

Draka Comteq UK Ltd

Conditions of Sales

1. Interpretation

1.1 In these conditions:-

'Buyer' means the person who enters into the Contract with the Seller for the sale of the goods.

'Goods' means the goods (including any instalment of the goods) which the Seller is to supply in accordance with these Conditions.

'Seller' means Draka Comteq UK Ltd.

'Conditions' mean the standard terms and conditions of sale set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Buyer and the Seller.

'Contract' means the contract for the purchase and sale of the Goods.

'Writing' includes cable, facsimile transmission and any comparable means of communication.

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 any written quotation of the Seller, or any written order of the Buyer (which is accepted by the Seller), subject in either case to these Conditions, which shall govern the Contract to the exclusion of any other terms and conditions (including any terms or conditions which the Buyer purports to apply under any purchase order, confirmation of order, specification or other document).

2.2 No variation to these Conditions shall be binding unless agreed in Writing between the authorised representatives of the Buyer and the Seller.

2.3 The Seller's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Seller in Writing. In entering into the Contract the Buyer acknowledges that it does not rely on, and waives any claim for breach of, any such representations which are not so confirmed.

2.4 Any advice or recommendation given by the Seller or its employees or agents to the Buyer or its employees or agents as to the storage, application or use of the Goods 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, acceptance of offer, invoice or other document 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 Notwithstanding any purported acceptance by the Buyer of the terms, of any quotation of the Seller no order submitted by the Buyer shall be deemed to be accepted by the Seller unless and until confirmed in writing by the Sellers authorised representative.
- 3.2 The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Buyer, and for giving the Seller any necessary information relating to the Goods within a sufficient time to enable the Seller to perform the Contract in accordance with its terms.
- 3.3 The quantity, quality and description of any specification for the Goods shall be those set out in the Sellers quotation or the Buyers order (if accepted by the Seller).
- 3.4 If the Goods are to be manufactured or any process is to be applied to the Goods by the Seller in accordance with a specification submitted by the Buyer, the Buyer shall indemnify the Seller against all loss, damages, costs and expenses awarded against or incurred by the Seller in connection with or paid or agreed to be paid by the Seller in settlement of any claim for infringement of any patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person which results from the Sellers use of the Buyers specification.
- 3.5 The Seller reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable statutory or EC requirements or, where the Goods are to be supplied to the Sellers specification, which do not materially affect their quality or performance.
- 3.6 No order which has been accepted by the Seller may be cancelled 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.
- 3.7 Notwithstanding any provision to the contrary in these Conditions all intellectual property rights in the Goods and any information relating thereto of whatever nature and whether registerable or not (save where the Goods are manufactured to the specification of the Buyer) shall vest in and remain the property of the Seller and accordingly the Buyer shall at all times keep confidential all such matters and shall not use the same for any purpose without the consent of the Seller in Writing.
- 3.8 Notwithstanding any provision to the contrary in these Conditions the Goods shall be manufactured to the Sellers normal tolerances from time to time for such goods.

4 Price of the goods

- 4.1 The price of the Goods shall be the Sellers quoted price. All prices quoted are valid for 30 days only, after which time they may be altered by the Seller without giving notice to the Buyer.
- 4.2 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 change in delivery dates, quantities or specifications for the Goods which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions.
- 4.3 The Seller reserves the right, by giving notice to the Buyer at any time up to 7 days before delivery, to increase the price of the Goods to reflect any increase in the cost to the Seller which is both beyond the reasonable control of the Seller and due to an increase in the cost of raw materials occurring after the making of the Contract. The amount by which the price of the Goods may be increased in accordance with this clause 4.3 shall not exceed any increase in the cost to the Seller of raw materials.
- 4.4 Except as otherwise stated under the terms of any quotation, and unless otherwise agreed in Writing between the Buyer and the Seller, all prices are given by the Seller on a delivered U.K. basis.
- 4.5 The price is exclusive of any applicable value added tax, which the Buyer shall be additionally liable to pay to the Seller.

4.6 The cost of pallets and returnable drums will be charged to the Buyer in addition to the price of the Goods, but full credit will be given to the Buyer provided they are returned undamaged to the Seller before the due payment date.

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 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 tendered delivery of the Goods.

5.2 The Buyer shall pay the price of the Goods within 30 days of the date of the Sellers 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; and

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).

6. Delivery

6.1 Delivery of the Goods shall be made by the Seller delivering the Goods to the Buyer at a place agreed to by the parties in Writing.

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 howsoever caused. Time for delivery shall not be of the essence unless previously agreed by the Seller in Writing.

6.3 The Seller reserves the right to deliver up to ten per cent more or ten per cent less than the quantity actually ordered and the quantity do delivered shall be deemed to be the quantity ordered provided always that the price paid for the Goods shall be adjusted pro rata to correspond to the quantity actually delivered.

6.4 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 anyone or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.

6.5 The Buyer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of final destination (being outside the UK) and for payment of any duties thereon.

7. Risk and property

7.1 Risk of damage to or loss of the Goods shall pass to the Buyer 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 Sellers 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 Sellers property. Until that time the Buyer shall be entitled to resell or use the Goods in the ordinary course of its business, but shall account to the Seller for the proceeds of sale or otherwise of the Goods, whether tangible or intangible, including insurance proceeds, and shall keep all such proceeds separate from any moneys or property of the Buyer and third parties and, in the case of tangible proceeds, properly stored, protected and insured.
- 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, to enter upon any premises of the Buyer or any third party 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.

8. Warranties and liability

- 8.1 Subject to the conditions set out below the Seller warrants that the Goods will correspond with their specification and will be free from defects in material and workmanship at the time of delivery.
- 8.2 The above warranty is given by the Seller subject to the following condition namely that 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.
- 8.3 Subject as expressly provided in these Conditions all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- 8.4 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 30 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 have been delivered in accordance with the Contract.
- 8.5 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 or their failure to meet specification is notified to the Seller in accordance with these conditions, the Seller shall be entitled to replace the Goods (or the part in question) free of charge or, at the Sellers 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.
- 8.6 Except in respect of death or personal injury caused by the Sellers negligence, the Seller shall not be liable to the Buyer by reason of any representation, or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for any consequential loss or damage (whether for loss of profit or otherwise), costs, expenses or other claims for consequential compensation whatsoever (and 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, except as expressly provided in these Conditions.
- 8.7 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 Sellers obligations in relation to the Goods, if

the delay or failure was due to any cause beyond the Sellers reasonable control including without limitation Act of God, explosion, flood, tempest, fire or accident, war or threat of war, sabotage, insurrection, civil disturbance or requisition, or any acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority, import or export regulations or embargoes, strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Seller or of a third party), difficulties in obtaining raw materials, labour, fuel, parts or machinery, and power failure or breakdown in machinery.

9. Insolvency of Buyer

9.1 This clause applies if:

9.1.1 The Buyer makes voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) 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 The Seller may assign the benefits and burdens hereunder to any third party without the consent of the Buyer. The Buyer shall not assign the benefits and burdens hereunder to any third party without the consent in Writing of the Seller.

10.2 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 as 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.

10.3 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.

10.4 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 thereby.

10.5 Incoterms means the international rules for the interpretation of trade terms of the International Chamber of Commerce as in force at the date when the Contract is made. Unless the context otherwise requires, any term or expression which is defined in or given a particular meaning by the provisions of Incoterms shall have the same meaning in the Contract, but if there is any conflict between the provisions of Incoterms and these Conditions, the latter shall prevail.

10.6 The Contract shall be governed by the laws of England and both parties agree to submit to the non-exclusive jurisdiction of the English Courts as regards any claim or matter arising under the Contract.