

DK Tools Terms and Conditions

1. GENERAL

In these conditions unless the context otherwise requires: "Company" means DK Tools Ltd and any subsidiary of the Company by which the Goods are Sold; "Customer" means the company, firm, body or person purchasing the Goods; "Goods" means the subject matter of the contract between the Company and the Customer including (but not limited to) raw materials, finished or Semi-finished materials or articles, machinery, parts, spares, commodities etc and whether one or a number of items whether or not identical or similar. The following conditions apply to any contract of which these conditions form part to the exclusion of any conditions of order or purchase of the Customer or any other standards, specifications, conditions or particulars out of or adopted by the Customer unless expressly accepted in writing by the Company as part of the contract with the Customer.

2. QUOTATIONS AND TENDERS

- (1) No order placed in response to the Company's quotation will be binding unless accepted by the Company in writing.
- (2) Where Goods are to be supplied from stock, such supply is subject to availability of stocks at the date of delivery.
- (3) Quotations and pro forma invoices submitted by the Company shall remain open for acceptance for a period of 30 days from the date of the quotation or pro forma invoice, unless in the quotation or pro forma invoice some other period is specified or accepted.

3. PRICES

- (1) Where the Goods are sold by reference to the Company's published price list, the price payable for the Goods shall be the ruling price as published in the price list current at the date of dispatch of the Goods from the Company's works.
- (2) In other cases the price stated in the contract is based on the cost to the Company of materials, fuel and power, transport and labour at the date of acceptance of the order or quotation (whichever is earlier). If at the date of dispatch of the Goods from the Company's works, there has been any increase in all or any of such costs, the price payable for the Goods may at the request of the company be increased accordingly.
- (3) Where the price for the Goods is varied in accordance with this condition the price as varied shall be binding on both parties and shall not give either party any option of cancellation.
- (4) There shall be added to the price of the goods any value added tax and any other tax or duty relating to the manufacture, transportation, export, import, sale or delivery of the Goods (whether initially charged on or payable by the Company or the Customer) and (where appropriate) the freight and other charges as specified in the relevant carriage tariff current at the date of dispatch.
- (5) All goods are sold "ex works" unless otherwise stated.

4. TERMS OF PAYMENT

Terms of payment are 30 days net monthly, unless otherwise agreed in writing by the Company. No goods will be delivered to an end user customer when payment has been received in full by the company's authorised dealer or in the case of spare parts, by the company themselves. The Company reserves the right to charge interest on any overdue accounts at a rate of 2% per month. Any Debt Collection Fees/related costs to be paid by the Customer as well, in addition to the interest. The Company operates a dealer only policy and will not open credit accounts to end user customers.

5. DELIVERY AND COMPLETION DATES

(1) The delivery or performance dates specified in the contract are approximate only and, unless otherwise expressly stated, time is not of the essence for delivery. The Company will not be liable in any circumstances for the consequences of any delay in delivery or failure to deliver if the duration of the delay is not substantial or if the delay or failure is due to act of God, fire, inclement or exceptional weather conditions, industrial action (whether at the Company's premises or elsewhere), hostilities, breakdowns, shortage of labour, materials, power or other supplies, late delivery or performance or non-delivery or non-performance by suppliers or sub-contractors, governmental order or intervention (whether or not having the force of law) or any other cause whatsoever beyond the Company's control or of an unexpected or exceptional nature.

(2) No delay shall entitle the Customer to reject any delivery or any further instalments or part of the order of any other order from the otherwise expressly agreed conditions which are due for payment not later than 30 days from the date of invoice; otherwise payment must be received by the Company before delivery. When deliveries are spread over a period each consignment will be invoiced as dispatched and each months invoices will be treated as a separate account and be payable accordingly. Failure to pay for any Goods or any delivery or instalment shall entitle the Company to suspend further deliveries and work both on the same order and on any other order from the Customer without prejudice to any other right the Company may have. The Company also reserves the right to charge interest on overdue accounts at the rate of 2% per month. The Company reserves the right where genuine doubts arise as to a Customer's financial position or in the case of failure to pay for any Goods or any delivery or instalments as aforesaid to suspend delivery of any order or any part or instalments without liability until payment or satisfactory security for payment has been provided.

(3) The Company cannot undertake to meet any schedule of Customer's requirements supplied after the date of the contract and will have no liability whatsoever for delay in despatch or delivery whether due all or any of such requirements (however such failure or delay may arise) unless and to the extent that the Company expressly agrees in writing to meet such requirements, in which event paragraph 5(1) of the conditions shall apply.

6. DELAYED ACCEPTANCE

If for any reason the Customer is unable to accept delivery of the Goods when the Goods are due and ready for delivery the Company may arrange storage of the Goods at the Customer's risk and the Customer shall be liable to the Company for the reasonable cost (including insurance) of such storage. The provision is without prejudice to any other right which the company may have in respect of the Customer's failure to take delivery of the Goods or pay for them in accordance with the contract.

7. RETENTION OF TITLE

(1) Notwithstanding that risk in the Goods shall pass to the Customer in accordance with Clause 11 title to the Goods (whether separate or identifiable or incorporated in or mixed with other Goods) shall remain with the Company until payment in full has been received by the Company:

- (i) For those Goods;
- (ii) For any other Goods supplied by the Company;
- (iii) Of any other monies due from the Customer to the Company on any account.

(2) Until title to the Goods passes to the Customer under Clause 7(1) the Customer shall:

- (i) Keep the Goods separately and readily identifiable as the Property of the Company;
- (ii) Not attach the Goods to real property without the Company's Consent.

(3) Any resale by the Customer of Goods in which the property has not passed to the Customer shall (as between the Company and the Customer only) be made by the Customer as agent for the Company.

(4) Goods shall be deemed sold or used in the contract, delivered to the Customer.

(5) At any time before title to the Goods passes to the Customer (whether or not any payment to the Company is then overdue or the Customer is otherwise in breach of any obligation to the Company) the Company may (without prejudice to any other of its rights):

- (i) Retake possession of all or any part of the Goods and enter any Premises for that purpose (or authorise others to do so) which the Customer hereby authorises;
- (ii) Require delivery up to it of all or any part of the Goods.

(6) The Customer may at any time appropriate sums received from the Customer as it thinks fit notwithstanding any purported appropriation by the customer.

(7) Each clause and sub-clause of this Clause 7 is separate, severable and distinct and, accordingly, in the event of any of them being for any reason whatever unenforceable according to its terms the others shall remain in full force and effect.

8. LIEN

(a) Notwithstanding that credit terms have been given to the Customer for payment of the price of any Goods to be sold under the contract, the Company shall be entitled to retain possession of such Goods until payment.

(b) In addition to any right of lien which the Company may by law be entitled to, the Company shall be entitled to a general lien on all Goods of the Customer in the Company's possession (although such Goods or some of them may have been paid for) for the unpaid price due from the Customer to the Company under any contract between the Customer and the Company.

(c) Where the Company exercises any such lien the Company may on giving 14 days prior notice in writing to the Customer of its intention to do so offer for sale any Goods over which it has exercised a lien of sale. On such sale, the sale proceeds will be applied in satisfying all sums due to the Company from the Customer including any interest and costs. Thereafter, the Company will remit any balance to the Customer within 28 days of such sale.

9. ACCEPTANCE

The Customer shall inspect the goods immediately on delivery and shall within 7 days from such inspection give notice in writing to the Company of any matter or thing by reason whereof it alleges that the Goods are not in accordance with the contract. If the Customer fails to give such notice, the Goods shall be deemed to be in all respects in accordance with the contract and the Customer shall be bound to accept and pay for them accordingly.

10. WARRANTY; LIMIT OF RESPONSIBILITY; GOODS

(1) The Company warrants in relation to Goods of the Company's manufacture that it will (at the Company's choice) either repair or replace, or refund the full purchase price of any Goods which are found within a period of 12 months from dispatch of such Goods from the Company's works (or 6 months in the case of air tools) ("the warranty period") to be defective or not in accordance with the contract or any express description or representation given or made on behalf of the Company in respect of the Goods. The Company will require a reasonable period of time to carry out any repairs or replacements.

(2) The Company warrants in relation to Goods not of the Company's manufacture (including but not limited to parts and components supplied by others for Goods manufactured by the Company) that it will so far as it is able to do so give the Customer the benefit of any express guarantee or warranty by the manufacturer or supplier of such Goods and of any other rights which the Company has against the manufacturer or supplier.

(3) The Customer's remedies in respect of any claim under the foregoing express warranty or against any manufacturer or supplier as aforesaid or any claim under any condition or warranty implied by law or any other claim in respect of the Goods or any workmanship in relation thereto (whether or not involving negligence on the part of the Company) shall in relation to Goods in the Company's manufacture be limited to repair, replacement or refund of the purchase price as aforesaid and any condition or warranty implied by law shall cease to apply after the expiry of the warranty period and in all other cases shall be limited to the enforcement of the above-mentioned liabilities of the manufacturer or supplier.

(4) The Company shall not in any circumstances be liable for any damages, compensation, costs, expenses, losses or other liabilities, whether direct or consequential, and any other remedy which would otherwise be available in law is hereby excluded except to the extent that such exclusion is prohibited by any rule of law.

11. DRAWINGS AND INFORMATION

(1) The Company is entitled to assume that all drawings, descriptions, specifications and other information supplied by the Customer to the Company, whether written or verbal, is in all respects complete, accurate and entirely suitable for the Customer's requirements.

(2) Unless otherwise expressly agreed, the Company shall have no responsibility for the performance, suitability or durability of any Goods or any materials or workmanship comprised therein to the extent that the same is manufactured in accordance with the Customer's designs, drawings, standards or specifications.

(3) Unless the contract expressly provides for the installation of the goods, the Company shall not be responsible for installation work or the supervision thereof.

(4) Any extra work, requirement or modification (including but not limited to foundation work) in relation to the Goods or their installation which is not expressly specified in the contract or which is expressly excluded by these conditions and which the Customer requests shall be charged extra (including an appropriate allowance of profit) to the extent that such extra work, requirement or modification increases the cost to the Company of performance of the contract.

12. CONFIDENTIALITY; PATENTS ETC.

(1) Any drawings, specifications or other technical information supplied to the Customer by the Company in connection with the contract are provided on the express understanding that the Customer will not give, loan, exhibit or sell drawings, specifications or technical information to any third party and that the Customer will not use them in any way except in connection with the Goods or services provided hereunder. The copyright in all documents provided by the Company will remain vested in the Company.

(2) The Customer shall indemnify the Company against all actions, costs (including the cost of defending any legal proceedings), claims, proceedings, accounts and damages in respect of any infringement or alleged infringement of any patent, registered design, copyright, trade mark or other industrial or intellectual property rights resulting from compliance by the Company with the Customer's instructions, whether express or implied.

(3) The Customer shall indemnify the Company against all actions, costs (including the cost of defending any legal proceedings), claims, proceedings, accounts and damages in respect of any infringement or alleged infringement of any patent, registered design, copyright, trade mark or other industrial or intellectual property rights resulting from use or sale by the Customer of any Goods designed by the Company, except where paragraph (2) of this condition applies.

13. LOSS OR DAMAGE IN TRANSIT

The risk in the Goods passes to the Customer when the Goods are dispatched from the Company's works. The Customer is responsible to inform the Company of any shortages, losses or damage in transit within 48 hours of receiving the Goods. If the Customer has signed for the Goods as checked and complete, the Company cannot claim from the Carriers and therefore the Customer will not be able to claim from the Company. When receiving Goods that cannot be checked upon delivery, the Customer must sign the Carriers paperwork as "Unchecked". The Customer is then responsible to notify the Company within the 48-hour period of such claim.

14. PACKING

(1) Unless otherwise specified, packing cases and packing materials will be charged extra, but where stated to be returnable will be credited in full on return to the Company's works carriage paid in good condition, within one month of receipt by the Customer.

(2) The Company uses its reasonable endeavours to ensure, where necessary, suitability of packing before dispatch, but no claim will be accepted by the Company for breakage or damage in transit, on the ground of alleged unsuitability of packing.

15. SUB-CONTRACTING

The Company reserves the right to sub-contract the whole or any part of the contract.

16. APPLICABLE LAW

The contract shall in all respects be governed by and construed in accordance with English law and the Customer hereby submits to the non-exclusive jurisdiction of the English courts.

17. HEALTH AND SAFETY

The Customer agrees to pay due regard to any information or any revised information whenever supplied by the Company (and is deemed to have been given adequate information and to have read and understood it) relating to the use for which the Goods are designed or have been tested or concerning conditions necessary to ensure that they will be safe and without risk to health at all times when they are being set, used, cleaned or maintained by any person at work or when they are being dismantled or disposed of, and the Company undertakes to take such steps as may be specified by the above information to ensure that as far as reasonably practicably, the Goods will be safe and without risk to health at all times as mentioned above. For these purposes, the Customer is deemed to have been given a reasonable opportunity to test and examine the Goods before delivery.

18. TERMINATION

If the Customer enters into a deed of arrangement or commits an act of bankruptcy or compounds with his creditors or if a receiving order is made against him (or being a Company) it shall pass a resolution or the court shall make an order that the Customer shall be wound up (otherwise and for the purposes of amalgamation or reconstruction) or if a receiver (including an administrative receiver) shall be appointed in respect of any of the assets or undertaking of the Customer or if the Customer suffers the appointment or presentation of a petition for the appointment of an administrator or if circumstances shall arise which shall entitle the court or a creditor to appoint a receiver (including an administrative receiver) or a manager or which entitle the court to make a winding up order or if a Customer takes or suffers any similar action in consequence of a debt or if the financial responsibility of the Customer shall, in the opinion of the Company, become impaired or if the Customer shall commit any breach of any part of the contract with the Customer, the Company may without prejudice to its rights and remedies under these conditions stop all Goods in transit and suspend further deliveries and by notice to the Customer may terminate the contract with the Customer immediately.

19. NON-STANDARD ORDERS

Where the Customer orders Goods or materials of a type, size or quality not normally produced by the Company, the Company will use all reasonable endeavours to execute the order, but if it proves impossible, impracticable or uneconomical to carry out or complete the order, the Company reserves the right to cancel the contract or the uncompleted balance thereof, in which event the Customer will only be liable to pay for the part thereof actually delivered. The Company will not be held responsible for any action, costs, legal claims, proceedings and damages in respect of any infringement of the above clause.