

JAMES DURRANS GMBH

General Conditions of Sales and Delivery

Unless other terms and conditions are expressly accepted by the Seller by means of a specific written amendment hereto signed by the Seller or a director of the seller the contract will be on the terms and conditions set out below and overleaf ("The Contract Terms") to the exclusion of any other terms and conditions (except those implied in favour of a seller which are not inconsistent with the Contract Terms) whether or not the same are endorsed upon, delivered with or referred to in any purchase order or other document delivered or sent by the Buyer to the Seller. Any reference overleaf to the Buyer's order specification or like document will not be deemed to imply that any terms or conditions endorsed upon, delivered with or referred to in such order specification or like document will have effect to the exclusion or amendment of the Contract Terms.

2 - Quotations

- 2.1 Any quotation given on the basis that no contract will come into existence until the Seller accepts an order from the buyer.
2.2 Any quotation is valid for the period stated on the quotation provided that the Seller has not previously withdrawn it.

3 - Delivery

- 3.1 The Buyer must request delivery before the Seller is under any obligation to be ready to deliver or to deliver and the Seller is not required to give any notice having reference to delivery. The Seller will endeavour to deliver the Goods to be supplied under the contract ("the Goods") which expression includes any of them or any part of them) within the time agreed and if not time is agreed within a reasonable time, but in no circumstances will the Seller be liable for loss or damage of any kind whatsoever caused directly or indirectly by any delay in the delivery of goods nor unless such delay exceeds 90 days will any delay entitle the Buyer to terminate or rescind the contract.
3.2 The Seller may make delivery by instalments on the basis that each delivery is deemed to be a separate contract on the Contract Terms.
3.3 Delivery will be made ex the Seller's works and the contract price is calculated on that basis except:-
3.3.1 where Goods are sold f.o.b. it is agreed that the Buyer has to make his own arrangements and that the Seller will incur no further liability or expense after he has placed the Goods either alongside vessel or if no vessel is made available to the Seller in a public warehouse at the Buyer's cost and risk.
3.3.2 Where Goods are sold c.i.f. it is understood that the price includes putting the Goods on board freight and I.p.a. insurance.
3.4 The Seller accepts no further liability and where the Goods are sent by a route involving sea transit the Seller is not required to give any notice to the Buyer to enable the Buyer to insure the Goods during the sea transit. No claim for damage or shortages will be considered unless the Seller is advised in writing within 7 days of delivery in the absence of such advice the Buyer will be deemed to have accepted the Goods and shall not be entitled to reject the Goods thereafter. No claim for non-delivery will be considered unless the Seller is advised in writing within 14 days of the date of the Seller's invoice. Any claim for damage, shortages or non-delivery shall also be notified to the carriers by the Buyer in the manner and within the appropriate time limit prescribed by the carriers terms and conditions.
3.5 In the event of failure by the Buyer to give the appropriate notice or notices as specified in Clause 3.4 the Buyer's claim will be deemed to have been waived and will be absolutely barred. In any event and subject to Clause 4 below the Seller's liability to the Buyer for damage, shortages or defects shall be limited to the difference between the contract price for the Goods and the market value of the Goods supplied hereunder.
3.6 The Seller will endeavour to supply the exact quantity ordered but the Seller may supply up to 10% more or less than the exact quantity ordered. A pro-rate charge or allowance at the contract price will be made to cover any variation.
3.7 Where Goods tendered for delivery are not accepted by or on behalf of the Buyer all the expiration of the time or times agreed for delivery the Buyer will indemnify the Seller for any and all losses or whatsoever nature including without limitation all out of pocket expenditure occasioned by the Buyer's non-acceptance as aforesaid and the Seller may at his option cancel the contract in whole or in part but without prejudice to any other right or remedy which the Seller may have prior to such cancellation or sale.
3.8 Deliveries may be made on returnable pallets a similar number of which should be made available to the Seller's drivers upon delivery.

4 - Guarantees and exclusion clauses

- 4.1 Where the Seller is not the manufacturer of the Goods the Seller will endeavour to transfer to the Buyer the benefit of any warranty or guarantee given by the manufacturer.
4.2 THE SELLER WILL BE UNDER NO LIABILITY UNDER THE CONTRACT FOR ANY PERSONAL INJURY, DEATH, LOSS OR DAMAGE OF ANY KIND WHATSOEVER (OTHER THAN DEATH OR PERSONAL INJURY RESULTING FROM THE SELLER'S NEGLIGENCE) WHETHER CONSEQUENTIAL OR OTHERWISE INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS AND THE SELLER HEREBY EXCLUDES ALL CONDITIONS, WARRANTIES AND STIPULATIONS EXPRESS OR IMPLIED, STATUTORY, CUSTOMARY OR OTHERWISE WHICH BUT FOR SUCH EXCLUSION WOULD OR MIGHT SUBSIST IN FAVOUR OF THE BUYER EXCEPT THAT SUCH EXCLUSION WILL NOT APPLY TO:
4.2.1 ANY IMPLIED CONDITION THAT THE SELLER HAS OR WILL HAVE THE RIGHT TO SELL THE GOODS WHEN THE PROPERTY IS TO PASS; OR
4.2.2 WHEN THE BUYER DEALS AS A CONSUMER (AS DEFINED IN SECTION 12 OF THE UNFAIR CONTRACT TERMS ACT 1977) ANY IMPLIED TERM RELATING TO THE CONFORMITY OF THE GOODS WITH THEIR DESCRIPTION OR SAMPLE OR AS TO THEIR QUALITY OR FITNESS FOR A PARTICULAR PURPOSE.
4.3 IN NO CIRCUMSTANCES WILL THE SELLER OR ITS EMPLOYEES, AGENTS OR SUB-CONTRACTORS BE LIABLE FOR ANY LOSS OR DAMAGE OF ANY KIND WHATSOEVER (OTHER THAN DEATH OR PERSONAL INJURY RESULTING FROM THE SELLER'S NEGLIGENCE) WHETHER CONSEQUENTIAL OR OTHERWISE DIRECTLY OR INDIRECTLY BY ANY NEGLIGENCE OR OTHER TORTIOUS ACT OR BREACH OF STATUTORY DUTY ON THE PART OF THE SELLER OR ON THE PART OF ANY OF ITS EMPLOYEES, AGENTS OR SUB-CONTRACTORS IN CONNECTION WITH OR ARISING OUT OF THE MANUFACTURE OR SUPPLY OF THE GOODS OR IN CONNECTIONS WITH ANY STATEMENT GIVEN OR MADE (OR ADVICE NOT GIVEN OR MADE) BY OR ON BEHALF OF THE SELLER.

5 - Risk

Notwithstanding any other Contract Term, risk in the Goods shall pass to the Buyer when the Goods are delivered to the Buyer or its agent.

6 - Property of the Goods

- 6.1 The property (both legal and equitable) in the Goods shall not pass to the Buyer until:
6.1.1 the purchase price of the Goods has been paid in full, and
6.1.2 payment to the Seller of any sum which is that date of the contract or may thereafter become due or owing from the Buyer to the Seller.
6.2 Until property in the Goods has passed to the Buyer or until delivery of the Goods to a third party pursuant to the permission given below, the Buyer will hold the Goods in a fiduciary capacity, will not obliterate any identifying mark on the Goods or their packaging and will keep the Goods separate from any other goods.
6.3 Prior to the property in the Goods passing to the Buyer the Seller permits the Buyer to deliver the Goods to a third party pursuant to a bonafide and arms length agreement to re-sell the Goods but such liberty will cease upon the termination of the contract.
6.4 Where the Seller is unable to determine whether any goods are the Goods the Buyer shall be deemed to have sold all Goods to the kind sold by the Seller to the Buyer in the order in which they were invoiced to the Buyer. The Seller may at any time after payment for the Goods has become due take possession of the Goods (which for the avoidance of doubt will include the right to stop the Goods in transit) and remove them and the Buyer shall be deemed to have granted irrevocable authority to the Seller to enter upon the Buyer's premises or other premises where the Goods may be by its employees or agents to take possession of the Goods and (if necessary) to dismantle the Goods from anything to which they are attached.
6.6 If the Buyer sells the Goods before the property in them passes to the Buyer, the Buyer will promptly account to the Seller for the proceeds of any such re-sale and, prior to paying such proceeds to the Seller, the Buyer will hold the same in a fiduciary capacity keeping the same separate from its other moneys. On receiving such proceeds the Seller will return to the Buyer any sum received in excess of the total of all sums due or owing from the Buyer to the Seller at the date of receipt by the Seller of such proceeds of sale.
6.7 The Seller will have the right to maintain an action against the Buyer for the price of the Goods not withstanding that property in the Goods has not been passed.
6.8 Nothing in the contract will constitute the Buyer the agent of the Seller in respect of any re-sale of the Goods by the Buyer so as to confer upon a third party rights against the Seller.

7 - Price

- 7.1 The contract price is based on the costs of materials, labour, sub contracts, transport, taxes, duties and currency exchange rates ruling at the date of the quotation. The Seller reserves the right to amend the contract price to take in account of any variations in these costs or the imposition of any new taxes or duties occurring from whatever cause before delivery of the Goods.
7.2 Unless expressly stated otherwise all prices are exclusive of V.A.T. which shall be charged at the rate and in the manner prescribed by law from time to time.

8 - Payment

- 8.1 Where no account has been agreed by the Seller the Goods will not be delivered until the Seller is paid the amount shown on the proforma invoice relating to the Goods.
8.1.2 Where an account has been agreed the Seller may in its absolute discretion set and alter the Buyer's credit limit and the Seller reserves the right not to deliver the Goods if the price thereof increases the amount owed by the Buyer to the Seller beyond the Buyer's credit limit.
8.1.3 Where an account has been agreed and the price of the Goods together with all other indebtedness of the Buyer and the Seller does not exceed the Buyer's credit limit the price will become payable upon delivery and payment will be made by the Buyer within 30 days of the date of the Seller's invoice unless otherwise agreed by the Seller in writing.
8.2 Interest at an annual rate of 5% above Lloyds TSB Base Rate from time to time will accrue daily and be calculated on a daily basis on overdue accounts from the date of invoice until payment as well before as after judgement.
8.3 Notwithstanding any Contract Term allowing the Buyer credit payment shall become due and payable to the Seller immediately upon the termination of the contract.
8.4 Where the Buyer makes default under the contract or any other contract with the Seller in payment on the due date of any sum due to the Seller, the Seller without liability may postpone any delivery or may cancel the contract or any other contract between the Seller and the Buyer but without prejudice to any right or remedy which the Seller may have against the Buyer in respect of such default.
8.5 The Seller will be entitled to payment for all instalments of Goods delivered to the Buyer whether under a blanket order or otherwise.
8.6 The Seller shall at all time be entitled to appropriate any payment made by the Buyer in respect of any Goods in settlement of such invoices or accounts in respect of such Goods as the Seller may in its absolute discretion think fit not withstanding any purported appropriation to the contrary by the Buyer.

9 - Lien

The Seller will (without prejudice to any other remedy available to it) have in respect of all unpaid debts due from the Buyer a general lien on all property of the Buyer in the possession of the Seller for whatever purpose and whether worked upon or not and be entitled on the expiration of not less than 14 days notice in writing to the Buyer to dispose of such property and to apply the proceeds towards the satisfaction of such debts.

10 - Cancellation

- 10.1 If the Buyer cancels, extends or delays or purports to cancel, extend or delay the contract or part thereof, or fails to take delivery of any Goods at the time agreed (if any) or if no time is agreed within a reasonable time, then the Buyer will be liable (without prejudice to any other rights of the Seller to claim damages) to indemnify and keep indemnified the Seller against any resulting loss, damage or expense incurred by the Seller in connection with the supply or non-supply of the Goods including the cost of any material, plant or tools used or intended to be used therefore and the cost of labour and other overheads including a percentage in respect of profit.
10.2 If the Seller is unable (whether temporarily or permanently) to procure any services of goods necessary to enable it to supply the Goods or if the supply of the Goods is prevented or hindered by reason of any cause beyond the Seller's reasonable control which for the avoidance of doubt and without prejudice to the generality of the foregoing shall include governmental action, war, riot, civil commotion, fire, flood, epidemic, labour disputes involving the workforce or any part thereof of the Seller, restraints or delays affecting shipping or carriers, currency restrictions and Act of God, the Seller may cancel the contract by notice in writing to the Buyer so far as it relates to Goods not then supplied or work not then done and such cancellation shall not give rise to any claims by the Buyer provided that the Buyer shall remain liable to pay for Goods delivered prior to the date of such cancellation.

11 - Storage

If the Buyer fails to take delivery of the Goods when they are ready for delivery the Seller may, at its option, either store them itself or have them stored by third parties on such terms as the Seller may in its absolute discretion think fit. In any event the cost of storage will be borne by the Buyer and insofar as the storage is done by the Seller then such cost will be the Seller's storage charges current at the time of storage. The cost together with any additional insurance or double handling charges will be added to and form part of the price for the goods.

12 - Promotional Material

No drawings, descriptive matter, weights, dimensions or shipping specifications issued by the Seller or the manufacturer of the Goods nor the description and illustrations contained by the Seller's or manufacturer's catalogues, price lists or other promotional material will form part of the contract nor be regarded as a warranty or representation relating to the goods.

13 - Right of re-sale

If the buyer defaults in accepting delivery of or paying for the Goods, the Seller reserves the right to re-sell the Goods or any of them to a third party without giving notice to the Buyer of the Seller's intention to re-sell.

14 - Set-off

The Buyer will have no right to set-off, statutory or otherwise.

15 - Termination

- 15.1 The contract will terminate immediately upon the happening of any one or more of the following, namely, that the Buyer has had a bankruptcy order made against him or has made an arrangement or composition with his creditors or otherwise taken the benefit of any Act for the time being in force for the relief of insolvent debtors or (being a body corporate) has had convened a meeting of creditors (whether formal or informal) or has entered into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation or has a receiver manager administrator or administrative receiver appointed of its undertaking or any part thereof or a resolution has been passed or a petition presented to any Court for the winding-up of the Buyer or for the granting of an administration order in respect of the Buyer or any proceedings have been commenced relating to the insolvency or possible insolvency of the Buyer.
15.2 The contract will terminate immediately upon service of written notice of termination by the Seller on the Buyer on the happening of any one or more of the following, namely, that the Buyer has suffered or allowed any execution whether legal or equitable to be levied on his / its property or obtained against him/it or has failed to observe or perform any of its obligations or duties under the contract or any other contract between the Seller and the Buyer or is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 or the Buyer has ceased to trade.
15.3 The Seller's rights contained in the clause headed "Property in the Goods" (but not the Buyer's rights) shall continue beyond the discharge of the parties' primary obligations under the contract consequent upon its termination.

16 - Export

Where the goods are to be exported to the Buyer.

- 16.1 The Uniform Laws on International Sales Act 1987 shall not apply to the contract.
16.2 Unless otherwise agreed in writing payment will be in pounds sterling in England subject to agreed terms of credit.
16.3 The goods will be sold based on the delivery terms as specified in 'INCOTERMS 2000' at the option of the Seller and the Seller will be under no obligation to give the Buyer notice as specified in Section 32(3) of the Sale of Goods Act 1979.

17 - Import

- 17.1 Where the goods are to be imported by the Seller, the contract is subject to the safe arrival of the goods.
17.2 The Buyer is responsible for ensuring that at the date of the contract he is in possession of any necessary authority to import and/or pay for the Goods as provided for in this contract.

18 - General

- 18.1 The Seller will be entitled to assign sub-contract or sub-let the contract or any part thereof.
18.2 Failure by the Seller to enforce any of the Contract Terms will not be constituted as a waiver of any of its rights hereunder.
18.3 In relation to all obligations of the Buyer under the contract, the time of performance is of the essence.
18.4 The legal construction of these clauses shall not be affected by their headings which are for convenience of reference only.

19 - German Law

The formation, interpretation and operation of the contract will be subject to German Law and the Buyer submits himself to the non-exclusive jurisdiction of the German Courts.