

# Terms and conditions of Smart Dry LTD. 09814653.

Last Updated February 5, 2019

## Definitions

In these conditions the following expressions shall have the following meanings:

- 1.1 "Contractor" SmartDry Ltd. Company number 09814653. VAT number 227037916.
- 1.2 "Customer" The Customer identified in the Installation Quote.
- 1.3 "Installation Quote" The Installation Quote between the Contractor and the Customer for the installation of the SmartDry units.

## Scope of Agreement

- 2.1 These conditions ("Conditions") shall apply to all orders and contracts for the installation of the SmartDry units by the Contractor and if there are any qualifications or variations to the Conditions it is important for the avoidance of doubt that such variations should be in writing. Modifications or changes may be made to the current conditions without prior notice, and such changes will be effective immediately upon being posted on the Site. Each time you use the site, you should review the current Terms and conditions, and may check the "last updated" legend at the top of these Terms and Conditions. You're continued use of our services and site indicates your accordance with the current Terms and Conditions, however, the terms and conditions that were in effect during the time of any claim or dispute shall be those applied.

## Installation

- 3.1 The Contractor shall install the SmartDry units in accordance with the Installation Quote Subject to these Conditions.
- 3.2 The quantity, quality and description of any specification for the SmartDry units shall be those set out in the Installation Quote. The Contractor reserves the right to make any changes to the specification of the installation that are strictly required to conform with any applicable safety or other statutory requirements or where the SmartDry units are to be supplied to the Customer's specification to the extent that the Customer's specification differs from that set out in the Installation Quote. The contractor will clean the site and remove any waste permitting to circumstances.
- 3.3 The Contractor will confirm the agreed installation date within 24 hours of the agreement. Standard 14 day full cancellation consumer rights will apply, as described by the British Department for Business Innovation & Skills. If the customer wishes the installation date to be within the 14 day cancellation period, the customer agrees that if they then cancel they will be liable for any costs incurred by the Company.
- 3.4 The Customer shall not remove, copy, reproduce, distribute, transmit, broadcast, display, sell, license, or otherwise exploit any part of the SmartDry System, especially the installed bricks, for any other purposes, other than for those originally installed by SmartDry, without the prior written consent of the Director of the SmartDry company and the presence of a SmartDry approved engineer.

## Price

- 4.1 The Basic Net Price of the installation will be the amount stated in the Installation Quote, based on our standard prices per linear meter of exterior wall in which the SmartDry units are installed.
- 4.2 If requested by the Contractor the Customer shall pay the Contractor 10% of the value of the Installation Quote as a deposit within 7 days of accepting the installation Quote. If the Customer cancels the accepted Installation date and is not covered by the standard 14 day cancellation period, the Customer is liable for all reasonable losses incurred by the company to the Contractor. The following values will be used as a guideline: £250.00 (+VAT) per installation day per team of installation engineers and any transportation costs calculated at 50p/Mile (+VAT).
- 4.3 The Customer has the right to reschedule the Installation date at no additional cost provided notice is given to the Contractor in writing within a minimum of 7 days before the installation date, otherwise, there will be a penalty as such stated in 4.2
- 4.4 In the case the customer cancels or changes the installation after works have commenced for whatever reason, the price will be calculated to include work already completed plus any reasonable losses as set out in the guidelines of 4.1. Furthermore the customer will waive rights to the guarantee as set out in paragraph 7.1 - 7.3
- 4.5 If the Customer does not meet their Customer Obligations set out in 6.1, the Customer will be notified of such discrepancies and will be subject to charges covering for expenses as set out in 4.1 for any extra day of work required to complete the installation.
- 4.6 If additional works are required in excess of the Installation Quote the Contractor shall inform the Customer of such additional works and require an acceptance from the Customer in writing.
- 4.7 Any other changes to the price will need to be agreed between the customer and the contractor in writing.

## Payment

- 5.1 The Customer shall pay to the Contractor the deposit amount described in 4.2 and only if requested beforehand by the Contractor in writing.
- 5.2 If additional works have been carried out the Customer shall pay the additional costs as stated in 4.6.
- 5.3 The Contractor shall be entitled to invoice the Customer for the price of the installation and any further charges shown in the Installation Quote minus any deposits paid beforehand after completion.
- 5.4 The Customer shall pay the invoice in UK Pounds Sterling within 7 days of receiving the invoice, after the works have been completed.
- 5.5 If the Customer fails to make full payment on the due date then the Contractor shall be entitled to charge the Customer a surcharge of £100.00 (+VAT) every week for a total of four (4) weeks, in which thereafter if payment still has not been received an interest (both before and after a Court judgment) on the amount unpaid and surcharged at the rate of 2% above Barclays Bank PLC base rate will be charged monthly until payment is made in full.
- 5.6 In addition to the rights set out in Clause 5.5 above, if the Customer fails to make any payment on the due date the Contractor shall be entitled (without prejudice to other rights of recovery) to make a claim to court or instruct a debt collector to recover any sums owed by the Customer. The Customer shall, in addition to the amount outstanding, be charged and will be required to pay the costs of the debt collector recovering the outstanding amount, and shall further reimburse the Contractor all other costs of or incidental to recovery (including court, legal and other professional fees) on a full indemnity basis.

## Customer Obligations

- 6.1 During the installation the Customer shall ensure the availability to the Contractor, free of charge, of water and electricity that the Contractor may require. Prior to the commencement of installation the Customer shall remove all obstructions that are likely to interfere with the installation, and shall for the duration of installation ensure access to the site for the contractor. In the event that the Contractor is obligated to remove objects in order to complete installation, the Contractor will not be liable for any damages incurred during the removal of interfering objects.

## Guarantee

- 7.1 The installation of the System involves the installation of humidity regulating units into the wall. The contractor guarantees that the humidity regulating units will last for at least the lifetime of the brickwork in which they are installed. If a humidity regulating element is defective, the Contractor will replace it to ensure the continuing operation of the SmartDry System. Provided that the customer has accepted and paid for the installation in full in accordance with the recommendations of the Contractor (including those out of the extent of the installation), the additional guarantee set out in 7.2 below shall also apply.
- 7.2 The Lifetime Guarantee is only applicable when the DryBrick System is installed on all external walls and following the surveyors recommendations. If the installation has only been done on some sections of the property, and is not installed on all external walls, or in accordance with the surveyors recommendations, the guarantee is void and not applicable.
- 7.3 The Contractor guarantees to the Customer that upon 16 months following the installation of the System, the moisture content of the brickwork in which the SmartDry units are installed will be reduced to below 10% as measured by the Contractor, and if it is not, the Customer shall be entitled to their money back, provided that the Customer has given notice through a written claim with a copy of the original Invoice and Guarantee Certificate, under this guarantee within 17 months of the installation. In the event that the Customer needs a gravimetric report to verify the performance of the System -for selling purposes of the property for example- and they have not previously purchased this service at the time of the Installation Quote, a first time reduced fee of £200 + VAT will be charged for this inspection and report; this service is available starting from 16 months after installation of the SmartDry System. Any changes to paperwork (such as change of ownership) will incur a standard administrative charge of £45 + VAT.
- 7.4 The Contractor shall not be liable under the above guarantees where the claim has arisen because of:
- 7.4.1 interference by the Customer or a third party or modifications to the installation;
  - 7.4.2 application by the Customer or a third party of any material such as a coating to the inner or outer surfaces of the walls which are treated with the SmartDry units which could prevent the walls from breathing. It is recommended that any materials that hinder the breathability of the walls be removed as this could delay the effectiveness of the System;
  - 7.4.3 failure to ensure ventilation options or possibilities so as to keep the humidity levels where the System has been installed within an acceptable range that does not surpass a humidity level of 60%;
  - 7.4.4 failure by the Customer to carry out or comply with any recommendations of the Contractor;
  - 7.4.5 failure of the Customer to keep the property in which the SmartDry units have been installed in a dry waterproof condition and adequately maintained; without limitation "adequately maintained" in these Conditions shall include proper maintenance of the structure of the property in which the SmartDry units have been installed, adequate sub-floor ventilation of such property and ensuring that the soil level outside the property does not exceed the level of any damp course;
  - 7.4.6 pre-existing structural defects.
  - 7.4.7 illegal or unapproved removal of any parts of the SmartDry system, especially the installed bricks.
- 7.5 The Contractor shall not be liable under the above guarantees if payment in full is not completed as set out in 5.3 to 5.5 for the installation of the SmartDry units.

## Liability

- 8.1 The Contractor's liability to the Customer, except in the case of liability for personal injury or death arising as a result of the Contractor's negligence, shall:
- 8.1.1 in the case of the Contractor not complying with either these Conditions or the Installation Quote, and subject to the money back guarantee offered in clause 7.2 will be limited to repairing or replacing the SmartDry units; and
  - 8.1.2 in the case of physical damage to the Customer's property the amount set for any incident or series of related incidents will be as agreed between the Customer and the Contractor in writing. In the case that an agreement cannot be reached, the courts will have to establish the limit of any claim.
- 8.2 The Contractor shall not be liable to the Customer or deemed to be in breach of the Installation Quote by reason of any delay in performing or any failure to perform any of the Contractor's obligations in relation to the installation if the delay or failure was due to any cause beyond the Contractor's reasonable control including fire, frost, periods of heavy rainfall, faulty machinery or other faults at the Contractor's industrial premises, strikes, war risk, riots, war, epidemics, flooding, and storms.
- 8.3 If the indicative delivery period contained in the Installation Quote is exceeded by more than 6 months as a result of any cause beyond the Contractor's reasonable control the Customer shall be entitled to terminate the Installation Quote in which event the Contractor shall return the Customer's deposit and the Contractor shall have no other liability to the Customer of any kind whether by way of consequential loss or otherwise howsoever.
- 8.4 If the Installation Quote and these Conditions constitute a consumer transaction, the statutory rights of the Customer are not affected by these Conditions. If the Customer is in any doubt about the relevant statutory rights it is for the Customer to be advised by the local Trading Standards Office or Citizens Advice Bureau or otherwise, as the Customer chooses.

## Complaints & Dispute

- 9.1 In the case of a complaint, The Contractor is obliged to resolve any issues that fall under the guarantee as set out in 7.1 - 7.4; and the Contractor vows to resolve any complaints that may not fall under the guarantee but can be dealt with reasonably to the interests of both parties.

- 9.2 If the complaint cannot be resolved directly, The Customer has the obligation to make known the exact nature of the complaint to the Contractor in writing. The Contractor is obliged to a response within 10 working days.
- 9.3 The Customer is prohibited to make the complaint known to any third parties during the complaints procedure and until the Contractor has had a chance to respond in writing.
- 9.4 When we cannot resolve your complaint using our own complaints procedure, as a Which? Trusted trader we use Dispute Resolution Ombudsman for dispute resolution. In the unlikely event of a complaint arising you are entitled to refer your complaint to them please contact 0333 241 3209 or via their website:  
<http://www.disputeresolutionombudsman.org/which-trusted-traders-partnership/>.

**Choice of Law**

- 10.1 The formation, existence, construction, performance, validity and all aspects whatsoever of the Installation Quote and the Conditions shall be Governed by the law of England and subject to the exclusive jurisdiction of the courts of England.