

Terms and Conditions of Sale

1. INTERPRETATION

1.1 Definitions

In these Conditions, the following definitions apply:

Abacus: Abacus Direct is a trading division of Primaflow Ltd. Registered Office: Votec House, Hambridge Lane, Newbury, Berkshire, RG14 5TN. Registered in England: 2662075 VAT Reg. No: 340 049 632

Business Day: a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

Conditions: the terms and conditions set out in this document as amended from time to time in accordance with condition 13.9 and all other documents referred to therein including, but not limited to, the Returns Policy and the Delivery Guide.

Contract: the contract between Abacus and the Customer for the sale and purchase of the Goods in accordance with these Conditions.

Customer: the person or firm who purchases the Goods from Abacus.

Delivery Guide: Abacus' guide to delivery costs and services which is available online at www.abacus-bathrooms.co.uk.

End-User: the person or firm to which the Customer re-sells the Goods.

Force Majeure Event: an event beyond the reasonable control of the affected party including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the party or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, telecommunications failure (including problems with internet transmission) fire, flood, storm or default of suppliers or subcontractors.

Goods: the goods (or any part of them) set out in the Order.

OEM Branding: the OEM Customer's brand.

OEM Customer: a Customer who requests Abacus to manufacture the Goods to include OEM Branding.

Order: the Customer's order for the Goods that can be placed either by email, telephone, fax or such other electronic means as Abacus and the Customer may agree from time to time.

Product Portfolio: Abacus' catalogue listing all the Goods supplied by Abacus and setting out the description of the Goods, the prices and the Product Warranty as may be amended or updated by Abacus from time to time.

Product Warranty: the warranty provided by Abacus (or the manufacturer of the Goods) in respect of each of the Goods as set out in the Product Portfolio.

Returns Policy: Abacus' returns policy which is available online at www.abacus-bathrooms.co.uk.

Services: dealing with enquiries or complaints raised by End-Users, the processing of returns of Goods and/or showroom design and fitting services.

Specification: any specification for the Goods, including OEM Branding and any related plans and drawings that is agreed in writing by the Customer and Abacus.

VAT: value added tax.

Warranty Period: has the meaning set out in condition 5.1.

Website: Abacus' website at www.abacus-bathrooms.co.uk.

1.2 Construction

In these Conditions, the following rules apply:

1.2.1 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.2.2 A reference to a party includes its personal representatives, successors or permitted assigns.

1.2.3 A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.

1.2.4 Any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

1.2.5 A reference to writing or written includes faxes and e-mails.

2. BASIS OF CONTRACT

2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.2 The Order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order and any applicable Specification submitted by the Customer are complete and accurate.

2.3 The Order shall only be deemed to be accepted when Abacus issues a written order acknowledgement, at which point the Contract shall come into existence.

2.4 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of Abacus which is not set out in the Contract.

2.5 Any samples, drawings, descriptive matter, or advertising produced by Abacus and any descriptions or illustrations contained in the Product Portfolio and/or the Website are produced for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract or have any contractual force.

3. GOODS

3.1 The Goods are described in the Product Portfolio and the Website as modified by any applicable Specification.

3.2 To the extent that the Goods are to be manufactured in accordance with a Specification supplied by the Customer, the Customer shall indemnify Abacus against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by Abacus in connection with any claim made against Abacus for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with Abacus' use of the Specification. This condition 3.2 shall survive termination of the Contract.

3.3 Abacus reserves the right to amend the Specification if required by any applicable statutory or regulatory requirements.

4. DELIVERY

4.1 All deliveries shall be carried out in accordance with this condition 4 and the Delivery Guide.

4.2 Abacus shall deliver the Goods to the location set out in the Order or such other location as the parties may agree (Delivery Location).

4.3 Delivery of the Goods shall be completed on the Goods' arrival at the Delivery Location.

4.4 On delivery, the Customer shall check the Goods. If the Goods were damaged during transport or delivery, or if the quantity of Goods delivered is different to the quantity of Goods ordered, then the Customer must report any issues to Abacus' sales office as soon as possible and in any event no later than 2 Business Days after delivery.

4.5 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. Abacus shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide Abacus with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

4.6 If Abacus fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. Abacus shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide Abacus with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

4.7 If the Customer fails to accept delivery of the Goods within three Business Days of Abacus notifying the Customer that the Goods are ready, then, except where such failure or delay is caused by a Force Majeure Event or Abacus' failure to comply with its obligations under the Contract:

4.7.1 delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day after the day on which Abacus notified the Customer that the Goods were ready; and

4.7.2 Abacus shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).

4.8 If 10 Business Days after the day on which Abacus notified the Customer that the Goods were ready for delivery the Customer has not accepted delivery of them, Abacus may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.

4.9 Abacus may deliver the Goods by installments, which shall be invoiced and paid for separately. Each installment shall constitute a separate Contract. Any delay in delivery or defect in an installment shall not entitle the Customer to cancel any other installment.

5. QUALITY

5.1 Abacus warrants that on delivery, and for the period specified by each Product Warranty (warranty period), the Goods shall:

5.1.1 conform in all material respects with their description and any applicable Specification;

5.1.2 be of satisfactory quality; and

5.1.3 be fit for any purpose held out by Abacus.

5.2 Subject to condition 5.3, if:

5.2.1 the Customer gives notice in writing to Abacus during the warranty period within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in condition 5.1;

5.2.2 Abacus is given a reasonable opportunity of examining such Goods; and

5.2.3 the Customer (if asked to do so by Abacus) returns such Goods to the Abacus' place of business at the Customer's cost, Abacus shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.

5.3 Abacus shall not be liable for any failure of the Goods to comply with the warranty set out in condition 5.1 in any of the following events:

5.3.1 the Customer makes any further use of such Goods after giving notice in accordance with condition 5.2;

5.3.2 the defect arises because the Customer failed to follow Abacus' oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;

5.3.3 the defect arises as a result of Abacus following any drawing, design or Specification supplied by the Customer;

5.3.4 the Customer alters or repairs such Goods without the written consent of Abacus;

5.3.5 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or

5.3.6 the Goods differ from their description or the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

5.4 Except as provided in this condition 5, Abacus shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in condition 5.1.

5.5 These Conditions shall apply to any repaired or replacement Goods supplied by Abacus and should be read in conjunction with the Returns Policy.

6. TITLE AND RISK

6.1 The risk in the Goods shall pass to the Customer on completion of delivery.

6.2 Title to the Goods shall not pass to the Customer until the earlier of:

6.2.1 Abacus receives payment in full (in cash or cleared funds) for the Goods and any other goods that Abacus has supplied to the Customer in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums; and

6.2.2 the Customer resells the Goods, in which case title to the Goods shall pass to the Customer at the time specified in condition 6.4.

6.3 Until title to the Goods has passed to the Customer, the Customer shall:

6.3.1 store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as Abacus' property;

6.3.2 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;

6.3.3 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;

6.3.4 notify Abacus immediately if it becomes subject to any of the events listed in condition 10.1; and

6.3.5 give Abacus such information relating to the Goods as Abacus may require from time to time.

6.4 Subject to condition 6.5, the Customer may resell or use the Goods in the ordinary course of its business (but not otherwise) before Abacus receives payment for the Goods. However, if the Customer resells the Goods before that time:

6.4.1 it does so as principal and not as Abacus agent; and

6.4.2 title to the Goods shall pass from Abacus to the Customer immediately before the time at which resale by the Customer occurs.

6.5 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in condition 10.1, then, without limiting any other right or remedy Abacus may have:

6.5.1 the Customer's right to resell the Goods or use them in the ordinary course of its business ceases immediately; and

6.5.2 Abacus may at any time:

6.5.2.1 require the Customer to deliver up all Goods in its possession which have not been resold, or irrevocably incorporated into another product; and

6.5.2.2 if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

7. PRICE AND PAYMENT

7.1 The price of the Goods shall be the price set out in the Order, or, if no price is quoted, the price set out in the Product Portfolio as at the date of delivery.

7.2 Abacus may, by giving notice to the Customer at any time before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:

7.2.1 any factor beyond Abacus' control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);

7.2.2 any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Specification; or

7.2.3 any delay caused by any instructions of the Customer or failure of the Customer to give Abacus adequate or accurate information or instructions.

7.3 The price of the Goods is exclusive of the costs and charges of packaging, transport of the Goods (which are set out in the Delivery Guide) and insurance, which shall be invoiced to the Customer.

7.4 The price of the Goods is exclusive of amounts in respect of VAT. The Customer shall, on receipt of a valid VAT invoice from Abacus, pay to Abacus such additional amounts in respect of VAT as are chargeable on the supply of the Goods.

7.5 Abacus may invoice the Customer for the Goods on or at any time after the completion of delivery.

7.6 Payment terms will be agreed in writing by Abacus and the Customer and confirmed in the written order acknowledgment. Abacus shall not be obliged to offer credit terms, and credit terms may be revoked at any time. Payment shall be made to a bank account nominated in writing by Abacus. Time of payment is of the essence.

7.7 If Abacus and the Customer agree any volume rebate or other discount, the Customer agrees that Abacus' calculations of such rebate or discount will be final and binding.

7.8 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). Abacus may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by Abacus to the Customer.

8. INTELLECTUAL PROPERTY - OEM CUSTOMERS

8.1 All OEM Customers hereby grant Abacus a non-exclusive licence to use the OEM Branding and any other Intellectual Property Rights necessary to manufacture and supply the Goods in accordance with any Specification.

8.2 Abacus acknowledges and agrees that all rights in the OEM Branding and other relevant Intellectual Property Rights belonging to the OEM Customer shall remain in the OEM Customer.

9. SERVICES

9.1 If requested by the Customer and agreed in writing by Abacus, Abacus may supply the Services.

9.2 Abacus shall use all reasonable endeavours to meet any performance dates agreed between the parties, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.

9.3 Abacus shall have the right to make any changes to the services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and Abacus shall notify the Customer in any such event.

9.4 Abacus warrants to the Customer that the Services will be provided using reasonable care and skill.

10. TERMINATION AND SUSPENSION

10.1 Abacus may terminate the Contract without liability immediately on giving notice to the Customer, if the Customer:

10.1.1 commits a material breach of its obligations under this Contract and (if such breach is remediable) fails to remedy that breach within a period of 30 days after receipt of written notice requiring it to do so;

10.1.2 commits a series of persistent minor breaches which, when taken together, amount to a material breach;

10.1.3 (being a natural person) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;

10.1.4 (being a natural person) is declared bankrupt or makes any arrangement with or for the benefit of his creditors or has a county court administration order made against him under the County Court Act 1984;

10.1.5 enters into compulsory or members voluntary liquidation or passes a resolution for voluntary winding up or its directors convene a meeting of shareholders for that

purpose (save for the purposes of solvent amalgamation or reconstruction where the amalgamated or reconstructed company agrees to adhere to this agreement);

10.1.6 has an administrative receiver or receiver appointed over all or any part of its assets or undertaking;

10.1.7 suspends, or threatens to suspend, payment of its debts, is unable to pay its debts as they fall due, admits inability to pay its debts or (being a partnership) has any partner to whom any of the foregoing apply or who is declared bankrupt;

10.1.8 is the subject of any judgment or order made against it or is the subject of any execution, distress, sequestration or other process levied upon or enforced against any of its assets;

10.1.9 has any action, step, legal proceedings or other procedure taken in respect of it by its directors, shareholders, bankers, creditors or any person seeking to appoint a liquidator or an administrator or takes any such act or step itself;

10.1.10 ceases or threatens to cease to carry on business; or

10.1.11 any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in Condition 10.1.3 to Condition 10.1.9.

10.2 Without limiting its other rights or remedies, Abacus may suspend provision of the Goods under the Contract or any other contract between the Customer and Abacus if the Customer becomes subject to any of the events listed in condition 10.1.3 to condition 10.1.9, or Abacus reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.

10.3 On termination of the Contract for any reason the Customer shall immediately pay to Abacus all of Abacus' outstanding unpaid invoices and interest.

10.4 Termination of the Contract, however arising, shall not affect any of the parties' rights, remedies, obligations and liabilities that have accrued as at termination.

10.5 Conditions which expressly or by implication survive termination of the Contract shall continue in full force and effect.

11. LIMITATION OF LIABILITY

11.1 Nothing in these Conditions shall limit or exclude Abacus' liability for:

11.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);

11.1.2 fraud or fraudulent misrepresentation; or

11.1.3 any matter in respect of which it would be unlawful for Abacus to exclude or restrict liability.

11.2 Subject to condition 11.1:

11.2.1 Abacus shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and

11.2.2 Abacus' total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the price of the Goods.

12. PRODUCT WITHDRAWAL/RECALL

12.1 Abacus shall notify the Customer as soon as practicable of any product withdrawal or recall relating to the Goods.

12.2 If Abacus decides to withdraw or recall any of the Goods, the Customer shall cooperate fully and promptly with any request by Abacus in respect of such withdrawal or recall.

12.3 Risk and title in the Goods shall pass to Abacus at the time the decision is made to withdraw or recall.

13. GENERAL

13.1 Abacus may assign the Contract or any part of it to any person, firm or company. Abacus shall use all reasonable endeavours to notify the Customer prior to making any such assignment. The Customer shall not be entitled to assign the Contract or any part of it without the prior written consent of Abacus and on such terms as Abacus shall reasonably specify.

13.2 Abacus maintains the right to employ any sub-contractor.

13.3 Notices under these Conditions shall be given in writing and may be given by delivery or first class post to the Customer at the address stated in the Order or as otherwise notified and to Abacus at the address stated in these Conditions or as other address notified. Notices sent by first class post shall be deemed to have been received within forty-eight hours of posting. Notices delivered by hand shall be deemed to have been received at the time of delivery.

13.4 No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy.

13.5 If any court or competent authority finds that any provision of these Conditions (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of these Conditions shall not be affected.

13.6 If any invalid, unenforceable or illegal provision of these Conditions would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

13.7 Nothing in these Conditions is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.

13.8 A person who is not a party to the Contract shall not have any rights under or in connection with it.

13.9 Except as set out in these Conditions, any variation, including the introduction of any additional terms and conditions, to the Contract, shall only be binding when agreed in writing and signed by Abacus.

13.10 The Contract shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the English courts.