

Denholm, Rees & O'Donnell Ltd

Standard terms and conditions

1. Definitions

"The Company" means Denholm Rees & O'Donnell Ltd
"The customer" means the person, firm or company that contracts with the Company for the purchase of goods or services.
"The goods" means the products of any kind manufactured or sold by the Company.
"The services" means work of any kind carried out by the Company.

2. Conditions applicable

These conditions shall apply to all contracts for the sale of goods or services by the Company to the customer to the exclusion of all other terms and conditions including any terms or conditions that the customer may purport to apply under any purchase order, confirmation of order or similar document.
All orders for goods or services shall be deemed to be an offer by the customer to purchase goods or services pursuant to these conditions.
Acceptance of delivery of the goods or service shall be deemed conclusive evidence of the customer's acceptance of these conditions.
Any variation to these conditions (including any special terms or conditions agreed between the parties) shall be inapplicable unless agreed in writing by a director of the Company.
In the event that information given by the customer to the Company differs from that on which the quotation was based and involves the alteration of the quotation, the Company may increase the price quoted therein to cover any increase in cost that the alteration may incur and amend the delivery date.

3. The price and payment

The price of the goods or service shall be the Company's quoted price which will be binding upon the Company provided that the customer shall accept the Company's quotation within 30 days.
The price is exclusive of VAT which shall be due at the rate ruling on the date of the Company's invoice.
Where the Company has approved the customer's credit facilities the customer shall pay within 30 days of the Company's invoice. Time for payment shall be of the essence of the contract. If the customer does not pay the whole of the price within 30 days of the relevant date interest shall be payable on the amount outstanding for the period beginning with the expiry of the 30 days and ending with the date of payment at the rate of 4% over the HSBC plc minimum lending rate for the time being.

4. Warranties and liability

All other terms conditions and warranties relating to fitness for purpose, merchantability or condition of the goods or service whether made expressly by the Company or its servants or agents or implied by statute at common law or otherwise are excluded.

5. Delivery of the goods

The Company will make every endeavour to meet the delivery times for the provision of the goods or services that are specified in the quotation but no guarantee is given as to delivery times which are forecasts only. Time shall not be of the essence of the contract save in the case of payment due to the Company.
Delivery times shall run from the date of receipt by the Company of the customer's order in writing or facsimile.
Delay in delivery shall not give the customer the right to cancel the order.
The Company may deliver the goods or service by separate instalments in accordance with an agreed schedule. Each separate instalment shall be invoiced and paid in accordance with these terms and conditions. The failure of the customer to pay for any one or more of the said instalments on the due dates shall entitle the Company (at its sole option) without further notice to suspend further deliveries of the goods or service pending payment by the customer and/or to treat the contract as repudiated by the customer
The customer shall promptly obtain all necessary import licenses, clearances, and other consents necessary for the purchase of goods.
The Company shall promptly upon request supply all documents reasonably required by the customer for this purpose.
The Company shall not be liable for any loss or damage whatever due to failure by the Company to deliver the goods or service (or any of them or it) promptly or at all.
The goods or service may be delivered to the customer at the Company's address. The risk in the goods shall pass to the customer upon such delivery taking place
The Company may arrange for carriage of the goods to the customer's address. The costs of carriage and any insurance that the customer reasonably directs the Company to incur shall be reimbursed by the customer without any set off or other withholding whatsoever and shall be due on the date of payment of the price. The carrier shall be deemed to be the customer's agent.

6. Damage, shortage, and loss

In the event that the Company delivers the goods to the customer, or uses a carrier to do so, the customer must notify the Company within three days of delivery of any damage, shortage or loss.
The Company shall not be liable for any loss or consequential loss arising from such damage or shortage.

7. Defects

The customer must notify the Company within 14 days of receipt of the goods or service of any defects in them. The customer shall return the goods to the Company carriage paid.
If the Company accepts the customer's claim, the Company shall have the choice of rectifying the defect or crediting the customer with the amount given on the quotation.
The customer may not charge the Company for any work the customer carries out to rectify a defect without the written agreement from the Company.
The Company shall despatch any rectified goods to the customer carriage paid.

8. Acceptance of the goods or service

The customer shall be deemed to have accepted the goods or service 30 days after delivery to the customer. After acceptance the customer shall not be entitled to reject the goods or service that are not in accordance with the contract.

9. Title and risk

Title and risk shall pass as hereinafter provided.
The goods shall be at the customers risk from delivery or collection as the case may be.
In spite of delivery being made properly in the goods shall not pass from the Company until the customer shall have paid the price plus VAT in full and no other sums whatever shall be due from the customer to the Company.
Until property in the goods passes to the customer in accordance with clause 9.3 the customer shall hold the goods and each of them on a fiduciary basis as bailee for the Company. The customer shall store the goods (at no cost to the Company) separately from all other goods in its possession and marked in such a way that they are clearly identified as the Company's property.
Notwithstanding that the goods (or any of them) remain the property of the Company the customer may sell or use the goods in the ordinary course of the customer's business at full market value for the account of the Company.
Any such sale or dealing shall be a sale or use of the Company's property by the customer on the customer's own behalf and the customer shall deal as principal when making such sales or dealings. Until property in the goods passes from the Company, the entire proceeds of sale or otherwise of the goods shall be held in trust for the Company and shall not be mixed with any other money or paid into any overdrawn bank account and shall be identified at all times as the Company's money.

The Company shall be entitled to recover the price (plus VAT) notwithstanding that property in any of the goods has not passed from the Company.

Until such time as property in the goods passes from the Company, the customer shall upon request deliver up such of the goods as have not ceased to be in existence or resold to the Company. If the customer fails to do so, the Company may enter upon any premises owned, occupied or controlled by the customer where the goods are situated and repossess the goods. On the making of such request the rights of the customer under clause 9.5 shall cease.

The customer shall not pledge or in any way charge by way of security for any indebtedness any of the goods that are the property of the Company. Without prejudice to the other rights of the Company. If the customer does so, all sums whatsoever owing to the Company shall forthwith become due and payable.

The customer shall insure and keep insured the goods to the full price against all risks to the reasonable satisfaction of the Company until the date that property in the goods passes from the Company, and shall whenever requested by the Company produce a copy of the policy of insurance. Without prejudice to the other rights of the Company, if the customer fails to do so, all sums whatsoever owing by the customer to the Company shall forthwith become due and payable.

The customer shall promptly deliver the prescribed particulars of this contract to the Registrar in accordance with the Companies Act 1985 Part XII as amended. Without prejudice to the other rights of the Company. If the customer fails to do so all sums whatsoever owing by the customer to the Company shall forthwith become due and payable

10. Liability

No liability is accepted for any direct or indirect cost, damage or expense relating to property or injury or loss to any person firm or company or for any loss of profits or production arising out of or occasioned by any defect in or failure of materials or for parts thereof supplied by the Company or other consequential loss howsoever arising (except to the extent that any such liability may be excluded by statute).
The Company's liability whether in respect of one claim or in aggregate arising out of any contract shall not exceed the purchase price payable under the contract.
Where the customer accepts or has been deemed to have accepted any goods, then the Company shall have no liability whatever to the customer in respect of those goods.
Illustrations, weights, measures, specifications and performance schedules set out in the sales literature of the Company form no part of this contract.

11. Delivered quantity

The Company reserves the right to over or under-deliver to the extent of 5% of the quantity given on the quotation, except for batches of 20 or less when the quantity that may be over or under delivered will be on item only. The Company will then invoice pro rata for the appropriate quantity.

12. Intellectual property

The specifications and designs of the goods (including the copyright, design right, or other intellectual property in them) shall as between the parties be the property of the Company. Where any designs or specifications have been supplied by the customer for manufacture by or to the order of the Company then, the customer warrants that the use of those designs or specifications for the manufacture, processing, assembly or supply of the goods shall not infringe the rights of any third party.
The customer shall indemnify the Company in full against all liability and cost of any infringement (alleged or proven) by the customer of any patent, copyright or other intellectual or industrial property.
The customer shall not alter, deface, reproduce or use any of the Company's trademarks.
All drawings, documents and other information supplied by the Company are supplied on the express understanding that the customer will not without written consent from the company.
12.4.1 Give away, loan, exhibit or sell any such drawings or extracts there from or copies thereof
12.4.2 Use them in any way except in connection with the components for which they are used

13. Customer drawings

The company accepts no responsibility for the accuracy of information or drawings supplied by the customer.
The customer shall indemnify the Company from and against all actions, claims costs, and proceedings that arise due to the manufacture of components according to the drawings and specifications of the customer, where such drawings and specifications of the customer shall be erroneous.

14. Insolvency or other default of the customer.

If the customer fails to make payment for the goods in accordance with the contract of sale or commits any other breach thereof or if any distress or execution shall be levied upon any of the customer's goods or if the customer offers to make any arrangement with its creditors or commits an act of bankruptcy or if any petition in bankruptcy is presented against the customer or the customer is unable to pay its debts as they fall due or if being a limited company any resolution or petition to wind up the customer (other than for the purpose of amalgamation or reconstruction without insolvency) shall be passed or presented of if a receiver, administrator, administrative receiver or manager shall be appointed over the whole or any part of the customer's business or assets or if the customer shall suffer any analogous proceedings under foreign law, all sums outstanding in respect of the goods shall become payable immediately. The Company may in its absolute discretion and without prejudice to any other rights that it may have.
14.1.1 suspend all future deliveries of goods to the customer and/or terminate the contract without liability upon its part and/or
14.1.2 exercise any of its rights pursuant to clause 9.

15. Set off and counterclaim

The customer may not without payment of any invoice or other amount due to the Company by reason of any right of set-off or counterclaim that the customer may have or allege to have or for any reason whatsoever.

16. Back orders

The Company shall be entitled to a general lien on all goods of the customer in the Company's possession (including goods of the customer that have been paid for) for the unpaid price of all goods sold to the customer by the Company under this or any other contract.

17. Sub-contracting

The Company may license or sub-contract all or any part if its rights and obligations under this contract without the customer's consent.

18. Force majeure

The Company shall not be liable for any default due to any act of God, war, strike, lockout, industrial action, fire, flood, drought, tempest or any other event beyond the reasonable control of the Company.

19. Notices

Any notice required to be served pursuant to this contract of sale shall be in writing and served by first class post, by hand or by facsimile on the Company at the Company's registered office or principle place of business, and on the customer at the customer's registered office or principle place of business.

20. Proper law of the contract

20.1 This contract is subject to the law of England and Wales

Revised February 2001

