

TERMS AND CONDITIONS OF SALE

1. Definitions

- 'Seller' means the appropriated Company belonging to MDK.
- 'Buyer' means the Corporate Entity, firm or person seeking to purchase goods or services from the Seller.
- 'The Goods' means the goods, which the Seller is to supply in accordance with these Conditions of Sale. Any reference to the Goods shall where appropriate include a reference to part of them.
- 'The Services' means the services, which the Company is to supply

2. Application

- (i) These conditions shall apply without modification and to the exclusion of all and any other conditions including any appearing in any quotation, form of acceptance, delivery form or other document or letter emanating from the Buyer to the Seller unless otherwise agreed by the Seller's Company Director in writing.
- (ii) No other terms or conditions express, statutory, implied or otherwise other than those incorporated in this contract shall form part of this contract.

3. Sales Contract

All orders are placed and accepted by the Seller only under these terms and conditions; payment being by TT or Letter of Credit as stated in the Sales Contract.

4. Prices

- (i) Prices are quoted on a day to day basis and are valid up to 10 days from date of Sales Contract unless the Sales Contract is confirmed by Seller and Buyer.
- (ii) The Seller's prices for Goods or works are based on the cost to the Seller of the Goods or materials, labour and transport on the day when such prices were quoted. Should the cost to the Seller of obtaining or delivering the goods or materials or executing the work in question increase by reason of any subsequent fluctuation in such costs or due to changes in material prices, currency exchange rates, alteration in tariffs and import changes or taxes or changed, delayed or incomplete Buyer instructions (such as incomplete drawings, specification or Master Sample), the Seller reserves the right to make a corresponding increase in their prices.
- (iii) Errors and omissions by the Seller in importing the agreed terms into the written quotation shall entitle the Seller either to submit to the Buyer a revised quotation including if applicable a quotation for any works or materials not in contemplation when preparing the preceding quotation and this preceding quotation shall have no effect or to proceed with the existing quotation at the Seller's sole option.
- (iv) Quotations and Draft Sales Contracts are merely invitations to treat and do not constitute confirmed offers. Quotations are given only as indications made in good faith and are subject to variation or withdrawal without notice.

5. Assignment

The Seller has the right to sub-contract any order or any part or parts of any order.

6. Payment

- (i) Payment for Goods or Services shall be made either by TT or Letter of Credit as stated in the Sales Contract as agreed between the Seller and the Buyer.
- (ii) If payment is by TT and not been made in accordance to the Sales Contract the Seller shall be entitled to recover from the Buyer interest, payable at the rate of 1.5% p.m. on any outstanding balance until the actual date of payment. This right shall exist without prejudice to any other right of the Seller.
- (iii) The Seller reserves the right at any time at its discretion to demand security for or vary the terms and method of payment, for continuing with or delivery Goods or Services in satisfaction of the order. The Seller shall notify the Buyer in writing of such variations.
- (iv) Should the Buyer fail to make any payment on the due date then the Seller shall be entitled to cancel any subsisting Sales Contract with or suspend any further deliveries to the Buyer and also appropriate any payments made by the Buyer for such other Goods, Services or materials or goods, services or materials supplied to the Buyer under any contract as the Seller may think fit notwithstanding any purported appropriation by the Buyer. The Seller shall not incur any liability to the Buyer in respect of such cancellation or suspension and this right shall exist without prejudice to any other right of the Seller.
- (v) If the payment is by way of a Letter of Credit, the Buyer is to open the Documentary Credit according to Seller's Opening Instruction Request. In the case where Buyer fails to open a Letter of Credit according to the Opening Instruction Request made by Seller, the Seller has the right to cancel the Contract or revise its content as it the Seller sees fit.

7. Right of set-off

Any sum payable by the Seller to the Buyer on any account may at any time be offset by the Seller at the Seller's sole discretion, against any sums payable by the Buyer to the Seller.

8. Cancellation

- (i) If the Buyer being a company has a petition presented for its winding up or any administration or passes a resolution for voluntary winding up otherwise than for the purpose of bona fide amalgamation or reconstruction or enters a scheme of arrangement or Voluntary Arrangement of compound or makes any proposals to or enters into any arrangement with his creditors or has a Receiver or Manager or Administrative Receiver appointed over all or any part of its assets or if the Buyer being an individual or Firm has a petition presented for his or its bankruptcy or becomes bankrupt or insolvent or enters into any arrangement with his or its creditors or makes or has made an application for interim order in connection with a proposal to creditors or voluntary arrangements or commits in either case a serious breach of this Agreement, then the Seller shall be entitled to treat the Contract as being at an end or suspend any further deliveries under the contract. If the Goods have been delivered but not paid for the price shall become due immediately regardless of any previous agreement to the contrary.
- (ii) The Buyer shall not be entitled to cancel the Contract without the written agreement of the Seller signed by a Director. In the event of such agreed cancellation the Buyer shall indemnify the Seller fully against all expenses, losses, claims and demands incurred up to the time of such cancellation including payment for such amount as the Seller will be required to make to sub-contractors and other third parties as necessary.
- (iii) If the Buyer cancels a Sales Contract the Seller shall retain any payment made by the Buyer, including deposit payments, to indemnify the Seller against all expenses, losses, claims and demands incurred up to the time of cancellation.

9. Delivery

- (i) Any statements made by the Seller as to the time or date for delivery of Goods, materials or Services for completion of any work are an approximate estimate based on the current trading conditions.
- (ii) The Seller is not liable for any delay in the delivery of the Goods nor is its liable if it is prevented from delivery Goods, materials or Services or executing work for any causes beyond its control, such causes may include Act of God, force majeure, war or hostilities, legislation, Government Order or direction and strike, lock-out, labour disturbance, civil commotion, fire accident, breakdown of machinery, or any lack or shortage of labour or materials or reduction, or delay or stoppage of the output at the works or suppliers of any Goods or materials required and in any such case the Seller are to be released from any obligation to complete the contract with the Buyer by a particular time. This right exists without prejudice to the Seller's right to recover payment for Goods or materials already delivered or work already done. Time of delivery is not the essence of the contract.
- (iii) Unless otherwise expressly agreed by the Seller in writing all deliveries, made or work done at the Buyer's request on Public Holidays and outside the Seller's normal working hours will be subject to extra charges. Notification of such charges may be obtained by the Buyer at his request from a Director of the Seller.
- (iv) Delivery will be deemed to have been effected when the Goods leave the premises of the Seller's supplier premises.
- (v) The Seller reserves the right to make partial delivery and to tender a separate invoice in respect of each delivery. Each delivery shall constitute a separate contract.
- (vi) If agreed between the parties the Goods may be collected by the Buyer. Collection of the Goods must take place within fourteen days from the agreed collection date or the dates notified by the Seller as available for collection. Thereafter the Buyer will incur storage charges at the rate currently applied by the Seller. Details of such storage charges may be obtained by the Buyer at his request from a Director of the Seller's Company.
- (vii) The Buyer shall take delivery or accept the Goods within the time limit provided in the contract. If the Buyer fails to accept the Goods or to give the Seller adequate delivery instructions the Seller will store the Goods until actual delivery to the Buyer or until the Goods are disposed of. The Buyer shall be

liable for the costs of such storage and insurance of the Goods. Alternatively the Seller may sell the Goods at the best price readily obtainable and the Buyer shall be liable to pay the costs of the sale. If the Goods are sold for less than the price payable by the Buyer, the Buyer shall be liable to pay the Seller the difference in price.

10. Inspection and Testing

- (i) The Buyer must carefully examine the Goods and materials immediately upon their delivery at destination port and in relation to those Goods and materials which are of the Seller's manufacture must notify the Seller in writing within 15 days of delivery of any short delivery, variance between the Goods and materials deliver and the delivery note or defects or damage reasonably discoverable on careful examination. In the absence of notification the Seller excludes all liabilities in respect of any short delivery, defect or variance, which should reasonably have been discovered on careful examination. The Seller will make good any variance, defect or damage if notified of such within 15 days of the arrival date of delivery at destination port. The maximum claim amount by the Buyer can be no more than the price given as per Sales Contract amount. This shall be the limit to the Seller's obligation and under no circumstances will the Seller be liable for any direct, indirect or consequential loss or damage resulting to the Buyer or any other person whatsoever or howsoever arising from any such shortage, variance, damage or defect.
- (ii) The Seller shall be under no liability where damage, shortage or variation in the terms of the delivery note or defects are complained of by the Buyer unless it is given reasonable opportunity by the Buyer to inspect the consignment in which the Goods complained of were contained and all or any strapping, batons or packaging provided by the Seller. The Seller may appoint a third party for the inspection.
- (iii) The Seller will not be liable for any charges incurred by the Buyer arising from any Goods or materials or work done proved to be defective or delayed and shall not be responsible for any additional overheads, administrative expenses, contractual penalties or other cost, claims and demands arising from the Buyer's obligations to any third party and due indirectly or directly to any defects or delays in the Goods or materials supplied or work done by Seller. The Buyer accepts that it is their responsibility to insure against these risks.
- (iv) Any alleged shortage, delay damage or defect shall not constitute valid grounds for a Buyer to delay payment in respect of the Goods delivered and for the avoidance of doubt the Buyer shall be required to pay for all Goods and materials supplied in respect of which there is an alleged claim for damage, delay, defect or variation from the terms of the delivery note or other default in accordance with the provision of the agreement.
- (v) All special test and inspections reasonably required by the Buyer or his agents shall be carried out at a location determined at the Seller's discretion and shall be at the Buyer's expense.

11. Passing of Property and Risk

- (i) Ownership of the Goods remains with the Seller and will not pass to the Buyer until either the Seller is paid for all the Goods and no other amounts are owed by the Buyer to the Seller in respect of other Goods supplied or the Buyer sells the Goods in accordance with this agreement in which case ownership of the Goods shall pass to the Buyer immediately before the Goods are delivered to the Buyer's purchaser.
- (ii) If the Buyer is overdue in paying for the Goods or any goods supplied, the Seller may recover and resell them. The Seller may enter the Buyer's premises for this purpose and this right does not prejudice the any other right of the Seller.
- (iii) Until the Buyer has paid the Seller for the Goods and all other goods supplied to him by the Seller the Buyer holds the Goods on trust for sale. If the Buyer sells the Goods, the Buyer shall hold the proceeds of sale on trust for sale for the Seller in a separate bank account. Further the Seller may trace into any bank or other account, which the Buyer maintains.

12. Quality

- (i) Where samples are submitted by the Seller to the Buyer these are drawn from bulk and are representative of the whole and no guarantee can be given that every item will be the same in all material respects as the sample.
- (ii) The Goods or materials supplied are on the basis that they conform to the written descriptions contained on the order or conformation or TDS or Drawings where supplied. No warranty can be given that the Goods or materials supplied conform to the drawings or TDS provided by the Seller.
- (iii) Any Goods manufactured to the design or specifications of the Buyer are produced without warranty. The Buyer will unconditionally fully and effectively indemnify in respect of any claim, cost or expenses, losses or demands resulting there from including the infringement of patent, copyright, design, trademark or any industrial or intellectual property rights resulting from the Seller's use of the said design or specifications.
- (iv) If the materials are supplied to the Buyer of a specified grade no warranty is given that the grade will be suitable for the purposes required by the Buyer.

13. Indemnity

- (i) Should the Seller incur any liability whether by court proceedings or by bona fide out of court settlement or by Arbitration under clause 17 or as a result of a claim against the Seller in respect of an alleged defect or defects in the Goods or materials supplied or services provided or any other claim then the buyer must indemnify the Seller against the liability.
- (ii) In no circumstances shall the Seller's liability in contract, tort or otherwise to the Buyer arising out of or in connection with this Contract or the Goods or materials supplied hereunder exceed the invoice price of the particular Goods or materials concerned.

14. Enforceability

Should any provisions of these terms and conditions be held by a competent authority to be invalid or unenforceable in whole or in part then the validity of the remaining provisions shall not thereby be affected.

15. Jurisdiction

This contract shall in all respects be construed and operate as an English contract. The Seller and Buyer agree to submit to the jurisdiction of Montreal Canada or to the jurisdiction of Seller's choice of place.