



DENGROVE MARKETING LIMITED -- CONDITIONS OF SALE

1. Interpretation

1.1 In these Conditions:

- 'BUYER' means the person who accepts a quotation of the Seller for the sale of the Goods or whose order for the Goods is accepted by the Seller.
- 'CONDITIONS' means the standard terms and conditions of sale set out in this document and (unless the context otherwise requires) includes any special terms and conditions set out in writing by the Seller.
- 'CONFIRMATION' means the acknowledgement in writing via a purchase order or such other form as the Seller reasonably requires with the Seller by the Buyer pursuant to a Quotation and acceptance of the terms and conditions of this contract.
- 'CONTRACT' means 'the Contract' for the supply of Services and the terms and conditions thereto.
- 'GOODS' means the goods (including any instalment of the goods or any parts for them) requested by the Buyer, which the Seller is to supply in accordance with these Conditions.
- 'PRICE' means the quoted costs of the Seller as set out in the Quotation as amended in accordance with this agreement.
- 'SELLER' means Dengrove Marketing Limited.
- 'QUOTATION' means a quotation requested by the Buyer and given by the Seller in respect to the availability and price of a particular Good together with any other appropriate details.
- 'WRITING' includes facsimile transmission provided that confirmation by letter posted first class is followed within 24 hours.

1.2 Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

1.3 The headings in these Conditions are for convenience only and shall not affect their interpretation.

2. Basis of the sale

- 2.1 The Seller shall sell and the Buyer shall purchase the Goods in accordance with these Conditions, which shall govern the Contract.
- 2.2 Upon receiving Confirmation by the Buyer that it accepts the Quotation the Seller shall use all reasonable endeavours to arrange for the provision of the Goods in accordance with the remaining terms and conditions hereunder.
- 2.3 No variation to these Conditions shall be binding unless agreed in Writing between the authorised representatives of the Buyer and the Seller.
- 2.4 Any advice or recommendation given by the Seller or her employees or agents to the Client or its employees or agents as to the provision of the Goods (or any part thereof) which is not confirmed in Writing by the Seller is followed or acted upon entirely at the Buyer's own risk and accordingly the Seller shall not be liable for any such advice or recommendation which is not so confirmed.
- 2.5 Any typographical, clerical or other error or omission in any sales literature, Quotation, price list, acceptance of offer, invoice or other documentation or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.

3. Orders and specifications

- 3.1 Subject to clause 3.2 no order submitted by the Buyer shall be deemed to be accepted by the Seller unless and until confirmed in Writing by the Seller's authorised representative.
- 3.2 Notwithstanding clause 3.1 no order (or part thereof) for the Goods shall be deemed or otherwise to be accepted by the Seller even though the Seller receives Confirmation from the Buyer and the Seller confirms the order in accordance with clause 3.1 unless and until the Seller receives confirmation from its supplier that the appropriate Goods are obtainable in accordance with their previous correspondences relating to the Goods that the Buyer has requested hereunder and the Seller notifies the Buyer of such in Writing.
- 3.3 The Buyer shall be responsible to the Seller for ensuring the accuracy of the information given and set out in the Quotation or any subsequent advice in Writing confirming the same submitted by the Seller and for giving the Seller any necessary or requested information relating to the Goods within a sufficient time to enable the Seller to perform the Contract in accordance with their terms.
- 3.4 The quantity, quality and description of and any specification for the Goods shall be those set out in the Seller's Quotation or any subsequent advice in Writing confirming the same and accepted by Confirmation in accordance with clause 2.2.
- 3.5 The Seller reserves the right to make any changes in the specification for the Goods which are required to conform with any applicable statutory or EC requirements.
- 3.6 No Quotation which has been accepted by the Buyer pursuant to clause 3.1 may be cancelled (in whole or part) or varied by the Buyer except with the agreement in Writing of the Seller and on terms that the Buyer shall indemnify the Seller in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Seller as a result of cancellation (in whole or part) or variation including (without limitation) any cancellation and/or penalty charges imposed on the Seller by any third party in the provision of the Goods.

4. Price of the goods

- 4.1 Subject to the remaining provisions of this clause 4 the price of the Goods shall be as set out in the Quotation.
- 4.2 No price given in a Quotation by the Seller shall be a confirmed price unless and until the Seller confirms the price in Writing to the Buyer in accordance with clause 3.2.
- 4.3 All prices quoted in the Quotation and subsequently confirmed in writing relate to a particular source of supply of the Goods and are therefore valid for as long as that source of supply is made available to the Seller from its Supplier in accordance with their previous correspondences relating to the Goods that the Buyer has requested hereunder or 7 days whichever shall be the lesser.

- 4.4 The Seller reserves the right, by giving notice to the Buyer at any time before delivery to increase the price of the Goods to reflect any increase in the cost to the Seller which is due to any factor beyond the control of the Seller (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increases in the costs of labour, materials variations in the terms of the Quotation, any change in delivery dates, quantities or specifications for Goods which are requested by the Buyer or any delay caused by any instructions of the Buyer, such instructions or information as required by the Seller in order for the Seller to provide the Goods.
- 4.5 The prices for the Goods are exclusive of any applicable value added tax and carriage/delivery charges (in accordance with clause 6.1), which the Seller shall be additionally liable to pay the Seller.

5. Terms of payment

- 5.1 Subject to any special terms agreed in Writing between the Buyer and the Seller, the Seller shall be entitled to invoice the Buyer for the price of the Goods on or at any time after delivery of the Goods, unless the Goods are to be collected by the Buyer or the Buyer wrongfully fails to take delivery of the Goods, in which event the Seller shall be entitled to invoice the Buyer for the price at any time after the Seller has notified the Buyer that the Goods are ready for collection or (as the case may be) the Seller has tendered delivery of the Goods.
- 5.2 The Buyer shall pay the price of the Goods within 30 days after the month end of the date of the Seller's invoice, and the Seller shall be entitled to recover the price, notwithstanding that delivery may not have taken place and the property in the Goods has not passed to the Buyer. The time of payment of the price shall be of the essence of the Contract. Receipts for payment will be issued only upon request.
- 5.3 If the Buyer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to:
- 5.3.1 cancel the contract or suspend any further deliveries to the Buyer;
 - 5.3.2 appropriate any payment made by the Buyer to such of the Goods (or the goods supplied under any other contract between the Buyer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer); and
 - 5.3.3 charge the Buyer interest (both before and after any judgment) on the amount unpaid, at the rate of 5% per cent per annum above Lloyds-TSB Bank Plc base rate from time to time, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).
- 5.4 If the Seller's supplier requires a payment from the Seller at any time towards the Goods prior to the time when the price for the Goods shall become due and payable hereunder then the Buyer shall be required to pay such part of the price of the Goods that the Seller reasonably requires in order to secure payment to its supplier. In such circumstances the Buyer shall forward the sums of money towards the purchase of the Goods forthwith.

6. Delivery

- 6.1 Unless otherwise stated in the Quotation, the Buyer shall be responsible for all carriage/delivery charges incurred by the Seller in complying with the remaining provisions of this clause 6.
- 6.2 Any dates quoted for delivery of the Goods are approximate only and the Seller shall not be liable for any delay in delivery of the Goods however caused. Time for delivery shall not be of the essence of the Contract unless previously agreed by the Seller in writing. The Goods may be delivered by the Seller in advance of the quoted delivery date upon giving reasonable notice to the Buyer.
- 6.3 Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure by the Seller to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.
- 6.4 If the Seller fails to deliver the Goods (or any instalment) for any reason other than any cause beyond the Seller's reasonable control or the Buyer's fault, and the Seller is accordingly liable to the Buyer, the Seller's liability shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest available market) of similar goods to replace those not delivered over the price of the Goods.
- 6.5 If the Buyer fails to take delivery of the Goods or fails to give the Seller adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of the Seller's fault) then, without prejudice to any other right or remedy available to the Seller, the Seller may:
- 6.5.1 store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or
 - 6.5.2 sell the Goods at then current market price readily obtainable and, (after deducting all reasonable storage and selling expenses) charge the Buyer for any shortfall below the price under the Contract.

7. Risk and property

- 7.1 Risk of damage to or loss of the Goods shall pass to the Buyer:
- 7.1.1 in the case of Goods to be delivered at the Seller's premises, at the time when the Seller notifies the Buyer that the Goods are available for collection; or
 - 7.1.2 in the case of Goods to be delivered otherwise than at the Seller's premises, at the time of delivery or, if the Buyer wrongfully fails to take delivery of the Goods, the time when the Seller has tendered delivery of the Goods.
- 7.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, the property in the Goods shall not pass to the Buyer until the Seller has received in cash or cleared funds payment in full of the price of the Goods and all other goods agreed to be sold by the Seller to the Buyer for which payment is then due.
- 7.3 Until such time as the property in the Goods passes to the Buyer, the Buyer shall hold the Goods as the Seller's fiduciary agent and bailee, and shall keep the Goods separate from those of the Buyer and third parties and properly stored, protected and insured and identified as the Seller's property, but the Buyer shall be entitled to use the Goods in the ordinary course of its business.
- 7.4 Until such time as the property in the Goods passes to the Buyer (and provided the Goods are still in existence and have not been resold), the Seller shall be entitled at any time to require the Buyer to deliver up the Goods to the Seller and, if the Buyer fails to do so forthwith the Seller shall be entitled to enter upon any premises of the Buyer or the Buyer shall procure entry of the Seller to any third party premises where the Goods are stored and repossess the Goods.
- 7.5 The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Seller, but if the Buyer does so all moneys owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.
- 7.6 Without prejudice to the provisions of 7.1 above the Buyer is hereby given notice that when title to Goods passes to the Buyer in accordance with the above provisions any insurance which may have been maintained by the Seller in respect of the same will automatically determine unless specifically agreed in Writing in the Sellers quotation.

8 Warranties and liability

- 8.1 Subject to the conditions set out below the Seller warrants that the Goods will correspond with their specification at the time of delivery and
- 8.2.4 in the case of refurbished Goods sold to the Buyer hereunder and marked as such in the Quotation will be free from defects in material and workmanship to a material degree for a period of 30 days from the date of invoice; and
 - 8.2.5 in all other cases, the Goods will be free from defects in material and workmanship to a material degree for a period of 3 months from the date of invoice.
- 8.2 The above warranty is given by the Seller subject to the following conditions:
- 8.2.1 the Seller shall be under no liability in respect of any defect in the Goods arising from any drawing, design or specification supplied by the Buyer;

- 8.2.2 the Seller shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Seller's, manufacturers or suppliers of the Seller's instructions (whether oral or in writing), misuse or alteration or repair of the Goods;
- 8.2.3 the Seller shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total price for the Goods has not been paid by the due date for payment;
- 8.2.4 the above warranty does not extend to parts, materials or equipment not manufactured by the Seller, in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the supplier or manufacturer to the Seller insofar as the same is transferable provided that the Buyer has taken all necessary administrative steps required with respect to such third parties in order to obtain such protection.
- 8.2.5 no warranty is given in relation to the Goods and their use in conjunction with any other external equipment.
- 8.3 The Seller's liability under this agreement does not extend to any other equipment used in conjunction with the Goods.
- 8.4 The Seller does not warrant that the Goods will conform to the particular use required by the Buyer or its Customer.
- 8.5 Any claim by the Buyer which is based on any defect in the quality or condition of the Goods or their failure to correspond with specification shall (whether or not delivery is refused by the Buyer) be notified to the Seller within 7 days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure. If delivery is not refused, and the Buyer does not notify the Seller accordingly, the Buyer shall not be entitled to reject the Goods and the Seller shall have no liability for such defect or failure, and the Buyer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.
- 8.6 In the event of any such claim the Buyer shall be responsible for withdrawing the Goods or the relevant part of them from service and/or making the same available for inspection by or on behalf of the Seller or returning the same to the Seller or its agent (as the Seller may require). If such Goods are returned to the Seller the risk of damage or loss in transit will be the responsibility of the Buyer,
- 8.7 Where any valid claim in respect of any of the Goods which is based on any defect in the quality or condition of the Goods in accordance with these Conditions, the Seller's total liability arising out of any such claim shall be limited to the replacement of the Goods (or the part in question) free of charge or, at the Seller's sole discretion, refund to the Buyer the price of the Goods (or a proportionate part of the price), but the Seller shall have no further liability to the Buyer. If Goods are replaced the items so replaced shall be or become the property of the Seller.
- 8.8 Except in respect of death or personal injury caused by the Seller's negligence, the Seller shall not be liable to the Buyer by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for any indirect, special or consequential loss or damage (whether for loss of profit or otherwise), costs, expenses or other claims for compensation whatsoever (whether caused by the negligence of the Seller, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods or their use or resale by the Buyer, and the entire liability of the Seller under or in connection with the Contract shall not exceed the price of the Goods, except as expressly provided in these Conditions.
- 8.9 The Seller shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Seller's obligations in relation to the Goods, if the delay or failure was due to any cause beyond the Seller's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Seller's reasonable control:
- 8.9.1 Act of God, explosion, flood, tempest, fire or accident;
- 8.9.2 war or threat of war, sabotage, insurrection, civil disturbance or requisition;
- 8.9.3 acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;
- 8.9.4 import or export regulations or embargoes;
- 8.9.5 strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Seller or of a third party);
- 8.9.6 difficulties in obtaining raw materials, labour, fuel, parts or machinery;
- 8.9.7 power failure or breakdown in machinery.
- 8.10 Where the Goods are sold under a consumer transaction (as defined by the Consumer Transactions (Restrictions on Statements) Order 1976) the statutory rights of the Buyer are not affected by these Conditions.
- 8.11 Subject as expressly provided in these Conditions, and except where the Goods are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977), all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

9. Insolvency of buyer

- 9.1 This clause applies if:
- 9.1.1 the Buyer makes any voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or
- 9.1.2 an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer; or
- 9.1.3 the Buyer ceases, or threatens to cease, to carry on business; or
- 9.1.4 the Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.
- 9.2 If this clause applies then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Buyer, and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

10. General

- 10.1 Any notice required or permitted to be given by either party to the other under these Conditions shall be in Writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.
- 10.2 No waiver by the Seller of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 10.3 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected.
- 10.4 Save as expressly provided herein it is not intended that a third party has a right to enforce a provision of this Agreement under the Contracts (Rights of Third Parties) Act 1999.
- 10.5 In the event of a dispute the parties shall each undertake to use their reasonable efforts to reach an amicable settlement. If the dispute has not been resolved by negotiation the parties shall attempt to resolve the dispute by mediation through the Centre for Dispute Resolution. If the dispute has not been resolved within 90 days of referral to the Centre for Dispute Resolution it shall become subject to action in the courts save that it is hereby agreed that if the Seller takes any action for injunctive relief or for non-payment of monies it may in its sole discretion commence such an action in the courts immediately and without the need to first refer the matter to the Centre for Dispute Resolution.
- 10.6 This Agreement shall be governed by English law and the parties shall submit to the non-exclusive jurisdiction of the English Courts.