

Buyer Responsibilities

(Our Conditions of Sale summarised)

Any order accepted by Newark Cylinders is automatically subject to these conditions. If any are not acceptable, please discuss alternative arrangements with us and ensure that they have been agreed to in writing, before placing an order.

Check product suitability

Newark Cylinders are manufacturers, not designers. The buyer accepts that it is their responsibility to research and verify with the system/ product **designer**, that the product being ordered meets the exact requirements of its intended purpose.

Observe all installation instructions

The buyer accepts that it is their responsibility to ensure that all installation instructions are carefully followed. Failure to do so can result in issues that can be mistaken for manufacturing defects, such as:

- Leaks due to insufficiently sealed pipework connections.
- Leaks due to aggressive/ incompatible water sources.
- Leaks due to lack of/ incorrect maintenance of the pressure-regulating components.
- Noisy/ reverberating coils due to trapped air or excessive flow rates.

Allow time contingencies

The buyer accepts that it is their responsibility to ensure the product is in their possession **before** they 100% commit to installation dates, as unforeseeable and unavoidable delays *can* occasionally occur.

Advise delivery access restrictions

The buyer accepts that it is their responsibility to notify us of any delivery access restrictions (narrow lanes, low bridges, weight-limited roads, etc) **before** despatch. Failure to do so may result in additional delivery charges.

Inspect the goods before the driver leaves

The buyer accepts that it is their responsibility to ensure that all goods have arrived in acceptable condition, **before** accepting delivery. If any damage is found during an inspection, please take photos/ videos, refuse the delivery, and let us know **within 24 hours**.

Order cancellation

The buyer accepts that cancellation requests for standard products are entirely at our discretion, may be subject to restocking fees, and that cancellation requests for bespoke products will **not** be accepted.

Manufacturer's guarantee

If a manufacturing defect causes a product that we have manufactured to fail within five years of purchase (or seven years for registered Heat Geek-designed products), we will repair or replace it at our own cost.

The buyer accepts that:

1. Our guarantee does **not** cover product failure which is due to corrosion (galvanic or otherwise), stress fatigue, accidental damage, or any other failure arising from conditions outside our control.
2. Removal of our products from the UK voids our guarantee **entirely**.
3. Our products are to **only** be used with water supplied from a UK public mains. **They must not be used with private water sources such as wells or boreholes.**
4. If we're unable to confirm the cause of a reported defect from any of the evidence provided, we will require to inspect the potentially faulty product at our factory to first confirm that the reported defect exists and, if so, what caused it (inspections prioritise establishing the facts and handling the outcome fairly).

All of these points (and more) are elaborated on in our full Conditions of Sale, below.

CONDITIONS OF SALE

1 DEFINITIONS

Under the terms and conditions of sale set out below

(a) The Company means "Newark Copper Cylinder Co Ltd"

(b) The Buyer means the corporation, firm, company, institution, person or persons to whom a quotation is made or to whom goods are sold by the company

(c) "Goods" mean products supplied by the company under contract

2 GENERAL

Any order accepted by the Company whether or not it is based on or results from this or any other quotation or tender given by the Company is deemed to incorporate these terms and conditions. No variation or modification of or substitution for these terms and conditions (even if included in or referred to in the document placing the order) shall be binding on the Company unless specifically accepted by the Company in writing.

Unless stated otherwise, in writing, before, or at the time of ordering, any orders that are placed or finalised, following the receipt of a written specification, quotation and/or diagram, will be taken as approval and confirmation that no amendments are necessary and that the specification and/or diagram perfectly describe the goods that are required, with an adequate amount of detail and accuracy. Similarly, The Company does not personally performance test the standardised products that they manufacture to third party designs. In both cases, it is, therefore, the buyer's responsibility to research and verify with the designer, that the product being ordered meets the exact requirements of its intended purpose. The Company will not take any responsibility for incorrectly or inaccurately ordered goods. Most goods are manufactured to order and, as a result, returns cannot be accepted unless the goods are inspected at The Company's facility in Newark, Nottinghamshire, and are either proven to have a manufacturing defect, or shown to not have been manufactured to the agreed specification. Further details on warranty claims can be found in section 7.

Any advice and assistance is provided without charge and in good faith without any undertaking, representation or warranty and The Company will obtain no liability - neither compensatory nor consequential - if the advice or assistance provided is later found to have been incorrect.

3 VALIDITY OF QUOTATION

Unless previously amended or withdrawn the Company's quotation is open for acceptance for the period stated therein or where no period is stated for 30 days after the date hereof The Company's quotation is not an offer but merely an invitation to the Buyer to make an order for goods under the terms and conditions of the quotation

4 CANCELLATION OF ORDERS

Any cancellations are at The Company's discretion based on its ability to stock, its resaleability, and any other factors which it deems relevant. Cancellation of goods ordered to the Buyers own specification and where manufacture has commenced will not be accepted. For standard/ standardised products that The Company deems easily resaleable, a £50.00 or 10% of the product value (whichever is higher) re-stocking/ admin fee may be offered.

5 RETURNED GOODS

Goods once despatched may not be returned without the Company's consent in writing and will generally exclude goods ordered erroneously. Goods returned as suffering from manufacturing defect will be rigorously tested and where confirmed as faulty the fault will be rectified or the goods replaced as is deemed appropriate by the Company and the unit will then be returned to the customer without charge.

6 WARRANTY

The Company's goods are tested or examined before despatch but are supplied without any Warranty conditions or guarantee expressed or implied that they are suitable for use under any special conditions or for any particular purpose that may be known to the company at the time nor in the absence of a specific guarantee in writing is any guarantee given as to the life or wear of the Company's goods. The Company will however repair or at their option replace goods in which defects under proper use and installation by a qualified and competent plumber or fitter appear within a period of sixty calendar months after delivery and which arise solely from faulty design materials or workmanship other than design or materials made or specified by the Buyer, provided always that acceptable proof is rendered as to the date of purchase and evidence of the installation by a qualified and competent plumber or fitter and any defective parts are promptly returned free to the Company's address.

In particular, the Company's warranty does not extend to problems resulting from corrosion (galvanic or otherwise) or scaling. Products are to only be used with water supplied from a UK public mains. The Company's products **must not be used in situations in which aggressive water is prevalent and/or supplied from a private water source such as a well or a borehole. The water quality shall be in accordance with European Council Directive 98/83 EC, or revised version at the date of installation, and its contents must remain within the following concentrations:**

- Chloride content: Max. 200 mg/l
- Sulphate content: Max. 200 mg/l
- Combination chloride/sulphate: Max. 300 mg/l (in total)
- Calcium Carbonate (water hardness): 100-200 mg/l

A water source within these content parameters does not guarantee longevity, as there could potentially be other chemistry present which could have a detrimental effect on the materials used. If in doubt, a professional water analyst should be consulted.

The condition of all goods must be checked thoroughly for damage, before accepting delivery. Newark Cylinders cannot claim compensation from the delivery company, unless the delivery has been refused due to the goods being damaged on arrival. We cannot, therefore, offer compensation for goods which are accepted but are later found to be damaged. If you do discover any damage during your inspection, please take photos/ videos, refuse the delivery, and let Newark Cylinders know within 24 hours.

The Company's goods **must not** be installed outside the UK unless they have been specifically designed for that purpose by the buyer, and unless an appropriate guarantee for that purpose has been provided, in writing, by The Company. If a buyer chooses to remove goods from the UK without said appropriate guarantee having been provided in writing, then the Company does not guarantee those goods in any way or under any circumstances. Regardless of installation location, The Company cannot be held liable for travel expenses in the event of a warranty claim, as the area that engineers choose to operate within (UK or otherwise) is not within its control.

The provisions of the Sale of Goods Act 1979 and Unfair Contract Terms 1977 shall apply to this contract but this guarantee is given in lieu of all warranties or conditions and liability whatsoever implied by law, statute or otherwise and in particular, without prejudice to the generality of foregoing the Company shall not be liable for loss of profit or goodwill of the Buyer or any other person arising, directly or indirectly from any breach of this contract or for any other indirect or consequential damage and loss whatsoever, save as provided in this clause. Neither the Company nor its servants and agents shall be under any liability whether in contract, tort or otherwise howsoever, in respect of the goods or any inquiry, damage or loss whatsoever and howsoever resulting therefrom or from any work done in connection therewith.

7 PRICES

Prices are subject to alteration or withdrawal without notice. Orders can be accepted subject to the conditions that goods will be invoiced at prices ruling on the date of despatch from warehouse unless otherwise stated on an official quotation of the Company. Unless otherwise stated, prices are net ex works excluding VAT

8 DELIVERY

Unless otherwise specified in the quotation, delivery shall take place at the Buyer's expense. **While The company will make every possible effort to deliver goods on the agreed dates, unforeseeable delays can occasionally occur during manufacture and/ or delivery (machinery breakdowns, late material deliveries, vehicle breakdowns, heavy traffic, etc). It is therefore advised that you plan to have goods in your possession a few days before the installation date, as The Company can't be held liable for consequential losses resulting from unavoidably late deliveries.** If by reason of the Buyer's default the goods are not taken up or delivered by the date specified in the contract, the Company may either treat the contract as repudiated or alternatively store the goods at the Buyer's risk and expense. Estimates of delivery dates and times are to be regarded as approximate only and the company accepts no liability for any loss, injury, damage or expenses consequent upon any delay in delivery of goods. Delay due to circumstances outside the control of the Company shall not entitle the customer to cancel any order or refuse to accept delivery. Offers for delivery from stock are made subject to goods remaining unsold on receipt of order.

Please notify The Company of any access restrictions (for example, narrow lanes, low bridges, weight-limited roads, etc) at the time of ordering, which may make it difficult/ impossible for larger vehicles to access the delivery address. Newark Cylinders cannot take responsibility for re-delivery charges for goods which were undeliverable due to insufficient access for large vehicles. Any redelivery costs must therefore be covered by the buyer, before redelivery can be arranged.

The condition of all goods must be checked thoroughly for damage, before accepting delivery. Newark Cylinders cannot claim compensation from the delivery company, unless the delivery has been refused due to the goods being damaged on arrival. We cannot, therefore, offer compensation for goods which are accepted but are later found to be damaged. If you do discover any damage during your inspection, please take photos/ videos, refuse the delivery, and let Newark Cylinders know within 24 hours.

The buyer accepts that it is their responsibility to ensure that all installation instructions are carefully followed. Failure to do so can result in issues that can be mistaken for manufacturing defects, such as:

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- Leaks due to lack of/ incorrect maintenance of the pressure-regulating components.
- Noisy/ reverberating coils due to trapped air or excessive flow rates.

9 PROPERTY IN THE GOODS

The property in Goods delivered under the contract shall not pass to the Buyer until their price and interest (payable pursuant to Clause 11) and any other sum payable under this contract has been paid in full. Until actual payment of all sums, the Buyer shall hold the goods in the fiduciary capacity of bailee (and without prejudice to the generality to the foregoing), the Buyer shall store and mark the goods in the ordinary course of his business until such permission has been withdrawn pursuant Clause 11.

10 RISK

Risk shall pass when the goods are delivered to the Buyer, delivery being defined as in clause 8 above.

11 PAYMENT

Liability for payment for goods shall arise on delivery, and such payment must be made no later than 30 days following the date of invoice. Any discounts specified in the Company's quotations shall relate only to payments so received. The Company reserves the right to charge interest on overdue amounts at the rate per annum of 2% above the Bank of England minimum lending rate (or if there is no such rate 5% above Lloyds Bank PLC lending rate) ruling on the last date on which payment must be made if payment is not made by such date or if this Buyer is in default as regards payment under this contract with the Company, the Company (without prejudice to its other rights) reserves the right to:

- (a) suspend deliveries under this contract for so long as the default continues and/or
- (b) serve notice on the Buyer that if sums due under this contract are not paid within 14 days, the Company shall be entitled to treat this contract as repudiated and/or
- (c) sue for the price, notwithstanding that property in the Goods has not passed to the Buyer and/or
- (d) request redelivery of the goods or any part of them to the Company at the Buyer's risk and expense and if such delivery does not take place forthwith the Buyer hereby grants the Company's representatives a licence to enter upon its premises or any other premises where those goods are stored during normal business hours to remove such goods

12 INSOLVENCY

Without prejudice to its other rights the Company may by notice treat this contract as repudiated if the Buyer enters into liquidation whether compulsory or voluntary (except for the purposes of solvent reconstruction or amalgamation) or the Buyer becomes insolvent within the meaning of section 61 (4) Sale of Goods Act 1979 or does any other act of bankruptcy as defined by section 1 Bankruptcy Act 1914 or any act which could be an act of bankruptcy if the Buyer were an individual, or the Buyer makes any assignment to, or agreement or composition with his creditors, or a receiver of the whole or any part of the Buyer's undertaking is appointed or a meeting is convened at which a resolution or the presentation of a petition to wind up the Buyer, or on any other event or default of any nature whatsoever which would cause the Company reasonably to consider that its property in the Goods or in their proceeds of resale by the Buyer may be adversely affected or that it is unlikely to be paid in full for the Goods. On such notice all goods which remain the property of the Company at the Buyer's risk and expense and for the purpose of taking possession of such Goods by the Buyer hereby grants to the Company's representative a licence to enter upon its premises where those goods are stored during normal business hours to remove such Goods.

13 PART PAYMENT AND RESALE

If notwithstanding the Buyer's default the Company chooses to enforce the contract, it shall recover and sell only so many of the Goods as may be necessary to obtain the full purchase price, interest and any other sums due from the Buyer with such further sums as represents proper damages for the Buyer's breach of contract. Any surplus Goods or funds obtained from such resale shall be passed onto the Buyer. If the Company chooses to treat this contract as repudiated the Company shall repay to the buyer any part payment of the purchase price of those Goods which remains after deduction of an amount representing damages for the Buyer's breach of contract. If the Buyer sells any Goods which remain the Company's property of resale and/or the claims to such proceeds shall at all times be held on trust for the Company and the buyer shall pay all such proceeds into a bank account separate from all monies and the company shall account to the Buyer for any sums in excess of the price for the Goods and other sums payable under this contract.

14 LAW APPLICABLE

Any contract subsisting between the Company and the Buyer shall be construed in all respects in accordance with the Laws of England and unless otherwise arranged is subject to the jurisdiction of the English Courts.

15 ERRORS

Clerical errors and omissions are subject to correction without notice

16 DAMAGE OR SHORTAGE

- (a) Where goods are delivered by outside carrier damage or part loss claims cannot be entertained unless the Company are notified in writing within two days from date of delivery
- (b) Where goods are delivered by the Company and a receipt or delivery note signed by the customer is received, the Goods will be deemed to have been examined and therefore no claim for damaged or loss can be entertained by the Company.
- (c) The Buyer may not exclude this provision either by marking his signature "unexamined" or by failing to return the signed delivery note otherwise.

17 NOTICES

Notices shall be in writing sent to the address of the appropriate party set out on the face of this contract or to such other address as may from time to time (by notice to the other party) by designated, and notices shall be deemed to have been duly given:

- (a) on the date of transmission if sent by telex, telecopier, facsimile, cable, telegram, or email.
- (b) on the date of delivery if delivered by hand
- (c) two days after the date of posting if sent by first class mail

In proving service by post it shall be sufficient to prove the envelope containing the notice was properly addressed, stamped and posted, and in proving service by facsimile or telex, that the intended recipient's answer back code is shown on the copy retained by the sender at the beginning and end of facsimile or telex.

18 NO WAIVER

No relaxation forbearance, indulgence or delay by either party in enforcing any of the terms of this agreement or the granting of time by either party to the other shall affect, prejudice or restrict the rights of the other party under this agreement nor shall any waiver or any breach of this agreement operate as a waiver of any subsequent breach.

19 ACCESS

The Buyer will ensure that access to the Buyer's premises shall be available to the Company its servants, agents or others lawfully authorised by it during normal working hours unless otherwise agreed in writing by the Company. Such access shall be for the purpose of the company carrying out the terms of its contract with the Buyer to supply the Goods

20 EXTRAS TO CONTRACT

If the Buyer requires extras to contract the Company may require payment in advance, in any event payment shall be automatically added to its contract price and shall be to the terms and conditions of sale.