

## Hy-Tek Homecare Limited – Terms & Conditions of Trade

### 1. Definitions

- 1.1 Hy-Tek Homecare Ltd, its successors and assignees or any person acting on behalf of and with the authority of Hy-Tek Homecare Ltd.
- 1.2 "Customer" shall mean the person or entity described as such on the invoices, application for credit, quotation, work authorisation or any other forms to which these terms and conditions apply, and shall mean any person acting on behalf of and with the authority of such person or entity.
- 1.3 "Guarantor" means that person (or persons), or entity, who agrees to be liable for the debts of the Customer on a principal debtor basis.
- 1.4 "Goods" shall mean Goods supplied by Hy-Tek Homecare Ltd to the Customer (and where the context so permits shall include any supply of Services as hereinafter defined) and are as described on the invoices, quotation, work authorisation or any other forms as provided by Hy-Tek Homecare Ltd to the Customer.
- 1.5 "Services" shall mean all services supplied by Hy-Tek Homecare Ltd to the Customer and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined above).
- 1.6 "Price" shall mean the cost of the Goods/Services as agreed between Hy-Tek Homecare Ltd and the Customer subject to clause 3 of this contract.

### 2. Acceptance

- 2.1 Any instructions received by Hy-Tek Homecare Ltd from the Customer for the supply of Goods/Services and/or the Customer's acceptance of Goods/Services supplied by Hy-Tek Homecare Ltd shall constitute acceptance of the terms and conditions contained herein.
- 2.2 Where more than one Customer has entered into this agreement, the Customers shall be jointly and severally liable for all payments of the Price.
- 2.3 Upon acceptance of these terms and conditions by the Customer the terms and conditions are irrevocable and can only be amended with the written consent of Hy-Tek Homecare Ltd.
- 2.4 The Customer undertakes to give Hy-Tek Homecare Ltd at least fourteen (14) days notice of any change in the Customer's name, address and/or any other change in the Customer's details.

### 3. Price And Payment

- 3.1 At Hy-Tek Homecare Ltd's sole discretion the Price shall be either;
- (a) as indicated on invoices provided by Hy-Tek Homecare Ltd to the Customer in respect of Goods/Services supplied; or
- (b) Hy-Tek Homecare Ltd's quoted Price (subject to clause 3.2) which shall be binding upon Hy-Tek Homecare Ltd provided that the Customer shall accept Hy-Tek Homecare Ltd's quotation in writing within thirty (30) days.
- 3.2 Hy-Tek Homecare Ltd reserves the right to change the Price in the event of a variation to Hy-Tek Homecare Ltd's quotation.
- 3.3 Hy-Tek Homecare Ltd may require 100% payment in advance.
- 3.4 Hy-Tek Homecare Ltd will require a deposit of 30% of the quotation price.
- 3.5 Time for payment for the Goods/Services shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due thirty (30) days following the date of the invoice.
- 3.6 Payment will be made by cash, or by cheque, or by bank cheque, or by any other method as agreed to between the Customer and Hy-Tek Homecare Ltd.
- 3.7 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.

### 4. Delivery Of Goods/Services

- 4.1 At Hy-Tek Homecare Ltd's sole discretion delivery of the Goods/Services shall take place when the Customer takes possession of the Goods/Services at the Customer's address (in the event that the Goods/Services are delivered by Hy-Tek Homecare Ltd or Hy-Tek Homecare Ltd's nominated carrier).
- 4.2 At Hy-Tek Homecare Ltd's sole discretion the costs of delivery are included in the Price.
- 4.3 The Customer shall make all arrangements necessary to take delivery of the Goods/Services whenever they are tendered for delivery. In the event that the Customer is unable to take delivery of the Goods/Services as arranged then Hy-Tek Homecare Ltd shall be entitled to charge a reasonable fee for redelivery.
- 4.4 Hy-Tek Homecare Ltd may deliver the Goods/Services by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions in these terms and conditions.
- 4.5 The failure of Hy-Tek Homecare Ltd to deliver shall not entitle either party to treat this contract as repudiated.
- 4.6 Hy-Tek Homecare Ltd shall not be liable for any loss or damage whatever due to failure by Hy-Tek Homecare Ltd to deliver the Goods/Services (or any of them) promptly or at all.

### 5. Risk

- 5.1 If Hy-Tek Homecare Ltd retains ownership of the Goods nonetheless, all risk for the Goods passes to the Customer on delivery.
- 5.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, Hy-Tek Homecare Ltd is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by Hy-Tek Homecare Ltd is sufficient evidence of Hy-Tek Homecare Ltd's rights to receive the insurance proceeds without the need for any person dealing with Hy-Tek Homecare Ltd to make further enquiries.

### 6. Title

- 6.1 It is the intention of Hy-Tek Homecare Ltd and agreed by the Client that ownership of the Goods/Services shall not pass until:
- (a) The Client has paid all amounts owing for the particular Goods/Services, and
- (b) The Client has met all other obligations due by the Client to Hy-Tek Homecare Ltd in respect of all contracts between Hy-Tek Homecare Ltd and the Client.

- 6.2 Receipt by Hy-Tek Homecare Ltd of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then Hy-Tek Homecare Ltd's ownership or rights in respect of the Goods/Services shall continue.

- 6.3 It is further agreed that:

- (a) where practicable the Goods/Services shall be kept separate and identifiable until Hy-Tek Homecare Ltd shall have received payment and all other obligations of the Client are met; and
- (b) Until such time as ownership of the Goods/Services shall pass from Hy-Tek Homecare Ltd to the Client Hy-Tek Homecare Ltd may give notice in writing to the Client to return the Goods/Services or any of them to Hy-Tek Homecare Ltd. Upon such notice the rights of the Client to obtain ownership or any other interest in the Goods/Services shall cease; and
- (c) Hy-Tek Homecare Ltd shall have the right of stopping the Goods/Services in transit whether or not delivery has been made; and
- (d) the Client is only a bailee of the Goods/Services and until such time as Hy-Tek Homecare Ltd has received payment in full for the Goods/Services then the Client shall hold any proceeds from the sale or disposal of the Goods/Services on trust for Hy-Tek Homecare Ltd; and
- (e) the Client shall not deal with the money of Hy-Tek Homecare Ltd in any way which may be adverse to Hy-Tek Homecare Ltd; and
- (f) the Client shall not charge the Goods/Services in any way nor grant nor otherwise give any interest in the Goods/Services while they remain the property of Hy-Tek Homecare Ltd; and
- (g) Hy-Tek Homecare Ltd can issue proceedings to recover the Price of the Goods/Services sold notwithstanding that ownership of the Goods/Services may not have passed to the Client; and
- (h) Until such time that ownership in the Goods/Services passes to the Client, if the Goods/Services are converted into other products, the parties agree that Hy-Tek Homecare Ltd will be the owner of the end products.

### 7. Customer's Disclaimer

- 7.1 The Customer hereby disclaims any right to rescind, or cancel the contract or to sue for damages or to claim restitution arising out of any misrepresentation made to the Customer by Hy-Tek Homecare Ltd and the Customer acknowledges that the Goods/Services are bought relying solely upon the Customer's skill and judgment.

### 8. Defects

- 8.1 The Customer shall inspect the Goods/Services on delivery and shall within fifteen (15) days notify Hy-Tek Homecare Ltd of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford Hy-Tek Homecare Ltd an opportunity to inspect the Goods within a reasonable time following delivery if the Customer believes the Goods are defective in any way. If the Customer shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which Hy-Tek Homecare Ltd has agreed in writing that the Customer is entitled to reject, Hy-Tek Homecare Ltd's liability is limited to either (at Hy-Tek Homecare Ltd's discretion) replacing the Goods or repairing the Goods.
- 8.2 No Goods shall be accepted for return except in accordance with 8.1 above.

### 9. Warranty

- 9.1 For Goods/Services not manufactured by Hy-Tek Homecare Ltd, the warranty shall be the current warranty provided by the manufacturer of the Goods/Services. Hy-Tek Homecare Ltd shall not be bound by or responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods/Services.
- 9.2 The extent of the warranty given on service Hy-Tek Homecare Ltd is Twelve (12) months from purchase date.

### 10. Sale of Goods Act 1893 and Sale of Goods and Supply of Services Act 1980

- 10.1 This agreement is subject to the provisions of the Sale of Goods Act 1893 and the Sale of Goods and Supply of Services Act 1980 in all cases except where the Customer is contracting within the terms of a trade/business (which cases are specifically excluded).
- 10.2 Notwithstanding clause 10.1 nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Sale of Goods Act 1893 (in particular sections 12-15), or the Sale of Goods and Supply of Services Act 1980, or any laws or legislation governing the rights of consumers, except to the extent permitted by those Acts laws or legislation.
- 10.3 In particular where the Customer buys Goods/Services as a consumer the provisions of Clauses 8 and 9 above shall be subject to any laws or legislation governing the rights of consumers.

### 11. Default & Consequences of Default

- 11.1 Interest on overdue invoices shall accrue from the date when payment becomes due daily until the date of payment at a rate of 1.5% per calendar month and such interest shall compound monthly at such a rate after as well as before any judgment.
- 11.2 If the Customer defaults in payment of any invoice when due, the Customer shall indemnify Hy-Tek Homecare Ltd from and against all costs and disbursements incurred by Hy-Tek Homecare Ltd in pursuing the debt including legal costs on a solicitor and own Customer basis and Hy-Tek Homecare Ltd's collection agency costs.
- 11.3 Without prejudice to any other remedies Hy-Tek Homecare Ltd may have, if at any time the Customer is in breach of any obligation (including those relating to payment); Hy-Tek Homecare Ltd may suspend or terminate the

- 11.4 Supply of Goods/Services to the Customer and any of its other obligations under the terms and conditions. Hy-Tek Homecare Ltd will not be liable to the Customer for any loss or damage the Customer suffers because Hy-Tek Homecare Ltd exercised its rights under this clause.
- 11.5 If any account remains overdue after thirty (30) days then an amount of the greater of €20.00 or 10.00% of the amount overdue (up to a maximum of €200) shall be levied for administration fees which sum shall become immediately due and payable.
- 11.6 Without prejudice to Hy-Tek Homecare Ltd's other remedies at law Hy-Tek Homecare Ltd shall be entitled to cancel 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 Hy-Tek Homecare Ltd shall, whether or not due for payment, become immediately payable in the event that:
- any money payable to Hy-Tek Homecare Ltd becomes overdue, or in Hy-Tek Homecare Ltd's opinion the Customer will be unable to meet its payments as they fall due; or
  - the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
  - 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 Charge**
- 12.1 Despite anything to the contrary contained herein or any other rights which Hy-Tek Homecare Ltd may have howsoever?
- Where the Customer and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Customer and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to Hy-Tek Homecare Ltd or Hy-Tek Homecare Ltd's nominee to secure all amounts and other monetary obligations payable under the terms and conditions. The Customer and/or the Guarantor acknowledge and agree that Hy-Tek Homecare Ltd (or Hy-Tek Homecare Ltd's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be released once all payments and other monetary obligations payable hereunder have been met.
  - Should Hy-Tek Homecare Ltd elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Customer and/or Guarantor shall indemnify Hy-Tek Homecare Ltd from and against all Hy-Tek Homecare Ltd's costs and disbursements including legal costs on a solicitor and own Customer basis.
  - The Customer and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint Hy-Tek Homecare Ltd or Hy-Tek Homecare Ltd's nominee as the Customer's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 12.1.
- 13. Cancellation**
- 13.1 Hy-Tek Homecare Ltd may cancel these terms and conditions or cancel delivery of Goods/Services at any time before the Goods/Services are delivered by giving written notice. On giving such notice Hy-Tek Homecare Ltd shall repay to the Customer any sums paid in respect of the Price. Hy-Tek Homecare Ltd shall not be liable for any loss or damage whatever arising from such cancellation.
- 13.2 In the event that the Customer cancels delivery of Goods/Services the Customer shall be liable for thirty percent (30%) of the quotation price and for any loss incurred by Hy-Tek Homecare Ltd (including, but not limited to, any loss of profits) up to the time of cancellation.
- 14. Data Protection Act 1988 & Data Protection Act 2003**
- 14.1 The Customer and the Guarantor/s (if separate to the Customer) authorises Hy-Tek Homecare Ltd to:
- collect, retain and use any information about the Customer, for the purpose of assessing the Customer's creditworthiness or marketing products and services to the Customer; and
  - to disclose information about the Customer, whether collected by Hy-Tek Homecare Ltd from the Customer directly or obtained by Hy-Tek Homecare Ltd 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 (whether before or after judgement) a default by the Customer on publicly accessible credit reporting databases.
- 14.2 Where the Customer is an individual the authorities under (clause 14.1) are authorities or consents for the purposes of the Data Protection Act 1988 & Data Protection Act 2003.
- 14.3 The Customer shall have the right to request Hy-Tek Homecare Ltd for a copy of the information about the Customer retained by Hy-Tek Homecare Ltd and the right to request Hy-Tek Homecare Ltd to correct any incorrect information about the Customer held by Hy-Tek Homecare Ltd.
- 15. Dimensions, Plans and Specifications**
- 15.1 All customary building industry tolerances shall apply to the dimensions and measurements of the Goods/Services unless Hy-Tek Homecare Ltd and the Customer agree otherwise in writing.
- 15.2 Hy-Tek Homecare Ltd shall be entitled to rely on the accuracy of any plans, specifications and other information provided by the Customer
- 15.3 If the giving of an estimate or quotation for the supply of Goods/Services involves Hy-Tek Homecare Ltd estimating measurements and quantities, it shall be the responsibility of the Customer to verify the accuracy of Hy-Tek Homecare Ltd's estimated measurements and quantities, before the
- 15.4 Customer places an order based on such estimate or accept such quotation.
- 15.5 Should the Customer require any changes to Hy-Tek Homecare Ltd's estimated measurements and quantities, the Customer shall request such changes in writing, in the case of an estimate before placing an order based on that estimate and in the case of a quotation before acceptance of that quotation.
- 16. Customer's responsibilities**
- 16.1 It is the Customer's responsibility to.
- Accept the recommended specifications of Hy-Tek Homecare Ltd.
  - Ensure there is adequate access at the delivery point to accept the Goods.
  - Make the installation site available on the agreed date and time. Should delivery be delayed or interrupted by the failure of the Customer to adhere to the delivery schedule agreed to between Hy-Tek Homecare Ltd and the Customer then any additional costs will be invoiced to the Customer as an extra.
  - Provide adequate and safe access to the site for all workmen and equipment necessary for the installation. Delays in gaining access to, or from, the site will attract chargeable downtime.
  - Fully disclose any information that may affect Hy-Tek Homecare Ltd's installation procedures.
  - Ensure that adequate lighting for efficient installation is provided in the working area.
  - Provide suitable and adequate waste disposal facilities unless otherwise agreed with Hy-Tek Homecare Ltd.
  - Hy-Tek Homecare Ltd requires the Customer to watch for leaks in the first 96 hours of installation and notify Hy-Tek Homecare immediately.
- 17. General**
- 17.1 Each clause of this agreement is severable and distinct from the others. If any provision of these terms and conditions is or becomes invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 17.2 These terms and conditions and any agreement to which they apply shall be governed by the laws of Ireland and are subject to the jurisdiction of the courts of Ireland.
- 17.3 Hy-Tek Homecare Ltd shall be under no liability whatever to the Customer for any indirect loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by Hy-Tek Homecare Ltd of these terms and conditions.
- 17.4 In the event of any breach of this contract by Hy-Tek Homecare Ltd the remedies of the Customer shall be limited to damages. Under no circumstances shall the liability of Hy-Tek Homecare Ltd exceed the quotation price of the Goods/Services.
- 17.5 The Customer shall not be entitled to set off against or deduct from the Price any sums owed or claimed to be owed to the Customer by Hy-Tek Homecare Ltd.
- 17.6 Hy-Tek Homecare Ltd may license or sub-contract all or any part of its rights and obligations without the Customer's consent.
- 17.7 Hy-Tek Homecare Ltd reserves the right to review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which Hy-Tek Homecare Ltd notifies the Customer of such change. Except where Hy-Tek Homecare Ltd supplies further Goods/Services to the Customer and the Customer accepts such Goods/Services, the Customer shall be under no obligation to accept such changes.
- 17.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.