

L&W Heating & Plumbing Ltd

Terms & conditions

1. **Definitions**
 - 1.1. "L&W" shall mean L&W Heating & Plumbing Ltd, its successors and assigns or any person acting of or with the authority of L&W Heating & Plumbing Ltd.
 - 1.2. "Customer" shall mean the person or entity described as such on the invoices, application for credit, estimates, work authorisation or any other forms to which these terms & conditions apply, and shall include any person acting on behalf of and with the authority of such person or entity.
 - 1.3. "Guarantor" means that person (or persons), who agrees to be liable for the debts of the Customer on a principle debtor basis.
 - 1.4. "Works" shall mean Works provided by L&W for the Customer including and advice or recommendations (and where the context so permits shall include the supply of materials as hereinafter defined) and are as described on the invoices, estimate, work authorisation or any other forms as provided by L&W to the Customer.
 - 1.5. "Materials" shall mean all materials provided by L&W to the Customer (and where the context so permits shall include any supply of works as defined above).
 - 1.6. "Price" shall mean the cost of the works as agreed by L&W and the Customer subject to clause 5 of this contract.
 2. **Application of these terms and conditions to consumers**
 - 2.1. Where the customer acquires work as a consumer these terms and conditions (in particular clauses relating to Risk, Disclaimer, Defects, Returns, Warranties, and Limitations of Liability) shall be subject to any laws or legislation governing the rights of consumers and shall not affect the consumer's statutory rights.
 3. **Consumer Rights Act 2015**
 - 3.1. This agreement is subject to the provisions of the Consumer Rights Act 2015 (or any replacement or re-enactment thereof) in all cases except where the customer is contracting within the term of a trade/business (which cases are specifically excluded).
 - 3.2. Notwithstanding clause 3.1 nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Consumer Rights Act 2015 or any laws or legislation governing the rights of consumers, except to the extent permitted by those Acts, laws or legislation.
 4. **Acceptance**
 - 4.1. Any instructions received by L&W from the Customer for the provisions of works and/or the Customers' acceptance of works provided by L&W shall constitute acceptance of the terms & conditions contained herein.
 - 4.2. Where more than one Customer has entered into the agreement, the Customers shall be jointly and severally liable for all payments of the price.
 - 4.3. Upon acceptance of these terms and conditions by the Customer the terms & conditions are irrevocable and can only be amended with the written consent of both parties.
 - 4.4. The Customer undertakes to give L&W at least fourteen (14) days notice of any change to the Customer's name, address and/or any other change in the Customer's details.
 5. **Price & Payment**
 - 5.1. At L&W's sole discretion the price shall be either:
 - 5.1.1. As indicated on invoices provided by L&W to the Customer in respect of works provided; or
 - 5.1.2. L&W's estimated price (subject to clause 5.2) which shall be binding upon L&W provided that the Customer shall accept L&W's estimate in writing within thirty (30) days.
 - 5.2. L&W reserves the right to change the price in the event of a variation to L&W's estimate, in the event either party requests a variation, L&W will give the customer a written variation document which states the reason for the variation, provides a full description of the variation, stating any effect the variation will have on the price, completion date and whether further permits are required, L&W shall require written acceptance by the Customer of the variation prior to commencing the variation work. If the price increases significantly the customer can cancel the contract and will be liable for any cost incurred by L&W.
 - 5.3. At L&W's sole discretion a deposit may be required.
 - 5.4. L&W may submit detailed progress payment claims:
 - 5.4.1. At intervals not less than monthly for works performed up to the end of each month; or
 - 5.4.2. In accordance to L&W's specialised payment schedule and such payment claims may include the reasonable value of authorised variations and the value of any materials delivered to the site but not yet installed.
 - 5.5. At L&W's sole discretion:
 - 5.5.1. Payment shall be due upon satisfactory completion of the works; or
 - 5.5.2. Payment for certain approved Customers shall be due either:
 - 5.5.2.1. Two (2) working days following the date of the invoice; or
 - 5.5.2.2. Seven (7) working days following the date of the invoice.
 - 5.6. Time for payment for the works shall be of the essence and will be stated on the invoice or any other forms.
 - 5.7. Payment will be made by cash, cheque, credit/debit card, or by any other method as agreed to between the customer and L&W.
 - 5.8. VAT and other taxes and duties that may be applicable shall be added to the price except when they are expressly included in the price.
 6. **Provision of the Works**
 - 6.1. Subject to the clause 6.2 it is L&W's responsibility to ensure that the works start when specified on the estimate, if this date is not known at the time the agreement is signed, as soon as it is reasonable possible once the start date is ascertained.
 - 6.2. The works commencement date will be put back and the completion date extended by whatever time is reasonable in the event that L&W claims and extension on the time (by giving the Customer written notice) where completion is delayed by an event beyond L&W's control, including but not limited to any failure by the Customer to:
 - 6.2.1. Make a selection; or
 - 6.2.2. Have the site ready for the works
 - 6.2.3. Notify L&W that the site is ready.
 - 6.3. At L&W's sole discretion delivery of the materials shall take place when the Customer takes possession of the materials at the Customer's nominated address (in the event that the materials are delivered by L&W or L&W's nominated carrier.
 - 6.4. At L&W's sole discretion the cost of delivery are included in the price.
 - 6.5. Provision of the works to a third party nominated by the Customer is deemed to be provision of the works to the Customer for the purposes of this agreement.
 - 6.6. L&W shall not be liable for any loss or damage whatsoever due to failure by L&W to provide works (or any part of them) promptly or at all, where due circumstances beyond the control of L&W.
 7. **Risk**
 - 7.1. Notwithstanding L&W retains ownership of the materials, unless caused by L&W's negligence, if any of the materials are damaged or destroyed following delivery to the site, but prior to the completion of the works or full payment by the customer for the works (whichever occurs first) the first Customer shall be liable for any costs incurred by L&W in replacing or repairing the materials.
 8. **Title**
 - 8.1. It is the intention of L&W and agreed by the Customer that ownership of the materials shall not pass until:
 - 8.1.1. The Customer has paid all amounts owing for the particular materials; and
 - 8.1.2. The Customer has met all other obligations due by the Customer to L&W in respect of all contracts between L&W and the Customer.
 - 8.2. Receipt by L&W of any form other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then L&W's ownership or rights in respects of the materials and this contract shall continue.
 - 8.3. It is further agreed that:
 - 8.3.1. Where practicable the materials shall be kept separate and identifiable until L&W shall have received payment and all other obligations of the Customers are met; and
 - 8.3.2. Until such time as ownership of the materials shall pass from L&W to the Customer L&W may give notice in writing to the Customer to return the materials or any of them to L&W. Upon such notice the rights of the Customer to retain ownership or any other interest in the materials shall cease; and
 - 8.3.3. L&W shall have the right of stopping the materials in transit whether or not delivery has been made; and
 - 8.3.4. The Customer is only and bailee of the materials and until such time as L&W has received payment in full for the materials then the Customer shall hold any proceeds from the sale of disposal of the materials on trust for L&W; and
 - 8.3.5. The Customer shall not deal with the money of L&W in any way which may be adverse to L&W; and
 - 8.3.6. The Customer shall not change the materials in any way nor grant nor otherwise give any interest in the materials while they remain the property of L&W
 - 8.3.7. L&W can issue proceedings to recover the price and materials sold notwithstanding that ownership of the materials may not have passed to the customer; and
 - 8.3.8. Until such time that ownership in the materials passes to the customer, if the materials are converted into other products, the parties agree that L&W will be the owner of the end products, unless they have become fixtures.
 9. **Defects, Error and Omissions**
 - 9.1. The Customer shall inspect the works on completion (materials on delivery) and shall as soon as reasonably practical notify L&W of any alleged defect, error or omissions, shortage in quantity, damage or failure to comply with the description or estimate. The Customer shall afford L&W an opportunity to inspect the works (materials) within a reasonable time following such a notification if the Customer believes the works (materials) are defective in any way. If the Customer fails to comply with these provisions the works (materials) shall be presumed to be free from any defects of damage. For defective works (materials), which L&W has agreed in writing that the customer is entitled to reject, L&W's liability is limited to either (at L&W's discretion) replacing the works (materials), rectifying the works or repairing the materials.
 - 9.2. Materials will not be accepted for return other than in accordance with 9.1 above.
 10. **Warranty**
 - 10.1. Subject to the conditions of warranty set out in Clause 10.2 L&W warrants that if any defect in any workmanship of L&W becomes apparent and is reported to L&W within three (3) months of the date of completion (time being of the essence) then L&W will either (at L&W's discretion) replace or remedy the workmanship. The does not affect the Customers right to remedy under the Consumer Rights Act 2015.
 - 10.2. The conditions applicable to warranty given by the clause 10.1 are:
 - 10.2.1. The warranty shall not cover any defect of damage which may be caused or partly caused by or arise through:
 - 10.2.1.1. Failure on the part of the Customer to properly maintain the works; or
 - 10.2.1.2. Failure on the part of the Customer to follow any instructions or guidelines provided by L&W; or
 - 10.2.1.3. Any use of the works other than for any other application specified on an estimate; (it does not prevent the Customer from seek redress under the Consumer Rights Act 2015 if the use does not contribute to the fault); or
 - 10.2.1.4. The continued use of the works after any defect becomes apparent or would've become apparent to a reasonably prudent operator or user; or
 - 10.2.1.5. Fair wear and tear, any accident of act of god.
 - 10.2.2. The warranty shall cease and L&W shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without L&W's consent.
 - 10.2.3. In respect of all claims L&W shall not be liable to compensate the Customer for any reasonable delay in either replacing or remedying the workmanship or in property assessing the Customer's claim
 - 10.3. For materials not manufactured by L&W, the warranty shall be the current warranty provided by the manufacturer of the materials, L&W shall not be bound by nor be responsible for any item, condition, representation or warranty other than that which is given by the manufacturer of the materials. This does not exempt L&W's obligations to the Customer under Section 9 of the Consumer Rights Act 2015.
11. **Default and consequences of default**
 - 11.1. Interest of overdue invoices shall accrue from the date when payment becomes due daily until the date of the payment at a rate of two and a half percent (2.5%) per calendar month and such interest shall compound monthly at such a rate alter as well as before any judgment.
 - 11.2. In the event that Customers payment is dishonoured for any reason due to the fault of the Customer the Customer shall be liable for any dishonour fees incurred by L&W.
 - 11.3. If the Customer defaults in payment of any invoices when due, the Customer shall indemnify L&W from and against all costs and disbursements incurred by L&W in pursuing the debt including legal costs on a solicitor and own client basis and L&W's collection agency cost.
 - 11.4. Without prejudice to any other remedies L&W may have, if at any time the Customer is in breach of any obligation (including those relating to payment) L&W may suspend or terminate the provision of works to the Customer and any of its other obligations under the terms and conditions. L&W will not be liable to the Customer for any loss of damage the Customer suffers because L&W exercised its rights under its clause.
 - 11.5. If any account remains overdue after thirty (30) days then an amount of £20.00 shall be levied as an administration fee and shall be levied for each month that the account remains overdue, which sums shall become immediately due and payable.
 - 11.6. Without prejudice to L&W's other remedies at law L&W shall be entitled all or any part of any order of the Customer which remains unperformed in addition to and without prejudice to any other remedies and all amounts owing to L&W shall, whether or not due for payment, become immediately payable in the event that:
 - 11.6.1. Any money payable to L&W becomes overdue, or in L&W's reasonable opinion the Customer will be unable to meet its payments as they fall due; or
 - 11.6.2. The Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an agreement with creditors, or makes an assignment for the benefit of its creditors; or
 - 11.6.3. A receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.
12. **Security and Charges**
 - 12.1. Despite anything to the contrary contained herein or any other rights which L&W may have where the Customer is in breach of contract recover all reasonable losses through all civil law remedies afforded to L&W.
13. **Intellectual Property**
 - 13.1. Where L&W has designed drawn or written plans or a schedule of the works for the Customer, then the copyright in those plans, schedules, designs and drawings shall remain invested in L&W, and shall only be used by the Customer at L&W's discretion.
 - 13.2. The Customer warrants that all designs or instructions to L&W will not cause L&W to infringe any patent, registered design or trademark in the execution of the Customers order and the Customer agrees to indemnify L&W against any action taken by a third party against L&W in respect of any such infringement.
14. **Cancellation**
 - 14.1. L&W may cancel these terms and conditions or cancel provision of the works at any time before the works are completed (materials) are delivered by giving written notice. On giving such notice L&W shall repay to the Customer any sums paid in respect of the price, less any amounts owing for works already provided, L&W shall not be liable for any loss of damage whatever arising from such cancellation.
 - 14.2. In the event that the Customer cancels provision of the Works then the Customer shall be liable (or any loss incurred by L&W including, but not limited to, any amounts owing for works already provided and any loss of profits) up to the time of cancellation.
15. **Data Protection Act 2018**
 - 15.1. L&W will gain consent from the Customer/guarantor to:
 - 15.1.1. Collect, retail and use any information about the Customer, for the purpose of assessing the Customer's credit worthiness or marketing product and services to the Customer; and
 - 15.1.2. To disclose information about the Customer, whether collected by L&W from the Customer directly or obtained by L&W from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or of listing a default by the Customer on publicly accessible credit reporting databases.
 - 15.2. L&W may also use information about the Customer to monitor or analyse its business, in this connection the business authorises the business to disclose personal information to agents or third parties engaged by L&W.
 - 15.3. The Customer consents to the transfer of information outside of the European Economic Area for the purposes listed above.
 - 15.4. Where the Customer is an individual the authorities under clause 15.1 are authorities or consents for the purposes of the Data Protection Act 2018.
 - 15.5. The Customer shall have the right to request L&W for a copy of the information about the Customer retained by L&W and the right to request L&W to correct incorrect information about the Customer held by L&W
16. **Limitation of liability**
 - 16.1. L&W shall be under no liability whatsoever for the Customer for any foreseeable indirect loss and/or expense (including loss of profit or goodwill) suffered by the Customer or any third party arising out of a breach by L&W of these terms and conditions.
 - 16.2. In the event of any breach of this contract by L&W the remedies of the Customer shall be limited to damages.
 - 16.3. For the avoidance of doubt, nothing in these terms and conditions shall exclude or restrict L&W's liability for the death or personal injury to any person resulting from L&W's negligence.
17. **Unpaid L&W's rights**
 - 17.1. Where the Customer has left any item with L&W for repair, modification, exchange or for L&W to perform any other service in relation to the item and L&W has not received or been tendered the whole of the price, or the payment has been dishonoured L&W shall have:
 - 17.1.1. A lien on the item;
 - 17.1.2. The right to retain the item for the price while L&W is in possession of the item;
 - 17.1.3. A right to sell the item.
 - 17.2. The Lien of L&W shall continue despite the commencement of proceedings, or judgment for the price having been obtained.
18. **Housing Grants, Construction and Regeneration Act 1996 (HGCRA)**
 - 18.1. Where the term of contract between the Customer & L&W exceeds forty-five (45) days as detailed in the HGCRA section 109, then L&W shall be entitled to receive payments by instalment, stage payments or other periodic payments for any work under the contract.
 - 18.2. If the Customer wishes to dispute a payment, the Customer must do so strictly in accordance with Section 111 of the HGCRA, otherwise the right to withhold the payment shall be invalid and the payment shall become immediately due and payable.
 - 18.3. If the Customer fails to make payments as requested by L&W in accordance with the HGCRA, then L&W is entitled to suspend performance of the contract in accordance with Section 112 of the HGCRA.
 - 18.4. In the event the Customer requires residential building work under the HGCRA then the provisions of Section 106 shall apply.
 - 18.5. Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Housing Grants, Construction and Regeneration Act 1996, except to the extent permitted by the Act where applicable.
 - 18.6. The Scheme for Construction Contract (England & Wales) regulation 1998 shall apply to this contract.
19. **General**
 - 19.1. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected prejudiced or impaired.
 - 19.2. These terms and conditions and any contract to which they apply shall be governed by the laws of England & Wales and are subject to the jurisdiction of the Court of England & Wales.
 - 19.3. L&W may license or sub-contract all or any part of its rights and obligation without the Customers consent.
 - 19.4. L&W reserves the right to review these terms and conditions at any time if following any such review, there is to be any changes to these terms and conditions, then that change will take effect from the date on which L&W notifies the Customer of such change. Except where L&W provides further works to the Customer and the Customer accepts such Works, the Customer shall be under no obligation to accept such changes and no changes will be enforceable without the Customer agreement.
 - 19.5. Neither party shall be liable for any default due to any act of god, war, terrorism, strike, lockout, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.