



**Heartwood Saunas Ltd Terms and Conditions for Businesses**

Heartwood Saunas Limited provides its services and purchases Services for its customers on the following terms and conditions. Additional terms apply where the customer is a consumer in which case where there is any difference between the terms hereunder and the consumer terms then the consumer terms take precedence.

**1 The meaning of some words used in these terms and conditions**

<b>we, us or our</b>	is a reference to Heartwood Saunas Limited;
<b>you or your</b>	is a reference to the person to whom we are providing our Services or supplying Services and who is required to pay for the Services we provide and the Services we construct and supply;
<b>Delivery and Installation fee</b>	The additional charge paid in respect of the delivery and installation of the Services
<b>Services</b>	means the Services we shall construct and supply for you and which you will pay for;
<b>Materials</b>	means any materials, Services, parts or items we need to buy necessarily in order to perform the Services but does not include the Services we will be purchasing for you;
<b>Estimate</b>	Our provisional written estimate of the likely cost of your order
<b>The Initial Work</b>	means the preparation of designs, plans, drawings, site visits, surveys and all related communications

<b>Advance Reservation Fee</b>	A fee (of up to 10% of the Estimate) to cover actual work done and expenses incurred from your acceptance of the Estimate to the preparation and/or completion of the the Order Confirmation Form which sum is due and payable within 14 days of your receipt of the Estimate or within any other time period that we may agree in advance. The said sum will be credited to your account when the Order Confirmation Form is issued
<b>Order Confirmation Form</b>	means the detailed summary of your order as agreed between the parties to be signed by you on commencement of the Services
<b>Premises</b>	means the place where we will supply the Services; and
<b>Services</b>	means the advice OR assistance OR help OR opinion OR installation we will provide to meet your requirements. The precise Services we will be providing to you will be stated in the Order Confirmation Form and as we agree from time to time;
<b>Updated Price</b>	The final fixed price for the Services, Materials and Services (excluding the Delivery and Installation fee) as provided at the same time as Order Confirmation Form.

## 2 Entering into legally binding contracts

2.1 Contracts between you and us will come into being in one of two ways:

2.1.1 In respect of the Advance Reservation Fee when you authorise us in writing to proceed with the Services after you have received the Estimate

2.1.2 In respect of the Services when you sign the Order Confirmation Form

2.2 In both cases we and you will enter into a legally binding contract We suggest that before you authorise us in writing to proceed with the Services after you have received the Estimate, and before you sign the Order Confirmation Form that you read through these terms and conditions. If you have any questions concerning them please ask us.

2.3 You should keep a copy of these terms and conditions for your records.

### **3 Providing the Services**

3.1 Once we and you have entered into a legally binding contract we will normally start providing the Services to you as soon as practicably possible and by reference to any lead-time we have discussed with you . Occasionally the Services will be provided at some other date or time or be dependent on a number of factors including those set out at clause 7.3.2 below.

3.2 Our aim is to always provide you with the Services:

3.2.1 using reasonable care and skill;

3.2.2 in compliance with commonly accepted practices and standards;

3.2.3 in compliance with England and Wales' laws and regulations in force at the time we are carry out the Services.

### **4 Services**

4.1 You and we shall agree the Services that you wish us to purchase (except where you have allowed us the choice to decide on what Services to purchase for you).

4.2 Once it has been decided what Services will be purchased for you or supplied to you:

4.2.1 it will be possible for you to change what is purchased or supplied, as we may in our absolute discretion consider appropriate, at any time up to our submission to you of the Order Confirmation Form.

4.2.2 After you have signed the Order Confirmation Form you will have accepted the Updated Price and it will be not possible for you to change what is purchased or supplied (except as you are permitted to do so under law).

4.3 Once the Services are delivered to you at the Premises it will be your responsibility to look after the Services (and no longer our responsibility to look after the Services). If you delay delivery after we and you agree a date for delivery, then we will not be responsible for the Services after the agreed date of delivery whether or not the Services have been delivered (unless any damage which the Services suffer is due to our negligence).

4.4 Where any Services need to be performed in relation to the Services (such as installing the Services, fitting the Services or making them ready to be used) we assume that:

4.4.1 any supplies of such things as electricity, water, and internet connection are available; and

- 4.4.2 existing systems, Services, wiring, pipes, electricity, gas, walls etc to which the Services are to be connected, installed in or with, added etc are in good working order and suitable for the installation, fitting or configuring of the Services; and
  - 4.4.3 any site data sheet provided by us (which is for general information purposes only and imposes no contractual obligation on us) has been followed; and
  - 4.4.4 You have satisfied yourself that the existing systems and structural foundations are adequate for the intended use and have requisitioned all necessary certificates from your electrician, plumber, groundwork contractor and engineer/architect as the case may be.
  - 4.4.5 if the Services are to be connected to other Services or systems then such connection is suitable and permitted (either by the manufacturer or maker or by law).
- 4.5 Unless agreed otherwise, we will arrange for the Services to be delivered to the Premises.
- 4.6 The Services will be in accordance with statutory requirements, be of satisfactory quality, meet any description concerning them and be fit for normal purposes. If there are particular purposes for which the Services will be used then we need to be made aware of these before the Services are ordered.
- 4.7 For the avoidance of doubt the Intellectual Property of the Services and/or Services shall not pass to you by reason of this Agreement and shall remain in our ownership.
- 4.8 You agree with us not to cause or permit anything which may damage or endanger our intellectual property or our title to such intellectual property, nor assist or allow others to do so.

## **5 Days and times when we normally provide the Services and performance of Services away from the Premises**

- 5.1 Unless we agree otherwise, we will provide the Services on normal working days and start work no earlier than 8am and finish work no later than 5 pm. A normal working day for us means Mondays to Fridays, excluding any bank or other national holidays.
- 5.2 The performance of the Services may take place away from the Premises. For example, we may be able only to carry out some of the activities in performing the Services other than at your Premises or when you are present.

## **6 Materials**

At the time we perform the Services we may not have all the Materials we need to perform the Services. This may be for a number of reasons such as:

- 6.1 we cannot reasonably establish what Materials are necessary until we start performing the Services;  
or

- 6.2 where we have provided an Order Confirmation Form, the need for particular Materials may not be reasonably possible to establish at the time we provide the Order Confirmation Form. The need for the particular Materials may only be revealed when we start performing the Services; or
- 6.3 whether or not we have provided an estimate, the condition of an item which is the subject of the Services may only become apparent when we start performing the Services and it was not reasonably possible to establish it until that point.

In most cases we need to purchase Materials. We will not charge you for any time spent in obtaining Materials if we have bought or ordered the wrong Materials.

## **7 Timing**

- 7.1 Our responsibility to perform the Services and supply the services by particular dates

We aim to carry out the Services and the delivery of the Services by the dates and times we either agree with you or notify to you. But we cannot guarantee or provide a firm commitment that:

- 7.1.1 we will start performing the Services by a specified date or time; or
- 7.1.2 we will complete the performance of all the Services by any specified date or time; or
- 7.1.3 the performance of any individual part of the Services will be completed by a specified date or time; or
- 7.1.4 the Services will be delivered at the times or dates specified.

- 7.2 What can happen if we cannot start performing the Services or complete performing the Services

- 7.2.1 If we do not start or complete performing the Services within a reasonable period from the date(s) we have agreed or notified, then you may choose either to continue to wait until we can start performing the Services or complete performing them or you can cancel the contract.

- 7.2.2 Where we have started performing the Services and you decide you wish to cancel the contract you will only have to pay for any Services we have performed up to the date of cancellation and for any Services and/or Materials which we have a legal obligation to pay for. If you have made payment(s) to us in excess of the amount of Services we have performed or Services and/or Materials we have purchased, we will return the difference to you within 7 days of cancellation.

- 7.2.3 What is a reasonable period of time depends on the type of Services we will be performing and the length of time they will take to perform. For example, if you and we believe that the

Services will take only a few days to perform, then if we fail to start performing the Services (e.g. within a few days) then you may have the right to cancel. But if the Services are due to take several months to perform, then if we fail to start to perform the Services after a couple of months when we are due to or we do not perform the Services during a couple of months when we were due to, then in such circumstances you may be entitled to cancel the contract.

### 7.3 Situations or events outside our reasonable control

7.3.1 In addition, there are certain situations or events which occur which are not within our reasonable control (some examples are given in clause 7.3.2 ). Where one of these occurs we will normally attempt to recommence performing the Services as soon as the situation which has stopped us performing the Services has been resolved. In such circumstances there may be a delay (sometimes a substantial delay) before we can start or continue performing the Services.

7.3.2 The following are examples of events or situations which are not within our reasonable control:

- (a) where weather conditions make it impossible or unsafe for us to perform any of the Services;
- (b) If the wholesale price of the Services increases between the date of the estimate and the date of the Order Confirmation Form;
- (c) if the Materials or Services are not delivered on the date or at the time agreed with the supplier of the Materials and/or Services (and it is not possible to obtain a replacement from an alternative supplier at all or within a reasonable amount of time, or the price charged by the alternative supplier is excessively higher than by the original supplier if ordered at short notice);
- (d) where you make a change in the Services you wish us to perform (and this results in, for example, us having to do further work or wait for new or different Materials and/or Services);
- (e) where we have to wait for other providers of services (who have been engaged by you) to complete their work before we are able to perform the Services (or the relevant part of the Services dependant on the other provider);
- (f) where we are unable to gain access to the Premises to carry out the Services at the times and dates we have agreed with you;
- (g) where the areas in the Premises have not be readied by you as we and you have agreed in order for us to perform the Services;

(h) for some other unforeseen or unavoidable event or situation which is beyond our control.

7.3.3 If the delay in us recommencing performing the Services will be excessive then we will offer you the option of either:

(a) continuing to wait until we are able to recommence performing the Services. If you are required to make any payments during this period (for example if we and you have agreed that you will pay us in staged amounts) then we will not require you to make any of the payments required until we are able to recommence performing the Services; or

(b) allowing you to cancel the contract. If you choose this option then you will only have to pay for any Services we have performed up to the date of cancellation and for any Materials and/or Services which we have a legal obligation to pay for. If you have made payment(s) to us in excess of the amount of Services we have performed or Materials and/or Services we have purchased, we will return the difference to you within 7 days of cancellation.

#### 7.4 Payment for the purchase of the Services

7.4.1 You will need to pay for any Services before or at the time we purchase or order them (plus the costs of delivery). For your information, most Services we purchase will need to be paid for in advance of purchase or at the time of ordering. We will retain ownership of any Services until you have paid for them (whether or not the Services are delivered or have been subject to the Services we are to perform concerning them).

7.4.2 A date for the delivery and installation of the Services will only be provided upon receipt of cleared funds representing the full balance of the Updated Price which date will be as soon as practicably possible thereafter.

#### 7.5 When payment is required for the Services

Payment for the Initial Work, the Services and the Materials are normally made in in a number of staged payments:

(a) the payment of the Advance Reservation Fee for the Initial Work after your acceptance of the Estimate ("the First Payment"); and

(b) payment of 50% of the actual price provided within the Updated Price ("the Second Payment"); and

- (c) the payment of the remaining amount within the Updated Price we will be charging you on completion of the Services ("the Third Payment");
- (d) On completion of the Services the Delivery and Installation fee is payable ("the Fourth Payment").

## 7.6 VAT

All amounts stated (whether orally or in writing) are exclusive of VAT, which will be added at the rate currently in force.

## 7.7 If you do not pay when required to:

If you fail to make payment by the date or time we and you agree we may:

- 7.7.1 charge you interest (at HSBC's base interest rate plus 3%) on any outstanding amounts if those outstanding amounts remain unpaid for more than 7 days from the date of our invoice or when we asked you first to pay them; and/or
- 7.7.2 if the amounts not paid represent more than 10% of the total value of the Services and/or Services we are to perform for you and there remain some Services which we have not yet performed, then we may suspend performing the remaining Services until you make payment.

## 7.8 Where you seek to not pay amounts due to us

You will not refuse to pay any amount owing to us where there is only a minor or inconsequential defect or error in the performance of the Services. You will be entitled only to refuse to pay no more than a proportionate amount of any amount due.

## 8 Things you will need to do

### 8.1 If we are performing the Services at the Premises then you should:

- 8.1.1 make the areas where the Services are to be performed ready;
- 8.1.2 remove any items etc. which will stop or hinder in the performance of the Services;
- 8.1.3 protect your items or possessions from the effects of us performing the Services; and
- 8.1.4 allow us to gain access to the Premises at the dates and times we and you have agreed we will perform the Services or when the Services will be delivered.



- 8.2 You will obtain all necessary consents, permissions and approvals before we start performing the Services.
- 8.3 You will make available facilities at the Premises as we reasonably require.

## **9 Some restrictions and assumptions**

We will assume that all information, measurements and facts (Measurements) that you provide are accurate and true. We will not accept liability for any loss or damage caused where we reasonably perform our Services in reliance on these. We will be responsible for any Measurements we make or provide.

## **10 Exclusion and limitation of liability**

- 10.1 We do not exclude or limit liability for our negligence or negligent omission which causes you personal injury or death.
- 10.2 We shall only be liable for any loss or damage suffered by you which is a reasonably foreseeable consequence of a breach of this contract. In the event that any loss or damage suffered by you relates to your business activities or use of the Premises for commercial purposes then we exclude all liability and in particular we exclude all liability for loss of profits or other economic loss arising from a breach of this contract.

## **11 Communicating with us**

- 11.1 You can always telephone (our contact number is +44 (01654) 401101). Our normal office hours are 09.00 to 17.00 Monday to Friday.
- 11.2 However, for important matters we suggest that you use writing and send any communications by email only, to [info@heartwoodsauanas.com](mailto:info@heartwoodsauanas.com), or if not practicable to Heartwood Saunas, Esgair Forest, Pantperthog Machynlleth Powys SY20 9AY and marked for the attention of Oliver Davey. If we wish to send you a letter or notice we will use the email address you have given.

## **12 Cancellation by you**

- 12.1 Once we and you enter into a binding contract you will normally not be able to cancel the contract, except where we agree or as otherwise provided for in this contract.
- 12.2 If we agree to cancel then you will be responsible for the cost of:
- 12.2.1 any of our time in performing the Services up to the date we stop providing the Services;

- 12.2.2 any of the Services you have not already paid for (or any part of the price of the Services you have not paid for);
- 12.2.3 any Materials we are contractually committed to buying up to the date of termination (whether or not we need to pay for them before or after the date the contract between us and you is cancelled). Any Materials we have purchased and you have paid for (but not used in performing the Services) will be made available for you to collect.
- 12.3 In the circumstances stated in clause 12.2 we will first deduct the amounts for which you are responsible from payment(s) you have made to us. Any remaining sum will be returned to you. If the amount owing is greater than the payment(s) you have made we will return invoice you for the amount in excess of the payment(s) you have made.
- 12.4 If you:
- 12.4.1 purport to cancel the contract; or
- 12.4.2 give notice purporting to cancel; or
- 12.4.3 otherwise do not fulfil your obligations (such as by not paying any sums due to be paid to us) in a way which amounts to you cancelling the contract,

we do not have to accept your cancellation. However, we may choose to accept cancellation, and if we choose to do so you will be required to pay to us a reasonable amount for the losses and costs (including loss of profit) we have suffered. If you have paid any sum in accordance with clause 7.5 or otherwise, this will be retained and if our reasonable losses and costs (including loss of profit) are greater than the sum we have retained we will require you to pay for our losses and costs in excess of the sum retained.

### **13 Amendments to the contract terms and conditions**

We will have the right to amend the terms and conditions of this contract where:

- 13.1 we need to do so in order to comply with changes in the law or for regulatory reasons; or
- 13.2 we need to correct any errors or omissions (and this right includes the right to change any of the documentation which forms part of the contract), as long as such correction is minor and does not materially affect the contract.

Where we are making any amendment we will give you 30 days' prior notice (unless the contract is terminated before that period).

#### 14 **Contracts (Rights of Third Parties) Act 1999**

For the purposes of the Contracts (Rights of Third Parties) Act 1999 this contract is not intended to, and does not, give any person who is not a party to it any right to enforce any of its provisions.

#### 15 **Law and jurisdiction**

This contract shall be governed and construed by the law of England and you and we agree to submit to the jurisdiction of the courts of England and Wales.

