

Dewar Brothers Limited (“the Company”) Terms & Conditions of Sale

01. Definitions

In these Conditions:

- 01.1 “the Customer” means the person, firm, company or other entity supplied or to be supplied with Goods by the Company.
- 01.2 “Goods” means the goods, materials, services (including design) and/or other items (whether original or substituted) supplied or to be supplied by the Company to the Customer pursuant to any contract made under these Conditions.
- 01.3 “the Contract” means that the contract for the supply of goods, materials, services (including design) and/or other items by the Company to which these Conditions apply.

02. General

- 02.1 The following Conditions shall govern all sales agreed, or affected by the Company in preference to and to the exclusion of all other terms and conditions in any other document or other communication (including without prejudice to the foregoing generality any Customer’s Order Form) used by the Customer in connection with the Contract with the Customer. This agreement supercedes all other agreements and discussions. In the event that there is a conflict between this Agreement and the terms of a Purchase Order or other document, the terms of this Agreement will prevail.
- 02.2 These Conditions are intended to apply to business transactions and shall not, in any way, prejudice the statutory rights of a Customer who shall be bound by these Conditions only in so far as they are consistent with said statutory rights.
- 02.3 No variation of, addition to, cancellation of, waiver, or agreement not to reply upon the whole or any part of these Conditions in any Contract made by the Company shall bind the Company unless it is made in writing prior to the conclusion of the Contract and is signed by a Director of the Company.
- 02.4 Quotations which comprise an invitation to do business may be withdrawn at any time.
- 02.5 It is strongly recommended that any offer to purchase Goods made verbally must be confirmed in writing by the Customer as soon as practicable and must be clearly marked confirmation of verbal order.
- 02.6 The Company has the right to sub-contract any order or part thereof without prior intimation to the Customer.
- 02.7 If any provision of these Conditions is held by a 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 thereby.

03. Delivery, Title and Risk

- 03.1 The Company accepts no liability for failure to meet quoted delivery times which shall be treated as estimates only and any such failures shall not entitle the Customer to cancel or terminate any order of the Contract.
- 03.2 Unless the Customer challenges in writing to the Company any invoice submitted by the Company, within fourteen days of its receipt the Customer shall be barred from challenging the invoice and shall be deemed conclusively to have accepted that the goods described therein were received and that the sum claimed in the invoice is due.
- 03.3 Unless the Company shall otherwise agree in writing, the Company shall not be bound to deliver or supply the Goods in one lot, shipment or consignment and the Customer shall be bound to accept split deliveries or delivery or supply of the Goods by instalments.
- 03.4 The Company shall have no liability in respect of any shortfall in the Goods or in respect of the Goods being damaged upon delivery unless the Customer shall have notified the Company in writing of such shortfall or damage within three days of the delivery or supply of the Goods to the Customer or to a nominee of the Customer.
- 03.5 Notwithstanding the delivery or supply of the Goods to the Customer, the property in and title to the Goods shall not pass to the Customer until the price payable by the Customer to the Company for the goods shall have been paid in full by the Customer and until such payment in full of the price has been made, the property in and the title to the Goods shall remain with the Company.
- 03.6 The risk of loss or damage to the Goods shall pass to the Customer when the Goods are delivered or supplied by the Customer or to a nominee of the Customer, whichever shall be the earlier.
- 03.7 Where the Customer requests that delivery or supply of the Goods be delayed beyond the quoted delivery or supply date, then the Company shall be entitled to invoice the Customer for payment of the Goods as if the Goods had been delivered or supplied to the Customer on the quoted delivery or supply date and the Customer shall reimburse to the Company on demand in writing of the Company all costs and expenses (including storage and insurance costs) incurred by the Company in connection with the Goods from the quoted delivery or supply date of the Goods to the date of actual delivery or supply thereof to the Customer or to a nominee of the Customer.
- 03.8 Divisibility Clause: All contracts are divisible. Each delivery made shall be deemed to arise from a separate contract and shall be invoiced separately. Any invoice for a delivery made shall be payable in full in accordance with the terms of payment provided for herein, without reference to and notwithstanding any defect or default in delivery of any other instalment.

04. Copyright Materials

- 04.1 All drawings, quotations, illustrations, descriptions, leaflets, samples and models of or relating to the Goods (in this Condition

referred to as “materials”) which are supplied by the Company are the Copyright of the Company and may not be passed on to any third party or be copied or used by the Customer without the written consent of the Company. All materials remain the property of the Company and are returnable to the Company forthwith on demand.

04 Extra Costs

04.1 Any price quoted by the Company shall be subject to increase to cover the expenses incurred by the Company as a result of any delay arising from the Customers instruction or lack thereof.

06. Pricing

06.1 Subject to Conditions 05 hereof, the price payable by the Customer to the Company for the Goods shall be the price thereof specified by the Company in the quotation made by the Company for the supply of the Goods or, if different, the price for the Goods specified in the order acknowledgement given by the Company to the Customer.

06.2 Value Added Tax at the applicable rate shall be paid by the Customer to the Company on the price of the Goods.

06.3 If the quotation made by the Company for the supply of the Goods has a period of validity then the price is fixed for that period.

06.4 If the quotation made by the Company for the supply of the Goods is ex works then the costs of packaging, insuring and delivering the Goods (as the case may be) together with Value Added Tax thereon at the applicable rate, shall be added to the price of the Goods and be paid by the Customer to the Company as part of the price of the Goods.

06.5 Unless the Company has otherwise agreed in writing, Customers with a credit account facility shall make payment for the Goods by the Customer to the Company within 30 days after the month of delivery to the Customer by the Company in respect of the supply of the goods and the time for payment shall be of the essence of the Contract.

06.6 Unless otherwise specifically agreed by the Company, accounts are strictly net.

06.7 Interest at the rate of five per cent per annum above the base lending rate from time to time and for the time being of the Clydesdale Bank Plc shall be payable on any sum payable by the Customer to the Company and not paid on the due date from the due date for payment thereof until the date of actual payment thereof to the Company and that whether or not after judgement or decree. Such interest shall be calculated on the basis of the actual number of days elapsed.

06.8 Unless the Customer in writing ascribes any payments to account to any particular invoices the company shall have the absolute right to ascribe to account to any invoices, due and payable as the date of receipt of the payment of account regardless of dates of the invoices and of any rule of law to the contrary.

07. Warranties

Save as provided in Section 12 of the Sale of Goods Act 1979, the Company gives no warranty and makes no representation whether express or implied as to any matter whatsoever including (without limitation) condition, merchantability or fitness for any purpose.

07.1 The Company accepts no liability for any loss or damage suffered by the Customer or any third party as a result of or caused by the use of Goods for a use or purpose for which the Goods were not designed.

The company shall incur no liability in respect of defect or fault in the Goods unless:

A/ details of the defect or fault in the Goods are notified in writing by the Customer to the Company forthwith (and not later than three days) following the delivery or supply of the goods to the customer or to a nominee of the Customer

B/ The Customer gives the Company such opportunity as the Company may reasonably require to examine or inspect the defective or faulty Goods at the premises of the Customer.

C/ The Customer forthwith upon discovery of such defect or fault by the Customer ceases to use the defective or faulty Goods unless otherwise authorised by the Company in writing and

D/ The Customer, unless otherwise authorised by the Company in writing, returns the defective or faulty Goods to the Company within seven days following the discovery of the defect or fault by the Customer.

07.2 The liability of the Company under this Condition shall be limited to replacing, repairing or making good the defective or faulty Goods or, at the option of the Company, giving credit or reimbursing to the Customer the price (whether in whole or in part) paid by the Customer to the Company for the defective or faulty Goods.

08. Consequential Loss and Damage

08.1 Save as herein expressly provided and except as provided in Section 16 of the Unfair Contract Terms Act 1977 (liability for death and personal injury resulting from breach of duty) the Company shall not be liable to the Customer or to any third party for any loss or damage (whether direct or consequential) suffered in respect of the Goods or arising from or caused by any defect or fault in the Goods and the Company shall be indemnified by the Customer against all third party claims made in respect of the Goods. In no event will the Company be liable to the buyer for any indirect, consequential, exemplary incidental or punitive damages, including but not limited to lost profits, claims of third parties or injury to persons or property even if the Company has been advised of the possibility of such damages.

09. Customer's Specification

09.1 If the Customer requires the Goods to be manufactured or supplied to the Customer's design, the customer must provide the Company a detailed design and/or specification of the Customer's requirements when the Customer orders the Goods. The Company shall not be liable for any defect or fault in the Goods resulting from the Goods being manufactured or supplied in accordance with the Customers design and/or specification of the Goods.

09.2 The Customer shall indemnify and so free and relieve the Company from and against any claim, cost, charge or expense in respect of the infringement or breach of any industrial property right as a result of or caused by the manufacture or supply of

the Goods by the Company in accordance with the Customers design or specification.

10 Tooling

- 10.1 The Company accepts no liability where tooling and or origination provided by the Customer proves to be unsuitable for whatever reason.
- 10.2 Tooling and or origination provided by the Company and charged in full to the Customer shall remain the property of the Customer. The Company agrees to hold such material for a period not exceeding two years after such material was used there after the Company is free to dispose of such material.

11 Termination

- 11.1 The Company shall be entitled to terminate any contract forthwith if the Customer commits any breach of the Contract whatsoever, or if distress, execution, sequestration, or other process is levied against the Customer, its property or assets, or of the Customer (being an individual) commits any act of Bankruptcy or (being a company) suffers a Receiver or Administrator to be appointed over the whole part of its undertaking or assets or any order is made or effective resolution is passed for its winding-up. In the event of such termination, all sums owing to the Company on any account shall become due and payable forthwith without requirement for any notice to be given and further any power of sale or use that the Customer may have shall automatically cease. For the avoidance of doubt it is a specific condition of this Contract that if, under a separate Contract, entered into before or after the contract of which these Conditions form part, the Customer is in breach of payment or is in default in any way under said Contract, as to which default, the company shall be the sole judge, the Company may as its sole discretion terminate the Contract of which these terms form part or suspend same until relevant breach has been remedied. Any such termination will be without prejudice to any accrued liabilities of the Customer to the Company and to **any claim against the Customer for loss or damage as a result of such termination.**

12 Force Majeure

The Company shall not be liable or responsible for any failure to perform in whole or in part or for any delay in performing any of its obligations under these Conditions caused by act of God, war, insurrection, government regulations, embargoes, strikes or walk-outs, illness, flood, fire, equipment breakdown, failure of suppliers or sub-contractors or any other cause beyond the control of the Company. Should any such event occur, the Company at its option may cancel or suspend (or both) the Contract without incurring any liability whatsoever for any loss or damage thereby occasioned.

13 Customer Property

- 13.1 When Customer owned property of any description is held at the Companies premises then this is done so at the Customers risk unless agreed in writing otherwise.

14 Set Off

- 14.1 The Customer hereby waives any and all existing or future claims for compensation or set off against any payments due to by the Customer to the Company under the Contract and Customer shall pay the Company the amounts payable to the company under the Contract on the due date or dates of payment thereof regardless of any compensation, set off or counter claim on the part of the Customer against the Company.

15 Remedies

- 15.1 Any remedies conferred on the Company by these Conditions shall be without prejudice to any other remedies available to the Company.

16 Invalidity

- 16.1 If any provision of the Condition is or becomes invalid, illegal or unenforceable in any respect under any applicable law, the validity, legality and enforceability of the remaining provisions of these Conditions or of the Contract shall not in any way be affected or impaired.

17 Headings

- 17.1 The headings used in these Conditions are for the ease of reference only and should not in any way affect the construction or interpretation of these Conditions.

18 Legal Construction

- 18.1 These Conditions and the Contract and the validity and performance thereof shall in all respects be governed by and interpreted in accordance with the Law of Scotland and the company and the Customer prorogate to the non-exclusive jurisdiction of the Scottish Courts.

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