

TERMS AND CONDITIONS OF SALE

1. TERMS AND CONDITIONS

- 1.1. The terms and conditions set out below are those upon which Dalroad Norslo Limited ("the Company") is willing to contract to the exclusion of all other terms and conditions including any terms or conditions which the Customer may purport to apply under any purchase order confirmation of order or similar document.
- 1.2. Any tender or quotation acceptance of order made by or given to the Company shall be subject to the following conditions.
- 1.3. Acceptance of delivery of the goods shall be deemed conclusive evidence of the Customer's acceptance of these conditions.
- 1.4. Any variation to these conditions (including any special terms and conditions agreed between the parties) shall be inapplicable unless agreed in writing by the Company.

2. ACCEPTANCE

Unless previously withdrawn or otherwise specified by the Company in writing all quotations and tenders are open for acceptance by the Customer within thirty days for the date thereof. All orders placed with the Company require the Company's acceptance before any obligation attaches to the Company.

3. TERMS OF PAYMENT

- 3.1. Unless otherwise stated all sums become due and payable in full at end of the month following the month of delivery
- 3.2. Time of payment shall be of the essence of the contract and the Company shall be entitled to charge interest at the rate of 2% above the base lending rate of the Company's Bankers current rate from time to time on all overdue accounts such interest being deemed to accrue on a day to day basis from the due date for payment.
- 3.3. The Customer shall have no right of set off statutory or otherwise.
- 3.4. The Company reserves the right at any time at its discretion to demand security for payment before continuing with or delivering any order.

4. PRICES

- 4.1. All prices are quoted net ex works exclusive of VAT unless otherwise stated.
- 4.2. The Company reserves the right to make an additional charge in respect of variations requested by the Customer to the specifications of the goods or their packaging.

5. THE GOODS

- 5.1. The quantity and description of the goods shall be as set out in the Invoice/Despatch Note.

6. RISK AND TITLE

- 6.1. Risk shall pass to the customer when the goods are delivered to, or collected by, the Customer or its agent and the Customer shall be responsible for all subsequent loss damage or deterioration.
- 6.2. Notwithstanding risk in the goods supplied passing in accordance with Clause 6.1 title in goods supplied shall remain vested in the Company and the Customer shall hold goods supplied as fiduciary agent and bailee for the Company until the Customer shall have paid the Company all sums owing, including any balances, from the Customer in respect of goods delivered by the Company. The Customer may however sell goods supplied for the purposes of its business in which case it shall hold the proceeds of any such sale in trust for the Company pending payment by the Customer to the Company of the sums owing. The Company may at any time revoke the power of sale given the Customer and such power of sale shall automatically cease if the Customer has a petition presented for its winding-up or passes a resolution for voluntary winding-up (otherwise than for a bona fide amalgamation or reconstruction) or compounds with its creditors or has a receiver appointed of all or part of its assets or becomes bankrupt or insolvent or enters into any arrangements with creditors or takes or suffers any similar action in consequence of debts or carries out or undergoes any analogous act or proceeding.
- 6.3. Upon determination of the Customer's power of sale and use the Customer shall place any of the goods in its possession or under its control and unsold at the disposal of the Company.
- 6.4. The Customer shall permit the servants or agents of the Company to enter on to the Customers premises and to repossess goods at any time prior to payment of the sums owing.

7. LIEN AND STOPPAGE

- 7.1. When the title in the goods supplied to the Customer and the time for payment has fallen due but payment has not been made or if the Customer (being a Company) has a petition presented for its winding up or passes a resolution for voluntary winding up otherwise than for the purpose of a bona fide amalgamation or reconstruction, or compounds with its creditors, or takes or suffers any similar action in consequence of debts, or carries out or undergoes any analogous act or proceedings; then the Company has (a) a lien on the goods so long as the Company is in possession of them (b) a right of stoppage in transit and (c) a right of resale.
- 7.2. For the avoidance of doubt it is hereby declared that nothing in this Clause shall affect the rights given to the Company by Sections 38-48 of the Sale of Goods Act 1979.

8. DELIVERY AND DELAY

Dates quoted for delivery and performance are subject to confirmation at the time the order is placed. Such dates are not to be of the essence of the contract and the Company will not be liable for loss or damage occasioned by delay nor shall the Customer have any right to impose penalties or to cancel the order for delay from any clause. Deviations in quantity of goods delivered (representing not more than 10 percent by value) from that stated in the order shall not give the Customer any right to reject the goods or to claim damages and the Customer shall be obliged to accept and pay at the contract rate for the quantity of goods delivered.

9. INSPECTION – SHORTAGES – DEFECTS

- 9.1. All goods are carefully inspected and packed before despatch and transported in an appropriate manner.
- 9.2. The Customer is under a duty whenever possible to inspect the goods on delivery.
- 9.3. Claims in respect of any shortage, damage or defective packing must be made in writing within ten days of receipt.
- 9.4. Any claims relating to total loss of goods must be made in writing within twenty-one days of notification of dispatch or receipt of invoice whichever is the later.
- 9.5. In all cases where defects or shortages are complained of the Company shall be under no liability in respect thereof unless an opportunity to inspect the goods is supplied to the Company before any use is made thereof or any alteration or modification is made thereto by the Customer.
- 9.6. Subject to the Customer complying with the provisions of this clause 9 the Company shall make good any shortage in goods delivered and where appropriate replace any goods damaged in transit as soon as it is reasonably able to do so, but otherwise shall be under no liability whatsoever or howsoever arising for such shortage or damage.

10. CANCELLATION

No cancellation of an order will be accepted by the Company other than by express agreement in writing and the Company reserves the right to charge for goods obtained, work done, costs incurred and loss of profit. In no case can cancellations be recognised or accepted within the thirty days prior to the agreed delivery date of materials.

11. WARRANTIES

- 11.1. The Company warrants that it has title to and the unencumbered right to sell the goods.
- 11.2. No representation or warranty is given as to the suitability or fitness of the goods for any particular purpose and the Customer shall satisfy himself in this respect and shall be totally responsible therefor.
- 11.3. If the goods supplied are in such state as would but for this condition entitle the Customer to repudiate the contract and/or claim damages from the Company the Company reserves the right to repair or replace the goods supplied.

12. LIABILITY/EXCLUSION OF CONSEQUENTIAL LOSS

- 12.1. Nothing in this clause shall be deemed to exclude or restrict the Company's liability for death or personal injury resulting from the Company's negligence.
- 12.2. Each of the sub-clauses in this Clause 12 is to be treated as separate and independent.
- 12.3. This Clause covers defects caused by faulty design, manufacture, materials or workmanship. It does not cover defects caused by abnormal use, misuse or neglect.
 - 12.3.1. The Company agrees that if any defect covered by sub-clause 12.3 of this clause is discovered during the period of twelve months commencing with the date of despatch, the Company will either repair the goods delivered at its own expense, or if it chooses to do so, replace the goods supplied.
 - 12.3.2. The Customer can not claim the benefit of this clause unless he informs the Company of the relevant defect in writing within seven working days of discovering it and he returns the goods to the Company at his own expense.
 - 12.3.3. The risk of accidental loss whilst the goods are being returned will be borne by the Customer.
 - 12.3.4. In consideration for receiving the benefit of this clause the Customer agrees that, apart from those terms set out in clauses 9 and 11, no other terms whether conditions warranties or innominate terms, express or implied, statutory or otherwise shall form part of this contract except where the Customer deals as consumer within section 12 of the Unfair Contract Terms Act 1977 when the terms implied by section 13, 14 and 15 of the Sale of Goods Act 1979 shall be implied into the contract.
- 12.4. The Company shall not be liable for any consequential or indirect loss suffered by the Customer whether this loss arises from breach of a duty in contract or tort or in any other way (including loss arising from the Company's negligence).
- 12.5. The Company's total liability for any one claim or for the total of all claims arising from any one act or default of the Company (whether arising from the Company's negligence or otherwise) shall not exceed the contract price of the goods.

13. DESCRIPTIONS DRAWINGS DATA CONFIDENTIAL INFORMATION

- 13.1. The Company reserves the right to change and improve the design of some or all of the component parts included in its quotation and thereafter supplied accordingly.
- 13.2. All drawings documents and other information supplied by the Company are supplied on the express condition that the Customer shall not without the written consent of the Company:
 - 13.2.1. give away, lend, exhibit, or sell such drawings or extracts therefrom or copies thereof;
 - 13.2.2. use them in any way except for the purpose of installing or operating the materials for which they are issued.
- 13.3. All illustrations, weights, measures, temperatures, capacities and performance schedules contained in the Company's printed brochures and sales literature form no part of the contract. The Customer shall be responsible for the accuracy of all information and drawings supplied by it and the Company shall be under no responsibility to check the accuracy thereof.
- 13.4. Copyright in respect of all drawings and other documents prepared by the Company shall vest in and remain the property of the Company.

14. TRADEMARKS PATENTS COPYRIGHT

The Customer shall indemnify the Company against any claim made against the Company in respect of infringement of letters patent copyright or other protection in respect of goods designed and supplied by the Company to the specification of the Customer.

15. FORCE MAJEURE

The Company shall be excused from liability if performance of the contract is prevented or hindered by any cause whatsoever beyond the Company's control and in particular but without prejudice to the generality of the foregoing by act of God War Government control restrictions or prohibitions or any Government act or omission whether local or national, fire flood, subsidence, sabotage, accidents strike or lockout and shall not be liable for any loss or damage resulting from any such circumstances.

16. SALES PROMOTION DOCUMENTATION

Whilst the Company takes every precaution in the preparation of its catalogues, technical circulars, price lists and its other literature, these documents are for the Customer's general guidance only and the particulars contained therein shall not constitute representations by the Company and the Company shall not be bound thereby.

17. NOTICES

- 17.1. Any demand notice or communication shall be deemed to have been duly served:-
 - 17.1.1. if delivered by hand, when left at the address of the party concerned as specified overleaf; or
 - 17.1.2. if sent by prepaid first class post, 48 hours after being posted (excluding Saturdays, Sundays and bank holidays);
 - 17.1.3. if transmitted by facsimile at the time of transmission.
- 17.2. Any demand notice or communication will be made in writing addressed to the party concerned at its address specified overleaf or such other address as that party may from time to time notify in writing.

18. DATA PROTECTION

- 18.1. We may transfer information about you to our bankers/financiers for the purpose of providing services and for the following purposes:- Obtaining credit insurance, making credit reference agency searches, credit control, assessment and analysis (including credit scoring, market, product and statistical analysis), securitisation, protecting our interests. We will provide you with details of our bankers/financiers and that of any credit reference agencies used on request.

19. LEGAL INTERPRETATION

- 19.1. This Contract shall be governed by and constructed in accordance with the law of England and Wales.
- 19.2. All disputes arising out of this contract will be subject to the jurisdiction of the Courts of England and Wales.