

DAWBARN & SONS LIMITED

HARECROFT ROAD, WISBECH, CAMBS, PE13 1RL
TEL: 01945 461741 FAX: 01945 585501 EMAIL: sales@dawbarn-evertaut.co.uk

TERMS AND CONDITIONS OF BUSINESS

DEFINITIONS

1. In these Conditions the following terms shall have the following meanings:-
"Company" means Dawbarn & Sons Limited;
"Customer" means the customer of the Company;
"Contract" means any contract for the sale of Goods by the Company to the Customer;
"Goods" means any goods forming the subject of a Contract between the Company and the Customer including parts and components of all materials incorporated in them;
"Price" means the Price as detailed in the Company's acknowledgment of order form.

QUOTATIONS

2. Quotations by the Company unless otherwise stated in them shall be open for acceptance within thirty days of the date of the quotation.

EXISTENCE OF CONTRACT

- 3.1 No Contract shall come into existence until the Customer's order (however given) is accepted by the earliest of:-
- the Company's written acceptance;
- delivery of the Goods; and
- the Company's invoice.
- 3.2 These Conditions shall be incorporated in the Contract to the exclusion of any terms or conditions stipulated or referred to by the Customer.
- 3.3 No variation or amendment of these Conditions shall be valid unless committed to writing and signed by or on behalf of both the Company and the Customer.

PRICES

- 4.1 The Price for the Goods includes delivery to the Customer at the Customer's premises and excludes VAT and other taxes or duties.
- 4.2 The Company shall have the right to adjust its prices for any increase in the price of materials, parts, labour, transport, changes in work or delivery schedules or quantities or any other costs of any kind arising for any reason after the date of the Contract.
- 4.3 The Company shall have the right to increase the cost of the Goods if the order for the Goods is for a quantity less than contained in the Company's quotation or where delivery is required either in instalments smaller than those specified in the quotation or to premises other than the Customer's premises.
- 4.4 Price changes shall take effect on the date of service on the Customer of notice of the change.

PAYMENT

- 5.1 Where the Goods are delivered in the United Kingdom payment is 60 DAYS net monthly by the end of the month after the month in which the goods are invoiced.
- 5.2 Where the Goods are delivered outside the United Kingdom payment is to be by way of irrevocable letter of credit in London or by such other method as the Company may specify. Payment (unless otherwise agreed) must be made in Sterling at the rate of exchange ruling in London at the date of invoice.
- 5.3 Without prejudice to any other rights of the Company, if the Customer fails to pay the invoice price by the due date, the Customer shall pay interest on any overdue amount from the date on which payment was due to the date of actual payment (whether before or after judgement) on a daily basis at a rate of 5% over the base rate from time to time quoted by Lloyds TSB PLC, and shall reimburse to the Company all costs and expenses (including legal costs) incurred in the collection of any overdue amount.

TITLE

- 6.1 For the purpose of section 12 of the Sale of Goods Act 1979 the Company shall transfer any such title or rights in respect of the Goods as the Company has and if the Goods are purchased from a third party shall transfer any such title or rights as that party had and has transferred to the Company.
- 6.2 Notwithstanding the earlier passing of risk, title in the Goods shall remain with the Company and shall not pass to the Customer until the amount due under the invoice(s) for them (including interest and costs) has been paid in full by cash or cleared funds.
- 6.3 Until title passes the Customer shall hold the Goods as bailee for the Company and shall store and mark them so they can at all times be identified as the property of the Company.
- 6.4 The Company may at any time before title passes and without any liability to the Customer:-
6.4.1 repossess and use or sell all or any of the Goods and by doing so terminate the Customer's right to use, sell or otherwise deal in them; and
6.4.2 for that purpose (or for determining what if any of the Goods are held by the Customer and inspecting them) enter any premises of or occupied by the Customer.
- 6.5 Until title passes the entire proceeds of sale of the Goods shall be held in trust for the Company and shall be held in a separate designated account and not mingled with other monies or paid into any overdrawn bank account and shall be at all times identifiable as the Company's money.
- 6.6 The Company may maintain an action for the Price of the Goods notwithstanding that title in them has not passed to the Customer.

RISK, DELIVERY AND PERFORMANCE

- 7.1 The Goods are deemed to be delivered to the Customer when delivered by the Company to the Customer's premises or other delivery point agreed by the Company.
- 7.2 Risk in the Goods passes when they are delivered in accordance with clause 7.1.
- 7.3 The Company may at its discretion deliver the Goods by instalments in any sequence.
- 7.4 Where the Goods are delivered by instalments, no default or failure by the Company in respect of any one or more instalments shall vitiate the Contract in respect of the Goods previously delivered or undelivered Goods.
- 7.5 Any dates quoted by the Company for the delivery of the Goods are approximate only and shall not form part of the Contract and the Customer acknowledges that in the performance expected of the Company no regard has been paid to any quoted delivery dates.
- 7.6 If the Customer fails:-
7.6.1 to take delivery of the Goods or any part of them on the due date; and
7.6.2 to provide any instructions or documents required to enable the Goods to be delivered on the due date;
the Company may on giving written notice to the Customer store or arrange for the storage of the Goods and on the service of the notice:-
7.6.3 risk in the Goods shall pass to the Customer;
7.6.4 delivery of the Goods shall be deemed to have taken place; and
7.6.5 the Customer shall pay to the Company all costs and expenses including storage, redelivery and insurance charges arising from its failure.
- 7.7 The Company shall not be liable for any penalty, loss, injury, damage or expense arising from any delay or failure in delivery or performance from any cause at all nor shall any such delay or failure entitle the Customer to refuse to accept any delivery or performance of or repudiate the Contract.

DAWBARN & SONS LIMITED

CLAIMS NOTIFICATION

- 8.1 Any claim for non-delivery of the Goods shall be notified in writing by the Customer to the Company within ten days of the Company's invoice.
- 8.2 Any claim that any of the Goods have been delivered damaged, are not of the correct quantity or do not comply with their description, shall be notified by the Customer to the Company within seven days of their delivery.

- 8.3 Any alleged defects shall be notified by the Customer to the Company within seven days of the delivery of the Goods or in the case of a defect which is not reasonably apparent on inspection within seven days of the defect coming to the Customer's attention and, in any event, in the following periods:-
- 8.3.1 for goods manufactured by the Company twelve months from the date of delivery; and
- 8.3.2 for goods not manufactured by the Company the warranty period given by the manufacturer.
- 8.4 Any claim under this condition must be in writing and must contain full details of the claim including the part numbers of any allegedly defective Goods.
- 8.5 The Company shall be afforded reasonable opportunity and facilities to investigate any claims made under this condition and the Customer shall, if so requested in writing by the Company, promptly return the subject matter of any claim and any packing materials securely packed and carriage paid to the Company for examination.
- 8.6 The Company shall have no liability with regard to any claim in respect of which the Customer has not complied with the claims procedure in these conditions.
- SCOPE OF CONTRACT**
9. Under no circumstances shall the Company have any liability of whatever kind for:-
- 9.1 Any defects resulting from wear and tear, accident, improper use by the Customer, or use by the Customer except in accordance with the instructions or advice of the Company or the manufacturer of any of the Goods, or from any instructions or materials provided by the Customer.
- 9.2 Any of the Goods which have been adjusted, modified or repaired except by the Company or in accordance with the manufacturer's recommendations.
- 9.3 The suitability of the Goods for any particular purpose or use under specific conditions whether or not the purpose or conditions were known or communicated to the Company.
- 9.4 Any substitution by the Customer of any materials or components not forming part of any specification of the Goods agreed in writing by the Company.
- 9.5 Any descriptions, illustrations, specifications, figures as to performance, drawings, in particular of weights and dimensions, submitted by the Company contained in the Company's catalogues, price lists or elsewhere since they are merely intended to represent a general idea of the Goods and do not form part of the Contract and are not to be treated as representations.
- 9.6 Any technical information, recommendations, statements or advice furnished by the Company, its servants or agents not given in writing in response to a specific written request from the Customer before the Contract is made.
- 9.7 Any variations in the quantities or dimensions of the Goods or changes of their specifications or substitution of any materials or components, if the variation or substitution does not affect the characteristics of the Goods and the substituted materials or components are of a quality equal or superior to those originally specified.
- EXTENT OF LIABILITY**
- 10.1 The Company shall have no liability to the Customer for any loss (including loss of profit or other economic loss, direct or indirect), indirect or consequential loss or damage of any nature (howsoever caused), or loss or damage (contractual, tortious, breach of statutory duty or otherwise), arising from any breach of any express or implied warranty or condition of the Contract or any negligence, breach of statutory or other duty on the part of the Company or in any other way out of or in connection with the purported performance of or failure to perform the Contract except:-
- 10.1.1 for death or personal injury resulting from the Company's negligence;
- 10.1.2 fraudulent misrepresentation; and
- 10.1.3 as expressly stated in these conditions.
- 10.2 If the Customer establishes that the Goods have not been delivered, have been delivered damaged, are not of the correct quantity or do not comply with their description, the Company shall, at its option, replace with similar Goods any of the Goods which are missing, lost or damaged, or do not comply with their description, allow the Customer credit for their invoice value or repair any damaged Goods.
- 10.3 If the Customer establishes that any of the Goods are defective the Company shall, at its option, replace with similar Goods or repair any defective Goods, allow the Customer credit for their invoice value or to the extent that the Goods are not of the Company's manufacture assign to the Customer (so far as the Company is able so to do) any warranties given by the manufacturer of the Goods to the Company.
- 10.4 The delivery of any repaired or replacement Goods shall be to the Customer's premises.
- 10.5 Where the Company is liable in accordance with this condition in respect of only some or part of the Goods, the Contract shall remain in full force and effect in respect of the other or other parts of the Goods and no set off or other claim shall be made by the Customer against or in respect of such other or other parts of the Goods.
- 10.6 No claim against the Company shall be entertained for any defect arising from any design or specification provided or made by the Customer or if any adjustments, alterations or other work has been carried out to the Goods by any person except the Company.
- 10.7 In no circumstances shall the liability of the Company to the Customer exceed the invoice value of the Goods.
- GENERAL**
- 11.1 The Company may subcontract the performance of the Contract in whole or in part.
- 11.2 The Company may at its discretion suspend or terminate the supply of the Goods if the Customer fails to make any payment when and as due or otherwise defaults in any of its obligations under the Contract or any other contract with the Company or becomes insolvent, has an administrative receiver appointed of its business or is compulsorily or voluntarily wound up or ceases or threatens to cease trading or if the Company bona fide believes that any of those events may occur, and in case of termination may forfeit any deposit paid.
- 11.3 If the Goods are manufactured in accordance with any design or specification provided or made by the Customer, the Customer shall compensate the Company in full on demand for all claims, expenses and liabilities of any nature in connection with such design or specification including any claim whether actual or alleged that the design or specification infringes the rights of any third party.
- 11.4 Except for any which is especially agreed to be included in the Goods, all tools, patents, materials, drawings, specifications and other data provided by the Company shall remain its property and all technical information patentable or unpatentable, copyright and registered designs arising from the execution of any order shall become the property of the Company.
- CANCELLATION**
12. Orders for the Goods will be charged in full unless written notice of cancellation is received not later than two weeks before the expected delivery date quoted in the Company's order acknowledgement and manufacture of them or any components for them has not commenced at the date of that notice.
- FORCE MAJEURE**
13. The Company shall not be liable for any failure in the performance of any of the Company's obligations under the Contract caused by factors outside the Company's control.
- LAW AND JURISDICTION**
14. These conditions shall be governed by English law and the Customer consents to the exclusive jurisdiction of the English courts in all matters regarding these conditions except to the extent that the Company invokes the jurisdiction of the courts of any other country.
- THIRD PARTIES**
15. None of these conditions may be enforced by any person who is not a party to the Contract.
- SEVERANCE OF UNENFORCEABLE PROVISIONS**
16. The invalidity or unenforceability of any of these conditions will not affect the validity or enforceability of any other conditions and any invalid or unenforceable condition will be severable.