

EVERHOT LIMITED'S TERMS AND CONDITIONS OF SALE

These are the terms on which Everhot Limited company number 03514591 ('Everhot') do business. They are designed to set out clearly Everhot's responsibilities and your rights.

1. DEFINITIONS:

1.1 In these terms and conditions (hereinafter collectively referred to as 'Conditions'):

'Buyer' means you, the corporate entity or individual purchasing Equipment from Everhot.

'Contract' means any contracts made between Everhot and the Buyer for the sale and purchase of Equipment which shall include (but not limited to) contracts entered into between the Parties arising from the Order.

'Damage' means Damage as defined in Clause 4.1 below.

'Equipment' means any stove, kitchen equipment, product, produce, article or item which Everhot sells (including part or parts of it).

'Order' means any order (whether oral and written) for Equipment made by the Buyer to Everhot.

'Parties' means Everhot and the Buyer.

'Specification' means the specification in respect of such Equipment (as may be amended by Everhot from time to time at its discretion).

1.2 In these Conditions, references to any statute or statutory provision shall, unless the context otherwise requires, be construed as a reference to that statute or statutory provision as from time to time amended, consolidated, modified, extended, re-enacted or replaced.

1.3 In these Conditions references to the masculine include the feminine and the neuter and to the singular include the plural and vice versa as the context admits or requires.

1.4 In these Conditions headings will not affect the construction of these Conditions.

1.5 In entering into a Contract, the Buyer acknowledges that it does not rely on any representations made by Everhot and/or its representatives provided that nothing in these Conditions shall affect liability of either party for fraudulent misrepresentation.

1.6 The Buyer shall not be entitled to assign, transfer, charge, mortgage, subcontract, declare a trust of or deal the Contract without the prior written consent of Everhot.

2. TERMS OF ACCEPTANCE

2.1 The Buyer agrees that these Conditions shall be the exclusive basis on which any Contracts made between Everhot and the Buyer are transacted and processed unless otherwise agreed in writing by a director of Everhot. For the avoidance of doubt, the Buyer terms and conditions shall not apply to any Contract(s) entered into by the Parties and the failure by Everhot to object to any of the Buyer's terms and conditions shall not be deemed as Everhot accepting such terms and conditions of the Buyer.

2.2 These Conditions shall not create any agency or partnership between the Parties or any third party.

2.3 Any price list given by Everhot shall be deemed as an 'invitation to treat' and not an offer.

2.4 A Contract is formed between the Buyer and Everhot when (and not before) Everhot notifies the Buyer in writing (including by e-mail) that the Buyer's Order has been accepted or that the Equipment ordered are ready for collection; or delivery of the Equipment is made by Everhot. All Orders accepted are subject to the availability of Equipment being ordered.

2.5 The Parties agree that the Contracts (Rights of Third Parties) Act 1999 shall not apply in any Contracts.

2.6 To ensure we comply with the General Data Protection Regulation (GDPR) and privacy laws, we never share your information with third parties. If you wish to remove your data from our systems, please contact sales@everhot.co.uk. Please note that we may not be able to service our contact with you should you choose to unsubscribe. We may still be required to send you email regarding factual, transactional and/or servicing information in connection with services that we provide to you.

You can find more information within our privacy policy and to request a copy, please contact sales@everhot.co.uk.

3. DELIVERY OF EQUIPMENT

3.1 Unless otherwise agreed, Everhot will deliver the Equipment to the Buyer at the address specified in the Order or where no address is specified, to the Buyer's place of business. The Company will use reasonable endeavours to meet any delivery dates specified in the Order, but any such dates shall be estimates only and time shall not be of the essence for the delivery of the Equipment.

3.2 For the avoidance of doubt, as the actual delivery of the Equipment is carried out by third party couriers, Everhot shall be under no liability for any delay or failure to deliver the Equipment except at its discretion, to return the purchase price or re-deliver the Equipment.

3.3 If Everhot is unable to effect delivery due to any fault of the Buyer, the Buyer may incur additional charges.

4. INSPECTION LOSS OR DAMAGE

4.1 Any Equipment delivered to the Buyer or made available for the Buyer for collection shall be deemed to be in good order and comply with the Specifications unless the Buyer informs Everhot of any defects, damage and/or fault with the Equipment (collectively as 'Damage') within 10 working days from the day of collection or receipt of the Equipment (as the case may be) unless the Damage is not ascertainable from reasonable inspection; in which case, the Buyer shall inform Everhot of such Damage as soon as it is practicable. The Buyer shall allow Everhot to inspect such allegedly Damaged Equipment.

4.2 If the Equipment is indeed Damaged, the Company shall (at its sole discretion), replace the Equipment in question or reimburse the Buyer for the whole or part of the price of the Equipment (if the quantity of Equipment is more than 1).

4.3 This Clause 4 shall apply to any replacement Equipment supplied by Everhot.

5. PRICE AND PAYMENT

5.1 Any price list provided by Everhot to the Buyer is based on its current price as on the date the price list is provided to the Buyer but the actual price payable for the Equipment shall be based on the actual current price of Everhot as at the time of acceptance of the Order. If Everhot is unable to effect delivery within 12 months of the date of order, due to any fault of the buyer, then the price will be revised to reflect the price at the time of delivery. All prices quoted are exclusive of VAT and delivery costs (unless otherwise stated).

5.2 Notwithstanding Clause 5.1 above, Everhot may increase the price of the Equipment before delivery if the cost of the Equipment to Everhot were to increase due to factors outside Everhot's control e.g. increase in material, freight or foreign exchange costs and the Buyer agrees to such increase.

5.3 Unless otherwise agreed by the parties in writing, the Buyer shall make payment to Everhot in respect of the Equipment upon placing of the Buyer's Order.

5.4 No payment for the Equipment shall be deemed to have been received until Everhot has received cleared funds for the whole sum specified in such invoice.

5.5 If the Buyer fails to settle any payment due to Everhot within the stipulated time, Everhot shall be entitled (without prejudice to any other right or remedy it may have) to charge the Buyer interest in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 from the date the payment was due until the payment is made whether before or after judgement; and/or suspend further deliveries of any Equipment ordered by the Buyer.

5.6 The Buyer shall make all payments due under a Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by Everhot to the Buyer.

6. CANCELLATIONS

6.1 Without prejudice to Clause 7.2, no cancellations of Orders shall be permitted unless agreed in advance by a director of Everhot.

6.2 Without prejudice to Clause 4, if Equipment has been delivered, the Equipment may not be returned unless agreed in advance by a director of Everhot. Any return which has been agreed shall be subject to the following conditions:

6.2.1 the Equipment being in the same condition as at the time of delivery of made available for collection;

6.2.2 (where applicable) the packaging of the Equipment remain intact and unbroken and in reasonable condition;

6.2.3 the Equipment is returned at the cost of the Buyer; and

6.2.4 the returned Equipment is received within 28 days from when a director of Everhot agreed to accept the returned Equipment.

6.3 Where Equipment is cancelled or returned pursuant to this Clause 6, Everhot reserves the right to charge a reasonable administration cost to reflect costs incurred. Typical cancellation charges after order are £150+vat after 2 weeks, £300+vat after 4 weeks and increase to 10% of order value once the cooker is built.

7. WARRANTIES AND LIABILITY

7.1 The Company warrants that the Equipment will substantially conform to the Specification.

7.2 The Company shall ensure that the Equipment is properly packed and secured in a manner as to enable them to reach their destination in good condition.

7.3 The Company shall obtain and maintain in force all licences, permissions, authorisations, consents and permits needed to supply the Equipment in accordance with these Conditions

7.4 Except for the warranties set out in Clauses 7.1 to 7.3 above, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from these Conditions and/or Contracts.

7.5 The Company shall not be in breach of any of the warranties set out in Clauses 7.1 to 7.3 or be liable for any Damaged Equipment if:

7.5.1 such Damage arose as a result of the Equipment being improperly installed, assembled, used and/or not used in accordance with the manufacturer's manual and/or installation guide; or

7.5.2 such Damage was the result of unauthorised modification of the Equipment without the written consent of Everhot.

7.5.3 the Damage arises because the Buyer failed to follow Everhot's oral or written instructions as to the storage of the Equipment or (if there are none) good trade practice.

7.6 Nothing in this Agreement excludes or limits the liability of Everhot for death or personal injury caused by Everhot's negligence or for fraudulent misrepresentation.

7.7 Subject to Clauses 4.2, 7.5, 7.6 and 7.8, Everhot's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of these Conditions shall be limited to:

7.7.1 in respect of matters for which Everhot does not carry insurance, the price of the Equipment; and

7.7.2 in respect of matters for which Everhot carries insurance, the insured value.

7.8 Subject to Clauses 7.5 and 7.6 Everhot shall not be liable to the Buyer for any indirect or consequential loss or damage, for loss of profit, loss of management time, depletion of goodwill or otherwise, loss of productivity, costs, expenses or other claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with these Conditions or Contracts.

7.9 The provisions of this Clause 7 shall survive the termination of these Conditions and/or Contracts.

7.10 The exclusions and limitations of liability set out in this Clause 7 shall be considered severally. The invalidity or

unenforceability of any one of these sub-clauses shall not affect the validity or enforceability of any other part of this Clause 7.

8. TERMINATION AND SUSPENSION

8.1 Without prejudice to the rights and remedies available to Everhot (whether under these Conditions, Contracts or otherwise), Everhot shall be entitled to (at its sole discretion) upon providing the Buyer with notice of such intention, terminate and/or suspend in whole or in part, any Contracts entered into between the Buyer and Everhot if:

8.1.1 the Buyer fails or refuses to take delivery of any Equipment in accordance with these Conditions;

8.1.2 the Buyer commits any material breach of these Conditions;

8.1.3 the Buyer fails to pay any sums due to Everhot; and/or

8.1.4 the Buyer makes any composition or voluntary arrangement with its creditors or becomes bankrupt or enters into administration or goes into liquidation (other than for the purpose of amalgamation or reconstruction).

9. TITLE AND RISK

9.1 Risk of damage to or loss of the Equipment shall pass to the Buyer upon delivery of the Equipment to the Buyer's premises or if applicable, when the Equipment is made available for collection but title in the Equipment only shall pass upon full payment for the Equipment and no other sums are then outstanding from the Buyer to Everhot on any account the Buyer may have with Everhot whatever whether or not such sums have become due for payment.

9.2 Until such time as title in the Equipment has passed to the Buyer the Buyer shall:

9.2.1 hold the Equipment on a fiduciary basis only and as Everhot's bailee for the company.

9.2.2 store the Equipment (without charge to Everhot) separately from all other goods held by the Buyer so that Everhot's Equipment is clearly identifiable;

9.2.3 not remove, deface or obscure any identifying mark or packaging on or relating to such Equipment; and

9.2.4 maintain such Equipment in good condition and insure the Equipment to their full value against all risks to the reasonable satisfaction of Everhot.

9.3 The Company shall be entitled to repossess at any time any of the Equipment of which, title remains vested in Everhot and in this regard, Everhot or any of its agents or authorised representatives shall be entitled at any time and without notice to enter upon any premises in which the Equipment or any part thereof are installed, stored or kept, or are reasonably believed so to be to retrieve the Equipment and Everhot shall not be liable for any damage or loss caused to the Buyer or the Buyer's premises provided that Everhot has taken reasonable care when retrieving such Equipment.

10. FORCE MAJEURE

The Company shall not be liable to the Buyer or be deemed to be in breach of these Conditions or any Contracts by reason of any delay in performing or any failure to perform any of its obligations in relation to the Equipment if the delay or failure was beyond Everhot's reasonable control including acts of God, explosion, flood, tempest, fire or accident; war or threat of war, sabotage, insurrection, civil disturbance or requisition; restrictions, regulations, byelaws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority in the United Kingdom, strikes, lockouts, other industrial actions and/or trade disputes.

11. INTELLECTUAL PROPERTY

Any intellectual property rights in any document, or other material and any data or other information provided by Everhot to the Buyer shall belong to Everhot.

12. LAW AND JURISDICTION

These Conditions shall be governed by and construed in accordance with English law and the English Courts shall have jurisdiction.