

BAPTISTRY UK - TERMS AND CONDITIONS

1. INTERPRETATION

1.1 Definitions. In these Conditions, the following definitions apply:

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.

Contract: the contract between the Supplier 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 the Supplier.

Delivery Address: the address at which delivery is to be made.

Force Majeure Event: has the meaning given in clause 11.

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

Initial Instalment: the initial instalment of the total price of the Goods that is set out in the Order (or acceptance of the Order) and which the Customer must pay upon or prior to acceptance of the Order by the Supplier.

Installation Location: the location at which the Goods will be installed.

Order: the Customer's order for the Goods.

Specification: any specification for the Goods, including any related plans and drawings, which shall be the Supplier's standard specification unless otherwise agreed in writing by the Customer and the Supplier.

Supplier: AQB Pools Limited, trading as "Baptistry UK" (registered in England at 89 Bradford Road, Shipley, Bradford, BD18 3BX with company number 6906071).

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 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.

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 (which shall be on the Supplier's standard purchase order form, unless the Supplier chooses, in its discretion to accept a purchase order on the Customer's standard purchase order form, which the Supplier shall only do on the express understanding that these Conditions apply to the Contract) 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 are complete and accurate.
- 2.3 The Order shall only be deemed to be accepted when the Supplier has issued a written acceptance of the Order and the Customer has paid the Initial Instalment in full, cleared funds to the Supplier, and the Specification (if different to the Supplier's standard Specification) for the Goods referred to in the Order has been agreed, at which point the Contract shall come into existence.
- 2.4 The Order, the written acceptance of the Order ("**Order Acceptance**"), the Specification, and these Conditions 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 the Supplier which is not set out in the Contract. In the event of any conflict, the following order of priority shall apply:
- 2.4.1 Order Acceptance;
 - 2.4.2 Order;
 - 2.4.3 Specification;
 - 2.4.4 these Conditions.
- 2.5 Any samples, drawings, descriptive matter, or advertising produced by the Supplier 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.
- 2.6 A quotation for the Goods given by the Supplier shall not constitute an offer. A quotation shall only be valid for a period of 20 Business Days from its date of issue.
- 2.7 The Supplier is not obliged to visit the Installation Location (a "**Site Visit**"), but the parties may agree separately that the Supplier shall do so, subject to agreement of the Supplier's charges for the Site Visit, which shall be payable in advance of the Site Visit. If the parties enter into a Contract for the supply of Goods as a result of, and within [3] months of the Site Visit, the Supplier shall credit up to £200 of the payment received by the Customer for the Site Visit against the final invoice to be issued by it in respect of the sale of the Goods.

3. GOODS

- 3.1 The Goods are described in the Supplier's Order Acceptance (which may refer back to the Order) and 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 be entirely responsible for such Specification (which must be supplied in sufficient detail (in the Supplier's reasonable opinion) and in AutoCAD), and shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses suffered or incurred by the Supplier in connection with any claim made against the Supplier for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Supplier's use of the Specification. This clause 3.2 shall survive termination of the Contract.
- 3.3 The Supplier reserves the right to amend the Specification of the Goods if required by any applicable statutory or regulatory requirements.
- 3.4 As wooden moulds are used during the manufacturing process, the Goods may have some small moulding lines. These are normal and are not a defect in the Goods.
- 3.5 The Customer shall notify the Supplier of the required colour of the Goods, by reference to the RAL colour chart (www.ralcolor.com), in the Order or otherwise prior to Order Acceptance. If no such notification is received, the Goods shall be supplied in the Supplier's default colour of pale blue. The Customer acknowledges and agrees that some colours may increase order lead times. The Supplier will promptly notify the Customer if and to the extent that any choice of colour by it may affect delivery times. "Special" finishes may be subject to further charges. To the extent that the Specification includes the use of wood, the Customer acknowledges that wood may swell and twist. As such, and by way of example, lids may be out of level by up to 3mm. The Supplier will work to a tolerance of \pm 3mm if the Goods include lids, but shall not be liable if the lids need re-planing or re-levelling upon installation (provided that the lids meet the Specifications on delivery).
- 3.6 All intellectual property rights in the Goods and the Specification remain with the Supplier at all times and no such rights shall pass or be deemed to pass to the Customer at any time (notwithstanding any payment for the Goods).

4. HANDLING THE GOODS

- 4.1 The Customer is entirely responsible for ensuring suitable access for delivery of the Goods at the Delivery Address (unless delivery occurs at the Supplier's premises), and for ensuring suitable lifting resources are available to accept delivery and to install the Goods. The Supplier is not responsible for installing or fitting the Goods.
- 4.2 The Customer is responsible for ensuring that the building, church or other environment in which the Goods are to be installed are appropriate and suitable. The Goods do require some (lateral) support, and the Customer is responsible for ensuring such support is put in place on installation.

4.3 The Goods cannot support the weight of any surrounding flooring and the Supplier shall not be liable for any damage to the Goods where the Goods have taken the weight of any (or any part of) the surrounding flooring.

4.4 Steps on any of the Goods (e.g. the Elim tank) must be supported, and the Customer is entirely responsible for procuring adequate support. The Goods must not be suspended when in use (or at all), whether from the flange or otherwise. Lids must be held in place by the surrounding floor.

5. DELIVERY

5.1 If agreed, either at the time of entering into the Contract or subsequently, or if the parties have not agreed the Delivery Address or the form of delivery, the Customer shall collect the Goods from the Supplier's premises within 10 Business Days of the Supplier notifying the Customer that the Goods are ready for collection. In these circumstances, delivery of the Goods shall be deemed completed immediately prior to loading of the Goods (by the Customer or by an agent on its behalf) onto a carrier's vehicle at the Supplier's premises.

5.2 Alternatively, if agreed between the parties, and subject to the Customer agreeing to pay (and paying) the costs of delivery prior to such delivery being effected, the Supplier (or a third party carrier on its behalf) shall deliver the Goods to a Delivery Address agreed between the parties. In these circumstances, delivery is completed immediately prior to off-loading of the Goods at the Delivery Address. The Customer acknowledges that they need to provide manpower (in such numbers as may be notified to them by the Supplier or its carrier) to assist with off-loading at the Delivery Address. The Customer acknowledges further that the charges applicable to such delivery services may only be finalised at the time of delivery, are beyond the control of the Supplier, and may change without notice.

5.3 Any dates quoted for delivery are approximate only, which shall be estimated in good faith as from the date the Contract is formed, and the time of delivery is not of the essence. The Supplier 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 the Supplier with adequate instructions that are relevant to the supply of the Goods.

5.4 The Customer shall check the quantity and condition of Goods upon receipt. Any claim for shortage or for damage to the Goods must be notified to the Supplier on the Delivery Sign-Off sheet that will accompany the Goods on delivery. The Delivery Sign-Off sheet must be returned to the Supplier's carrier (or the Supplier if the Delivery Address is the Supplier's premises). Completion and return to the Supplier (via its carrier) of the Delivery Sign Off sheet, without notification on it of any damage or shortages in respect of the Goods, constitutes the Customer's confirmation that the Goods are in compliance with the requirements of the Contract as at delivery.

5.5 If the Customer fails to take delivery of the Goods within 30 Business Days of the Supplier notifying the Customer that the Goods are ready, then, except where such failure or delay is caused by a Force Majeure Event or the Supplier's failure to comply with its obligations under the Contract, the Supplier may dispose of the Goods in its absolute discretion and retain any proceeds from such disposal.

6. QUALITY

- 6.1 The Supplier warrants that on delivery, the Goods shall:
- 6.1.1 conform in all material respects with their description and any applicable Specification; and
 - 6.1.2 be free from material defects in design, material and workmanship.
- 6.2 The Supplier warrants further that on delivery, and for a period of 24 months from the date of delivery (**warranty period**), the pool and lid on the Goods (but not any brassware or fittings, such as lights) shall:
- 6.2.1 conform in all material respects with their description and any applicable Specification; and
 - 6.2.2 be free from material defects in design, material and workmanship.
- 6.3 Fittings on the Goods may be the subject of a separate warranty from a third party manufacturer, which the Supplier may pass on to the Customer to the extent that it is reasonably able to do so. As lights are supplied but not fitted or sealed by the Supplier, the quality of the seal is an installation issue.
- 6.4 Subject to clause 6.6, if:
- 6.4.1 the Customer gives notice in writing to the Supplier during the warranty period and within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 6.1 and 6.2;
 - 6.4.2 the Supplier is given a reasonable opportunity of examining such Goods, as a result of which the Supplier concludes (acting reasonably) that the Goods do not comply with the warranty in clause 6.2,
- the Supplier shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full. If the Supplier chooses to repair the Goods, the repair may be undertaken in situ and the Customer will grant (or procure the grant to the Supplier of) sufficient rights of access to enable it to undertake such repairs.
- 6.5 If the Supplier believes (acting reasonably) that the Goods do not comply with the warranties in clauses 6.1 or 6.2 for any of the reasons set out in clause 6.6, the Supplier shall be entitled to charge for, and the Customer shall pay for, a Site Visit for the Supplier to inspect the Goods. Payments shall be made in advance of the Site Visit. If following the Site Visit, the Supplier determines (acting reasonably) that the Goods do not comply with the warranties in clauses 6.1 or 6.2, for any reason other than those set out in clause 6.6, it shall promptly reimburse its charges for the Site Visit to the Customer.
- 6.6 The Supplier shall not be liable for any failure of the Goods to comply with the warranties set out in clauses 6.1 or 6.2 where:

- 6.6.1 the Customer makes any further use of such Goods after giving notice in accordance with clause 6.4;
 - 6.6.2 the defect arises because the Customer (or any third party including any installer on the Customer's behalf) failed to follow the Supplier's oral or written instructions as to the storage, commissioning, installation, use or maintenance of the Goods or those of the third party installer of the Goods (provided that any such instructions are not in conflict with the Supplier's instructions or good trade practice) or (if there are none) good trade practice regarding the same;
 - 6.6.3 the defect arises as a result of the Supplier following any Specification supplied by the Customer;
 - 6.6.4 the Customer alters or repairs such Goods without the written consent of the Supplier;
 - 6.6.5 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions.
- 6.7 Except as provided in this clause 6, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranties set out in clauses 6.1 or 6.2.
- 6.8 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.
- 6.9 These Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.

7. TITLE AND RISK

- 7.1 The risk in the Goods shall pass to the Customer on completion of delivery at the applicable Delivery Address.
- 7.2 Title to the Goods shall not pass to the Customer, until the Supplier receives payment in full (in cash or cleared funds) for the Goods.
- 7.3 If, before title to the Goods passes to the Customer, the Customer becomes subject to any of the events listed in clause 9.2, then, without limiting any other right or remedy the Supplier may have, the Supplier may at any time:
- 7.3.1 require the Customer to deliver up all Goods in its possession which have not been irrevocably incorporated into another product; and
 - 7.3.2 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.

8. PRICE AND PAYMENT

- 8.1 The price of the Goods shall be the price set out in either the Supplier's Order Acceptance or (if no price is set out therein) in the Order.

- 8.2 The Supplier 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:
- 8.2.1 any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Specification; or
 - 8.2.2 any delay caused by any instructions of the Customer or failure of the Customer to give the Supplier adequate or accurate information (including without limitation in respect of the Specification) or instructions.
- 8.3 The price of the Goods is exclusive of amounts in respect of value added tax (**VAT**). The Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Goods.
- 8.4 The Supplier may invoice the Customer for the outstanding balance of the price of the Goods on or at any time prior to delivery. The Customer shall pay the outstanding balance of the price of the Goods in full, cleared funds prior to delivery, or in such further instalments as are set out in the Order or Order Acceptance. For the avoidance of any doubt, the Supplier shall not be obliged to effect delivery of the Goods prior to receiving full payment for the Goods.
- 8.5 If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment, then the Supplier shall not be obliged to deliver the Goods to the Customer until full payment has been made, and the Customer shall pay interest on the overdue amount at the rate of 5% per annum above HSBC Bank Plc's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
- 8.6 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).

9. TERMINATION AND SUSPENSION

- 9.1 If the Customer becomes subject to any of the events listed in clause 9.2, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer.
- 9.2 For the purposes of clause 9.1, the relevant events are:
- 9.2.1 the Customer suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) 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;

- 9.2.2 the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;
 - 9.2.3 (being a company) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Customer, other than for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;
 - 9.2.4 (being a company) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Customer;
 - 9.2.5 (being a company) the holder of a qualifying floating charge over the Customer's assets has become entitled to appoint or has appointed an administrative receiver;
 - 9.2.6 a person becomes entitled to appoint a receiver over the Customer's assets or a receiver is appointed over the Customer's assets;
 - 9.2.7 (being an individual) the Customer is the subject of a bankruptcy petition or order;
 - 9.2.8 a creditor or encumbrancer of the Customer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
 - 9.2.9 any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 9.2.1 to clause 9.2.8 (inclusive);
 - 9.2.10 the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business.
- 9.3 Without limiting its other rights or remedies, the Supplier may suspend provision of the Goods under the Contract or any other contract between the Customer and the Supplier if the Customer becomes subject to any of the events listed in clause 9.2.1 to clause 9.2.10, or the Supplier 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.
- 9.4 On termination of the Contract for any reason the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest.
- 9.5 Termination of the Contract, however arising, shall not affect any of the parties' rights, remedies, obligations and liabilities that have accrued as at termination.
- 9.6 Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

10. LIMITATION OF LIABILITY

10.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:

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

10.1.2 fraud or fraudulent misrepresentation;

10.1.3 defective products under the Consumer Protection Act 1987; or

10.1.4 any matter in respect of which it would be unlawful for the Supplier to exclude or restrict liability.

10.2 Subject to clause 10.1:

10.2.1 the Supplier 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

10.2.2 the Supplier's 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 payable by the Customer pursuant to the Contract.

10.3 The Customer acknowledges that wet environments are inherently slippery. Whilst the Goods do feature a finely textured, heavy matt finish in an effort to increase friction and reduce the risk of slips, the Supplier does not warrant or guarantee that the Goods are "non-slip".

11. FORCE MAJEURE

Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event. A **Force Majeure Event** means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable.

12. EXPORT SALES

12.1 The provisions of this clause 12 apply only where the Supplier supplies Goods for export from the United Kingdom.

12.2 The Customer is responsible, at its own cost, for complying with any legislation or regulations relating to the importation of the Goods and obtaining such import licences and other consents in relation to the Goods as are required from time to time and, if required by the Supplier, the Customer will make those licences and consents available to the Supplier prior to the relevant shipment.

12.3 If the Customer is required under any applicable law to withhold or deduct any amount from the payments due to the Supplier, the Customer will increase the sum it pays to the Supplier

by the amount necessary to leave the Supplier with an amount equal to the sum it would have received if no such withholdings or deductions had been made.

- 12.4 Section 26(3) of the Unfair Contract Terms Act 1977 shall apply and the Supplier's liability for death or injury arising directly or indirectly from the sale of the Goods where the Customer's main place of business or habitual residence is outside of the United Kingdom shall be excluded to the fullest extent permitted by law. For the avoidance of doubt, the Supplier will be under no obligation to give notice to the Customer under section 32(3) of the Sale of Goods Act 1979.

13. GENERAL

13.1 Assignment and other dealings.

13.1.1 The Supplier may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

13.2 Notices.

13.2.1 Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service, commercial courier, fax or e-mail (in the case of the Supplier, to office@baptistryuk.co.uk).

13.2.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 13.2.1; 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; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or e-mail, one Business Day after transmission.

13.2.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

13.3 Severance.

13.3.1 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.

13.3.2 If any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended,

it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

- 13.4 **Waiver.** A waiver of any right or remedy under the Contract or law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 13.5 **Third party rights.** A person who is not a party to the Contract shall not have any rights to enforce its terms.
- 13.6 **Variation.** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is in writing and signed by the Supplier.
- 13.7 **Governing law.** The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the law of England and Wales.
- 13.8 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).