

## Kelda Technology Terms and Conditions of Sale

Please read these terms carefully before you submit your order to us. These terms tell you who we are, how we will provide products to you, how you and Kelda Technology may change or end the contract, what to do if there is a problem and other important information. If you think that there is a mistake in these terms, please contact us to discuss before placing your order.

### 1. Application and Entire agreement

1.1 These are the Terms and Conditions on which we supply goods or services to you.

1.2 These Terms and Conditions will apply to the purchase of the items ("**Goods**") and/or installation services ("**Services**") detailed in a Kelda Technology quotation (Quotation), by the customer ("**You/Customer**"), from Kelda Technology, a trading style of Kelda Showers Limited, a company registered in England and Wales under number 07076881, whose registered office is 2 Venture Road, Southampton Science Park, Chilworth, Southampton, England, SO16 7NP ("**Kelda Technology/We/Us**").

1.3 These Terms and Conditions will be deemed to be accepted by you when you accept them or the Quotation or from the date of any delivery of the Goods (whichever happens earlier) and will constitute the entire agreement between us.

1.4 Once accepted by us, neither your order nor the contract can be cancelled, postponed or altered in any way, without our written consent. Unless otherwise agreed by us in writing, we do not trade on a sale or return basis.

1.5 These Terms and Conditions and the Quotation (together, the "**Contract**") apply to the purchase and sale of any Goods and/or Services between you and us to the exclusion of any other terms that you try to impose or incorporate, or which are implied by trade, custom, practice or course of dealing. No person acting or purporting to act on our behalf has any authority orally to add to or vary any of the terms of the contract or to waive any of our rights under it, and no such addition, variation or waiver shall have any effect unless agreed by us in writing. No waiver by us of any of our rights under the Contract will be considered to constitute a general waiver of those or any other such rights.

1.6 In these Terms and Conditions, the Contract means your order for Goods and/or Services as accepted by us, or our Quotation as accepted by you, in writing. If the Goods are to be delivered by instalments, each instalment will constitute a separate Contract.

1.7 Each Quotation of ours will lapse after 28 days from its date, or such later date as we may agree in writing.

1.8 Unless otherwise agreed by us in writing, these Terms and Conditions will apply to our Quotation, your order and the Contract to the exclusion of any customary trade terms or terms or conditions of yours, and supersede any previous terms of trade between us.

1.9 Our Quotation, your order and the Contract will be governed by the laws of England and the English and Welsh Courts will have exclusive jurisdiction.

## 2. Interpretation and Definitions

2.1 "Business Day" means any day other than a Saturday, Sunday or bank holiday.

2.2 "Normal Business Hours" means 9 am to 5 pm on a Business Day.

2.3 Words imparting the singular number include the plural and vice versa.

## 3. Orders

3.1 All contracts of sale made by Kelda Technology shall be deemed to incorporate these Terms and Conditions, which shall prevail over any other terms from the Customer with whom Kelda Technology is dealing.

3.2 All orders are subject to acceptance and to availability of the Goods ordered. Kelda Technology reserves the right to decline to trade with any company or person. In addition, we may decline to accept any order, whether or not payment has been received, by giving notice of non-acceptance to the Customer by telephone, email, in writing or by facsimile within a reasonable period of receipt by Kelda Technology of the order.

## 4. Prices and Payment

4.1 Goods and Services are invoiced at the price prevailing at time of order as stated on the Quotation.

4.2 Prices are quoted in British Pounds (GBP) and exclude VAT, shipping charges and other taxes which, where applicable must be paid by you in addition to the price and which will be listed with the total cost of your order.

4.3 Kelda Technology's standard credit terms for Customers in the United Kingdom require payment of 30% of invoice value upon order and the balance of 70% of the invoice value within 14 days from the date of the invoice, except in the case of transactions where different terms are agreed in writing.

4.4 In respect of any Services under the Contract, an invoice will be issued by Kelda Technology to the Customer upon completion of the Services.

4.5 Kelda Technology's standard credit terms for Customers outside of the United Kingdom require payment in full in advance of the Goods being shipped to the delivery location, except in the case of transactions where different terms are agreed in writing.

4.6 Where we have agreed to supply the goods over a period of more than three months from the date of the contract, and unless otherwise agreed by us in writing, the prices of the goods delivered after the three month period will be adjusted to reflect any increases in our standard prices for those goods as at the date of dispatch.

4.7 Any queries on our invoices must be made within 10 Business Days of their respective dates, failing which you will be considered to have accepted them.

4.8 We may at any time and at our entire discretion, discontinue your credit account or alter its level, by giving you notice in writing.

4.9 If you fail to pay any sum to us on the due date, or you make a voluntary arrangement with your creditors, have a receiver appointed, or a petition is presented for your administration, winding-up or bankruptcy, or you enter into liquidation or we have reason to believe that you will be unable to pay your debts to us as they fall due, all sums owed by you will become immediately due and payable, and we will be entitled to require payment prior to further delivery of the goods, or to cancel, suspend or terminate all or any further delivery of the goods, without incurring any liability to you.

4.10 We may charge you interest on any sums not paid to us by the due date at the statutory interest rate, that is 8% above the Bank of England rate and you will reimburse us for all debt collection and legal costs and expenses incurred by us in attempting to recover such sums. We may treat any sums received from you as being in payment first of any such costs and expenses, then interest accrued, and then all other amounts owed to us in date order, starting with the oldest, regardless of any disputes or your attribution of payment to any particular invoices.

## 5. Delivery

5.1 Goods are subject to availability. Stock levels may change due to the time delay between orders placed and orders accepted. If items become out of stock after Kelda Technology accepts the order we will notify you as soon as possible. For items that are out of stock, Customers, should they wish to cancel the order will be refunded in full.

5.2 Times and dates for delivery quoted on the Kelda Technology website or by Kelda Technology or its employees are approximate only. Kelda Technology shall use reasonable endeavours to despatch Goods by the date agreed with the customer, but does not accept liability for failure to deliver within the stated time where this is caused by circumstances beyond our reasonable control, such as (but not limited to) delays caused by delivery companies or manufacturer lead times. If a delay is likely, we shall contact the Customer and advise of the delay.

5.3 The Goods will be delivered to such delivery address in the United Kingdom as you have last given to us when your purchase order is placed, or such other address as we may agree in writing. Where the delivery address is outside the United Kingdom, the Goods will be delivered ex works our warehouse, but we will, at your request, make arrangements on your behalf and at your expense for their collection and carriage to such delivery point as you may designate.

5.4 Whilst we will use reasonable efforts to do so, we will not be obliged to comply with any delivery procedures of yours. You will have given authority to accept delivery on your

behalf to any person who purports to accept delivery of the goods at the delivery address. You will accept delivery at any time during your Normal Business Hours.

5.5 Part deliveries are permitted. You will not be entitled to reject a delivery or deliveries of the goods if they are within 10% of all or any of the numbers, sizes, types or finishes ordered.

5.6 We will use our reasonable efforts to dispatch or deliver the goods within any delivery period designated in the Contract or otherwise agreed by us in writing, but time for delivery will not be of the essence, and we will not be liable for any loss, expense or claim whatsoever caused by late delivery. In any event, we reserve the right to cancel all or part of the Goods or suspend or delay delivery, without liability to you, if the supply of the Goods is prevented or delayed because of any circumstances beyond our reasonable control.

5.7 We will not be liable for any shortage in the Goods as stated by us in our delivery notes, unless it is notified to us in writing within 3 Business Days of delivery, or in the case of complete non-delivery, unless it is notified to us in writing within 5 Business Days of the date of invoice.

5.8 We will not be liable for any damage to or deterioration of the goods as delivered, unless it is notified to us in writing within 3 Business Days of delivery, and you permit us and the carrier concerned or its insurers inspect and/or collect the Goods at any time during your Normal Business Hours. The risk of loss or deterioration of or damage to the Goods will be borne by you from delivery.

5.9 If you are unable or unwilling to accept delivery of the Goods in accordance with these conditions on arrival of our carrier at the delivery address during Normal Business Hours, we may retain the Goods and arrange for or provide the storage and insurance of the Goods concerned as we think fit at your expense. Where we provide such storage, we will be entitled to charge you at our then current standard rates for storage and handling. The appropriation or dispatch of any of the Goods for storage in accordance with this condition will be treated as constituting their delivery to you in accordance with the contract for all the purposes of these Terms and Conditions.

## **6. Product Specifications**

6.1 Kelda Technology makes every effort to supply the Goods as advertised but reserves the right to supply the Goods subject to minor variations in actual dimensions and specifications. Where these dimensions are critical to the application and use of the product, the Customer is advised to get them confirmed in writing or by fax or e-mail from us.

6.2 Kelda Technology has made every effort to ensure that the specifications of the Goods are displayed online or in our brochures as accurately as possible. However since presentation of colour varies with type of monitor settings and slightly from batch to batch during production, Kelda Technology cannot guarantee that the colours accurately reflect the colour of the Goods on delivery. Customers are strongly advised to ask for samples before ordering to ascertain suitability. Kelda Technology will take every care and effort to ensure that product descriptions, sizes and prices are displayed correctly at the time of entering the

relevant information onto the system. However, Kelda Technology reserves the right to refuse any orders where the information/sizes and prices are published incorrectly.

6.3 If Kelda Technology cannot supply the Goods ordered by the Customer, Kelda Technology reserves the right to offer Goods of equal or superior quality at no extra cost. In such a case, if the Customer does not wish to accept the alternative Goods offered, he or she can cancel the order and require the refund of any money paid to Kelda Technology in respect of that order, including carriage charges. This shall be the sole remedy of the Customer in these circumstances.

6.4 Each Customer bears the full responsibility for making its own determination as to the suitability of Kelda Technology's materials, products, services, recommendations or advice for its own particular purpose. Each Customer must identify and perform tests and analyses sufficient to assure it that its finished parts will be safe and suitable for use under end-use conditions. Because actual use of products by the Customer is beyond the control of Kelda Technology, such use is within the exclusive responsibility of the Customer, and Kelda Technology cannot be held responsible for any loss incurred through incorrect or faulty use of the products. Further, no statement contained herein concerning a possible or suggested use of any material, product, service or design is intended or should be construed to grant any license under any patent or other intellectual property right of Kelda Technology or any of its subsidiaries or affiliated companies, or as a recommendation for the use of such material, product, service or design in the infringement of any patent or other intellectual property right.

## **7. Supply of Services**

7.1 Kelda Technology shall supply the Services to the Customer in accordance with the Contract in all material respects.

7.2 Kelda Technology shall use all reasonable endeavours to meet any performance dates for the Services specified in the Quotation or the Customer's order, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.

7.3 Kelda Technology reserves the right to vary the Services as detailed in the Quotation or the Customer's order if necessary to comply with any applicable law or regulatory requirement, or if the variation will not materially affect the nature or quality of the Services, and Kelda Technology shall notify the Customer in such circumstances.

7.4 Kelda Technology warrants to the Customer that the Services will be provided using reasonable care and skill.

## 8. Warranties, Liability & Returns

8.1 Kelda Technology is committed to providing our customers with the highest quality Goods and Services. However, on rare occasions, products may be found to be faulty or defective. In such cases we offer the remedies described below.

8.2 We will at our option repair or replace such of the Goods as are shown to our reasonable satisfaction to contain material defects in design, materials or workmanship within two (2) years from the date of delivery of the Goods. This does not apply if you have not paid us the price for the Goods and all related charges in full, or to Goods that have not been properly installed, used and maintained under normal commercial conditions in accordance with our instructions, or have been altered or repaired or re-installed without our approval.

8.3 We will at our option re-supply any Services which are shown to our reasonable satisfaction to contain defects in workmanship and do not comply with the warranty under clause 7.4 within one (1) year from the date on which the supply of the Services is completed. This does not apply if you have not paid us in full for the Services, or to normal wear and tear, or if you have failed to comply with any of our instructions in respect of the Services supplied under the Contract.

8.4 Should we so require, we must be given every opportunity to inspect and test the Goods and/or Services concerned, if at all possible in situ as first installed, and we will need to see our applicable batch and delivery note details. If any of the Goods and/or Services concerned prove to our reasonable satisfaction not to be defective, or you give us the wrong batch or delivery note details, we will be entitled to make a reasonable charge for our efforts in establishing whether they fall within our obligations under condition 8.2 and/or 8.3 as applicable.

8.5 Except as agreed by us in writing you will not in any circumstances have the right to return any of the Goods to us or reject any of the Services following completion of them, unless they fall within our obligations under condition 8.2 and/or 8.3 and in respect of Goods, where the property in any of the Goods returned to us has passed to you, they will nevertheless remain your property and at your risk unless we have agreed otherwise in writing before their return.

8.6 Except as stated above, we will not be liable for any direct, consequential or other loss, damage or injury suffered or incurred by you, and you will indemnify us fully against any claims made by third parties, in respect of the Goods and/or Services or otherwise arising from the contract. Our liability will in any event be limited to the price paid for the Goods and/or Services concerned. Nothing contained in the Contract will, however, be treated as excluding or restricting any liability on our part for death or personal injury resulting from our negligence.

8.7 Except as stated above, and to the fullest extent permitted by law, all conditions, warranties and representations, whether express or implied, statutory or otherwise in relation to the Goods and Services (other than such as relate to title to the Goods) are excluded.

8.8 You acknowledge that our prices for the Goods and Services reflect these Terms and Conditions, and accordingly that you accept the above limitations on and exclusions of liability in exchange for those prices.

8.9 Special order products are non-refundable and non-returnable unless faulty.

## 9. Force Majeure

9.1 Kelda Technology shall not be liable to the Customer or be deemed to be in breach of the contract by reason of any delay in performing or any failure to perform any of Kelda Technology's obligations in respect of the Goods and/or Services, if the delay or failure was due to any cause beyond Kelda Technology's reasonable control (force majeure).

9.2 If we are unable to provide you with your Goods and/Services within a reasonable time due to circumstances outside our control, we shall either agree a new timescale with you for the delivery of the Goods and/or supply of the Services or either of us may decide to terminate the contract in which case we will return any prepayments that you have made in full or cancel the whole or any part of these terms and conditions of sale, without any liability to the Customer.

## 10. Errors & Omissions

10.1 Kelda Technology makes every effort to ensure that all prices and descriptions quoted in its catalogue and on its website are correct and accurate. However, mistakes will occasionally occur. In the case of a manifest error or omission, Kelda Technology will be entitled to rescind the Contract, notwithstanding that it has already accepted the Customer's order and/or received payment from the Customer. Kelda Technology's liability in that event will be limited to the return of any money the Customer has paid in respect of the order. In the case of a manifest error in relation to price, the Customer will be entitled to purchase the Goods by paying the difference between the quoted price and the correct price, as confirmed in writing by Kelda Technology after the manifest error has been discovered.

10.2 A 'manifest error', as the term is used in clause 10.1 above, means, in relation to an incorrect price, a price quoted in error by Kelda Technology which is more than 10% less than the price that would have been quoted had the mistake not been made.

## 11. Title

11.1 The Goods are at the risk of the Customer from the time of delivery.

11.2 Ownership of the Goods shall not pass to the Customer until the Company has received in full and cleared funds all sums due to it under all contracts between Kelda Technology and the Customer.

11.3 Until ownership of the Goods has passed to the Customer, the Customer must: a) hold the Goods as the Company's bailee; b) store the Goods (at no cost to the Company) separately from all other goods of the Customer or any third party so that they remain readily identifiable as the Company's property; and c) not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods.

11.4 The Customer may resell the Goods before ownership has passed to it subject to the Customer dealing as principal for the Company when making such a sale.

11.5 The Customer's right to possession of the Goods shall terminate immediately if the Customer encumbers or in any way charges any of the Goods; has a bankruptcy order made against him; makes any arrangement with his creditors for the relief of insolvent debtors; or enters into liquidation, administration or suffers any similar insolvency event.

11.6 The Customer grants the Company, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Customer's right to possession has terminated, to recover them.

## **12. General Terms of Business**

12.1 If any provision in these Terms and Conditions is held to be invalid or unenforceable by any court, tribunal or administrative body, it shall be deemed severed from the Terms and Conditions and this shall not affect the validity or enforceability of the remaining provisions.

12.2 Any waiver of a breach of these Terms and Conditions must be in writing.

12.3 Any variation of these Terms and Conditions must be in writing and signed by a duly authorised Kelda Technology official.

12.4 The headings are for convenience only and shall not affect the interpretation of these Terms and Conditions.

12.5 You must not transfer any Contract made with us under these Terms and Conditions, as it is personal to you, without written authority from us. This authority will not be refused without good reason.

12.6 No third party shall be allowed to enforce any rights under this Contract. The parties hereby exclude the application of the Contracts (rights of Third Parties) Act 1999 to each and every contract made under these Terms and Conditions.

12.7 Kelda Technology's failure to insist upon strict performance of any provision of these Terms and Conditions shall not be deemed a waiver of its rights or remedies in respect of any present or future default of the Customer in performance or compliance with any of these Terms and Conditions.

12.8 Any notice required or permitted to be given by either party to the other under these Terms and Conditions shall be in writing addressed to the 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 notice. Notice shall be delivered personally or sent by first class prepaid recorded delivery or by registered post (airmail if overseas) or by facsimile transmission and shall be deemed to be given in the case of delivery personally on delivery and in the case of posting (in the absence of evidence of earlier receipt) 48 hours after posting (six days if sent by airmail) and in the case of facsimile transmission on completion of the transmission provided that the sender shall have received printed confirmation of transmission.

12.9 If any provision of these Terms and Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Terms and Conditions and the remainder of the provisions in question shall not be affected.

### **13. Trade Marks and Data Protection**

13.1 Our trade mark KELDA TECHNOLOGY is registered in the United Kingdom and throughout Europe. You will not use our trade mark, or any of the range or product names or images of our products, in any advertising or promotional material that has not been approved by us in writing beforehand, at our reasonable discretion. You will not use our trade mark, or any of the range or product names or images of our products, directly or indirectly on or in relation to any products of others, or as part of your company name, or any of your trading styles, storefronts or domain names, or anywhere in your website content, or on your delivery vehicles, and will ensure that none of your customers, or others with whom you are connected in the course of business, do so in relation to theirs.

13.2 You will not use any other trade marks, range or product names or trading styles directly or indirectly on or in relation to our products. So as to maintain the integrity of our trade mark, and range and product names, and in addition to any other remedies, we reserve the right to discontinue, suspend, withhold or cancel the supply of all or any of our products to you at any time without prior notice, should we have reason to believe, at our entire discretion, that you are in breach of this condition.

13.3 Kelda Technology shall at all times comply with any and all applicable data protection legislation in force in England from time to time in respect of the processing of any personal data.