

Gemtex Heating Solutions Ltd



Credit Application for a Business Account

BUSINESS AND CONTACT INFORMATION

Company name		VAT No.	Company No.
Main company Invoice Address		Registered address if different	
Post Code		Post Code	
Contact Name		Contact No.	
Position		Email	
<input type="checkbox"/> Corporation	<input type="checkbox"/> Partnership	<input type="checkbox"/> Limited	<input type="checkbox"/> Sole proprietorship
<input type="checkbox"/> Other _____			

ACCOUNT AND CREDIT INFORMATION

Accounts contact		Bank name:	
Contact no.		Sort Code	
Email		Account number	
Credit Limit Required	£	Name on account	

BUSINESS/TRADE REFERENCES

Company Name	1)	2)	3)
Address			
Post Code			
Contact name			
Contact Number			
Email			

AGREEMENT

I/We the undersigned apply to Gemtex Heating Solutions Limited for credit facilities and declare that the information given above is accurate. I/We agree to trade on Gemtex Heating Solutions Limited's Terms and Conditions of Sale or Service as are applicable at the date of the transaction and confirm that I/We have read the Terms and Conditions of Sale contained in this form. Gemtex Heating Solutions Limited reserves the right to terminate this Agreement for credit immediately without notice upon a breach by the customer of any Terms and Conditions and all amounts then outstanding will become due. Thereafter interest will be charged daily until the account is paid in full.

SIGNATURES

Signature		Signature	
Name and Title		Name and Title	
Date		Date	

Gemtex, Unit 3The Glenmore Centre, Fancy Road, Poole, BH12 4FB

Registered office: Suite 7, Wessex House, St Leonard's Rd, Bournemouth BH8 8QS

Company number: 10617497 | VAT number: 273 9996 33

These terms and conditions apply where the Customer is a business, non-business Customers should refer to the Terms and Conditions of Sale to Consumers (see clause 2.4).

1 Definition and Interpretation

The following definitions and rules of interpretation apply in this agreement.

1.1 Definitions:

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

Conditions: these terms and conditions as amended from time to time in accordance with clause 14.8;

Contract: the contract between Gemtex and the Customer for the supply of Goods and/or Services in accordance with these Conditions;

Customer: the person or firm who purchases the Goods and/or Services from Gemtex;

Delivery Location: has the meaning given in clause 4.2;

Force Majeure Event: has the meaning given to it in clause 13;

Gemtex: Gemtex Heating Solutions Limited registered in England and Wales with company number 101617497;

Gemtex Equipment: has the meaning given in clause 8.2.8;

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

Goods Specification: any specification for the Goods that is agreed by the Customer and Gemtex;

Installation Premises: the premises at which some or all of the Services are to be performed where the boiler and/or any associated equipment or controls are located or proposed to be located;

Manufacturer's Warranty: a warranty or guarantee provided by the manufacturer for the benefit of users or purchasers of the Goods;

Order: The Customer's order for the supply of Goods and/or Services, as set out in the Customer's purchase order form, or the Customer's written acceptance of Gemtex's quotation, or overleaf, as the case may be;

Services: the services supplied by Gemtex to the Customer;

Service Specification: the description or specification for the Services provided by Gemtex to the Customer;

Terms and Conditions of Sale to Consumers: terms and conditions applicable where the Customer is an individual or is buying Goods or Services wholly or mainly for personal use (not for use in the connection with the Customer's trade, business, craft or profession), a copy of which is available on request from Gemtex or at www.gemtex.co.uk.

1.2 Interpretation:

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

A reference to a **party** includes its successors and permitted assigns.

A reference to a **statute** or **statutory** provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.

Any words following the terms **including**, **include**, **in particular**, **for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

A reference to **writing** or **written** includes fax, email and text.

2 Basis of contract

2.1 The Order constitutes an offer by the Customer to purchase Goods and/or Services in accordance with these Conditions.

2.2 The Order shall only be deemed to be accepted when Gemtex issues written acceptance of the Order or (if earlier) delivers the goods, at which point and on which date the Contract shall come into existence.

2.3 Any samples, drawings, descriptive matter or advertising issued by Gemtex and any [descriptions of the Goods or] illustrations or descriptions of the Services contained in Gemtex' catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Services and/or Goods described in them. They shall not form part of the Contract or have any contractual force.

2.4 These Conditions apply where the Customer is a business. If the Customer is an individual or is buying Goods or Services wholly or mainly for personal use (not for use in the connection with the Customer's trade, business, craft or profession), then the Terms and Conditions of Sale to Consumers apply to the Contract to the exclusion of these Conditions.

2.5 Subject to clause 2.4, 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.

2.6 Any quotation given by Gemtex shall not constitute an offer and is only valid for a period of 30 days from its date of issue.

2.7 All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.

Terms and conditions of sale (business customers)

3 Goods

- 3.1 The Goods are described in Gemtex' catalogue as modified by any applicable Goods Specification or the Goods Specification.
- 3.2 Gemtex reserves the right to amend the specification of the Goods if required by any applicable statutory or regulatory requirement, and/or where the changes do not result in any reduction in to the standard, quality or performance of the Goods.

4 Delivery of Goods

- 4.1 Gemtex shall ensure that each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, any relevant Customer and Supplier reference numbers, the type and quantity of the Goods including the code number of the Goods (where applicable), special storage instructions (if any) and, if the Order is being delivered by instalments, the outstanding balance of Goods remaining to be delivered.
- 4.2 Gemtex shall deliver the Goods to the location set out in the Order or such other location as the parties may agree (**Delivery Location**) at any time after Gemtex notifies the Customer that the Goods are ready.
- 4.3 Delivery of the Goods shall be completed on the completion of unloading of the Goods.
- 4.4 Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. Gemtex 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 Gemtex with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.5 Gemtex may refuse to deliver Goods where it reasonably believes the Customer is in breach of clause 8.1 or it would be unlawful to deliver the Goods.
- 4.6 If Gemtex 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. Gemtex shall have no liability for any failure to deliver the Goods to the extent that such failure is attributable to the exercise of Gemtex rights under clause 4.5 or is caused by a Force Majeure Event or the Customer's failure to provide Gemtex with adequate delivery instructions for the Goods or any relevant instruction related to the supply of the Goods.
- 4.7 If the Customer fails to accept delivery of the Goods within three Business Days of Gemtex notifying the Customer that the Goods are ready, then except where such failure or delay is caused by a Force Majeure Event or by Gemtex' failure to comply with its obligations under the Contract in respect of the Goods:
 - 4.7.1 delivery of the Goods shall be deemed to have been completed at 9.00 am on the [third] Business Day following the day on which Gemtex notified the Customer that the Goods were ready; and
 - 4.7.2 Gemtex shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- 4.8 If ten Business Days after Gemtex notified the Customer that the Goods were ready for delivery the Customer has not accepted delivery of them, Gemtex may resell or otherwise dispose of part or all of the Goods.
- 4.9 Gemtex may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.
- 4.10 Delivery of goods will be made to the entrance of the address where the delivery has been agreed and unless otherwise agreed.
- 4.11 The customer shall inspect the goods on delivery and shall within 48 hours or receipt, notify Gemtex in writing of any errors in quantity or other failure to comply with the quotation and / or acknowledgement given. If the customer fails to comply with these provisions, the goods shall be conclusively presumed to be supplied in accordance with the contract and the customer shall be deemed to have accepted the goods.
- 4.12 Subject to Clause 4.11 Gemtex shall make good any shortage in the goods or where applicable replacement of the goods, as soon as reasonably practicable, but otherwise shall be under no liability whatsoever or howsoever arising from such errors in delivery.

5 Quality of Goods and returns

- 5.1 Gemtex warrants that on delivery the Goods shall:
 - 5.1.1 conform in all material respects with their description and any applicable Goods Specification;
 - 5.1.2 be free from material defects in design, material and workmanship;

Terms and conditions of sale (business customers)

- 5.1.3 be fit for any purpose held out by Gemtex.
- 5.2 Subject to clause 5.3, If any defect caused by faulty design, manufacture, materials or workmanship is discovered Gemtex shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full if:
 - 5.2.1 the Customer gives notice in writing within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 5.1;
 - 5.2.2 Gemtex is given a reasonable opportunity of examining such Goods; and
 - 5.2.3 the Customer (unless Gemtex agrees otherwise) returns such Goods to Gemtex's place of business at its own expense.
- 5.3 Gemtex shall not be liable for the Goods' failure to comply with the warranty in clause 5.1 if:
 - 5.3.1 the Customer makes any further use of such Goods after giving a notice in accordance with clause 5.2;
 - 5.3.2 the defect arises because the Customer failed to follow Gemtex's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice;
 - 5.3.3 the defect arises as a result of Gemtex following any drawing, design or Goods Specification supplied by the Customer;
 - 5.3.4 the Customer alters or repairs such Goods without the written consent of Gemtex;
 - 5.3.5 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; or
 - 5.3.6 the Goods differ from their description or the Goods Specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards.
- 5.4 Except as provided in this clause 5, Gemtex shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.1.
- 5.5 Certain Goods have the benefit of a Manufacturer's Warranty, accordingly if the Goods are defective or a fault develops the Customer may be eligible for repair or replacement under the terms of the Manufacturer's Warranty. The Customer should refer to the terms of the Manufacturer's Warranty as to eligibility and how to make a claim against the manufacturer.
- 5.6 The terms of these Conditions shall apply to any repaired or replacement Goods supplied by Gemtex.
- 5.7 Unless returning any item under clause 5.1, then the customer must refer to the Gemtex returns policy which is available on request or can be found at www.gemtex.co.uk.

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 Gemtex receives payment in full (in cash or cleared funds) for the Goods and any other goods that Gemtex 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 clause 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 Gemtex' 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 on Gemtex' behalf from the date of delivery;
 - 6.3.4 notify Gemtex immediately if it becomes subject to any of the events listed in clause 11.1.1 or 11.1.2; and
 - 6.3.5 give Gemtex such information relating to the Goods as Gemtex may require from time to time.

Terms and conditions of sale (business customers)

- 6.4 Subject to clause 6.5, the Customer may resell or use the Goods in the ordinary course of its business (but not otherwise) before Gemtex 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 Gemtex's agent; and
 - 6.4.2 title to the Goods shall pass from Gemtex 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 clause 11.1.1 or clause 11.1.2 then, without limiting any other right or remedy Gemtex may have:
- 6.5.1 the Customer's right to resell Goods or use them in the ordinary course of its business ceases immediately; and
 - 6.5.2 Gemtex 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 Supply of Services

- 7.1 Gemtex shall supply the Services to the Customer in accordance with the Service Specification in all material respects.
- 7.2 Gemtex shall use all reasonable endeavours to meet any performance dates for the Services specified in the Order or which are otherwise agreed, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 7.3 Gemtex reserves the right to amend the Service Specification if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and Gemtex shall notify the Customer in any such event.
- 7.4 Gemtex warrants to the Customer that the Services will be provided using reasonable care and skill.
- 7.5 Gemtex shall not be obliged to connect any appliance to any gas supply which is unsafe.
- 7.6 The Customer acknowledges that in carrying out the Services some cosmetic damage may be caused at the Installation Premises (for example, paint work, plaster, wall and floor covering) and that Gemtex will not be responsible for repairing such damage.
- 7.7 Unless stated in the Order or otherwise agreed in writing, Gemtex will not be responsible for boxing in new or existing pipework.
- 7.8 Unless stated in the Order, Gemtex will not be obliged to:
 - 7.8.1 carry out the Services where any dangerous materials (such as asbestos) are present at the Installation Premises and carrying out the Services would create a risk to health or safety;
 - 7.8.2 remove any dangerous materials located at the Installation Premise

8 Customer's obligations

- 8.1 Where Gemtex is supplying Goods to the Customer, which Gemtex is not installing or fitting, the Customer warrants and represents that it is a Gas Safe registered engineer or that the person taking delivery of the of the Goods on behalf of the Customer is a Gas Safe registered engineer and that the Goods will be installed or fitted by a Gas Safe registered engineer.
- 8.2 The Customer shall:
 - 8.2.1 ensure that the terms of the Order are complete and accurate;
 - 8.2.2 co-operate with Gemtex in all matters relating to the Services;
 - 8.2.3 provide Gemtex, its employees, agents, consultants and subcontractors, with:
 - 8.2.3.1 access to the Installation Premises;
 - 8.2.3.2 gas, electricity and water supplies at the location within the Installation Premises and which in each case are safe;
 - 8.2.3.3 and other facilities as reasonably required by Gemtex to provide the Services;

Terms and conditions of sale (business customers)

- 8.2.4 provide Gemtex with such information as Gemtex may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
 - 8.2.5 prepare the Installation Premises for the supply of the Services;
 - 8.2.6 obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start (including any listed building consents, if applicable);
 - 8.2.7 comply with all applicable laws, including health and safety laws;
 - 8.2.8 keep all tools and equipment and other property of Gemtex (**Gemtex Equipment**) at the Installation Premises in safe custody at its own risk, and not dispose of or use Gemtex Equipment other than in accordance with Gemtex' written instructions or authorisation.
- 8.3 If Gemtex's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):
- 8.3.1 without limiting or affecting any other right or remedy available to it, Gemtex shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays Gemtex' performance of any of its obligations;
 - 8.3.2 Gemtex shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from Gemtex' failure or delay to perform any of its obligations as set out in this clause 8.3; and
 - 8.3.3 the Customer shall reimburse Gemtex on written demand for any costs or losses sustained or incurred by Gemtex arising directly or indirectly from the Customer Default.

9 Charges and payment

- 9.1 The price for Goods:
- 9.1.1 shall be the price set out in the Quote or Order acknowledgement; and
 - 9.1.2 unless specified, shall be inclusive of all costs and charges of packaging, and transport of the Goods within the United Kingdom.
- 9.2 The charges for Services shall be calculated on a time and materials basis:
- 9.2.1 the charges shall be calculated in accordance with Gemtex' hourly fee rates, as set out in the Order, but otherwise in its current price list at the date of the Contract;
 - 9.2.2 Gemtex' standard fee rates for each individual person are calculated on the basis of time spent between 0800 and 17:00 worked on Business Days;
 - 9.2.3 Gemtex shall be entitled to charge an overtime rate on a pro-rata basis for time worked by individuals whom it engages on the Services outside the hours referred to in clause 9.2.2; and
 - 9.2.4 Gemtex shall be entitled to charge the Customer for the cost of any materials associated with the Services.
- 9.3 Gemtex reserves the right to:
- 9.3.1 increase the price of the Goods, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Goods to Gemtex that is due to:
 - 9.3.1.1 any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Goods Specification; or
 - 9.3.1.2 any delay caused by any instructions of the Customer in respect of the Goods or failure of the Customer to give Gemtex adequate or accurate information or instructions in respect of the Goods.
- 9.4 In respect of Goods, Gemtex shall invoice the Customer on or at any time after completion of delivery. In respect of Services, Gemtex shall invoice the Customer on completion of the Services.
- 9.5 The Customer shall pay each invoice submitted by Gemtex:
- 9.5.1 By the due date as specified within the invoice; and

Terms and conditions of sale (business customers)

9.5.2 in full and in cleared funds to a bank account nominated in writing by Gemtex, and time for payment shall be of the essence of the Contract.

9.6 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (VAT). Where any taxable supply for VAT purposes is made under the Contract by Gemtex to the Customer, the Customer shall, on receipt of a valid VAT invoice from Gemtex, pay to Gemtex such additional amounts in respect of VAT as are chargeable on the supply of the Services or Goods at the same time as payment is due for the supply of the Services or Goods.

9.7 If the Customer fails to make a payment due to Gemtex under the Contract by the due date, then, without limiting Gemtex's remedies under clause 11 (Termination), the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 9.7 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.

9.8 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

10 Limitation of liability: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.

10.1 Nothing in these Conditions shall limit or exclude Gemtex' liability for:

10.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;

10.1.2 fraud or fraudulent misrepresentation;

10.1.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);

10.1.4 breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession); or

10.1.5 defective products under the Consumer Protection Act 1987.

10.2 Subject to clause 10.1, Gemtex shall not be liable to the Customer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract for:

10.2.1 loss of profits;

10.2.2 loss of sales or business;

10.2.3 loss of agreements or contracts;

10.2.4 loss of anticipated savings;

10.2.5 loss of use or corruption of software, data or information;

10.2.6 loss of or damage to goodwill; and

10.2.7 any indirect or consequential loss.

10.3 Subject to clause 10.1, Gemtex' total liability to the Customer, whether in contract, tort (including negligence), breach of statutory duty or otherwise, arising under or in connection with the Contract, shall be limited to £1500

10.4 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

10.5 This clause 10 shall survive termination of the Contract.

11 Termination

11.1 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:

11.1.1 the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business;

11.1.2 the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business.

Terms and conditions of sale (business customers)

- 11.2 Without affecting any other right or remedy available to it, Gemtex may terminate the Contract with immediate effect by giving written notice to the Customer if:
- 11.2.1 it would be unsafe or unlawful to Supply the Goods or Services
- 11.3 the Customer fails to pay any amount due under the Contract on the due date for payment. Without affecting any other right or remedy available to it, Gemtex may suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Customer and Gemtex if the Customer fails to pay any amount due under the Contract on the due date for payment, the Customer becomes subject to any of the events listed in clause 11.1.1 or clause 11.1.2 or Gemtex reasonably believes that the Customer is about to become subject to any of them.

12 Consequences of termination

- 12.1 On termination of the Contract:
- 12.1.1 the Customer shall immediately pay to Gemtex all of Gemtex' outstanding unpaid invoices and interest and, in respect of Services and Goods supplied but for which no invoice has been submitted, Gemtex shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- 12.1.2 the Customer shall return all of Gemtex Equipment or Goods which have not been fully paid for. If the Customer fails to do so, then Gemtex may enter the Customer's premises or where applicable the Installation Premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract.
- 12.2 Termination of the Contract shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.
- 12.3 Any provision of the Contract that expressly or by implication is intended to have effect after termination shall continue in full force and effect.

13 Force majeure

- 13.1 Neither party shall be in breach of the Contract nor liable for delay in performing or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control.

14 General

- 14.1 Assignment and other dealings
- 14.1.1 Gemtex may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.
- 14.1.2 The Customer shall not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of Gemtex.
- 14.2 **Notices.**
- 14.2.1 Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or by email, in the case of the Customer to the to the address specified in the Order and in the case of Gemtex to: Unit 3 The Glenmore Centre, Fancy Road, Poole, BH12 4FB
- 14.2.2 Any notice or other communication shall be deemed to have been received: if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service; or, if sent by email, at 9.00 am on the next Business Day after transmission.
- 14.2.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.
- 14.3 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
- 14.4 **Waiver.** A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law

Terms and conditions of sale (business customers)

shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

- 14.5 **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.
- 14.6 **Entire agreement.**
- 14.6.1 The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 14.6.2 Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in the Contract.
- 14.6.3 Nothing in this clause shall limit or exclude any liability for fraud.
- 14.7 **Third party rights.** The Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- 14.8 **Variation.** Except as set out in these Conditions, no variation of the Contract shall be effective unless it is agreed in writing and signed by the parties (or their authorised representatives).
- 14.9 **Governing law.** The Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.
- 14.10 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.