
- III. The Company may end without liability on its part the Contract for the supply of Goods where the Company has a valid reason to believe that the Goods are likely to be used in contravention of any such statutes, statutory instruments, regulations, or there is likely to be improper installation or poor first line or poor after sales service.

#### **16. Termination or cancellation**

- I. In the event of any distress, execution or other legal process being levied upon any of the Customers assets, or the Customer entering into any arrangement or composition with its creditors, committing any act of bankruptcy or an order being made or a resolution being passed for its winding up (except for the amalgamation or reconstruction as a solvent company) or a receiver, administrative receiver being appointed in respect of the whole or part of its undertakings or assets or an encumbrancer taking possession of any of the property or the assets of the Customer, the Customer ceasing or threatening to cease carrying on business, non payment by the Customer of any monies due from it to the Company, any breaches of these conditions by the Customer or the Company apprehending that any of the events mentioned above is about to occur, the Company shall be entitled to suspend all or any work upon or future deliveries or instalments of the Goods and/or the provision of Services under this or any other contract and give written notice to cancel the undelivered proportion of this or any contract and sell the Goods elsewhere and/or deem that the whole of the price under this or any other contract shall be payable immediately.

- II. In the event of any such cancellation by the Customer, the Company shall be entitled to recover damages from the Customer for all loss and damage of the whatever kind consequential or otherwise which the Company shall sustain in the connection with the cancellation.

**17. General**

- I. Any failure by the Company, to exercise any rights under these conditions does not constitute a waiver or prevent the subsequent exercise of such rights.
- II. Any notice required to be given or served under the conditions shall be addressed to the registered office of the Company or the address of the Customer shown on the contract or invoice.
- III. Any provision of the contract which is held by a competent authority to be invalid, void, voidable or unenforceable (in whole or in part) shall to the extent of such invalidity, voidness, voidability or unenforceability be deemed severable and the other provisions of the contract and the remainder of such provisions shall not be effected.

**18. Legal construction**

English Law shall be the proper law of the contract and the parties submit to the jurisdiction of the English Courts.

Manchester, July 1<sup>st</sup> 2009.