

DEKS Industries Europe Ltd – TERMS AND CONDITIONS OF SALE

The following terms and conditions apply to all transactions for the purchase of goods or products from DEKS Industries Europe Ltd and shall become binding once an order is accepted by DEKS Industries Europe Ltd. The placing of an order for goods indicates your acceptance of these terms and conditions. Please retain a copy for your records.

1 DEFINITIONS AND INTERPRETATION

1.1 In these terms and conditions, unless the context requires otherwise, the following words have the following meanings:

"Buyer" The person, firm or company which purchases the Goods as specified in the Order and in accordance with these terms and conditions;
"Goods" The goods or products agreed to be sold by the Seller to the Buyer in accordance with an Order;
"Incoterms" International rules for the interpretation of the most commonly used terms in international trade. The scope of Incoterms is limited to matters relating to the rights and obligations of the parties to the contract of sale with respect to delivery of goods sold. See <http://www.iccwbo.org/incoterms/id3045/index.html>
"Order" A contract or series of contracts for the supply of Goods by the Seller to the Buyer to which these terms and conditions apply
"Seller" DEKS Industries Europe Ltd Registered Company No. 08543099

1.1 A reference to a particular law is a reference to it as it is in force for the time being taking into account any amendment.

1.2 A reference to one gender includes a reference to the other gender or to the neuter.

1.3 Clause numbers and headings do not affect the interpretation of these conditions.

1.4 Subject to any variation under clause 1.9 these conditions are the only conditions upon which the Seller is willing to sell its Goods to the Buyer and they shall govern the Order to the entire exclusion of all other terms and conditions (save for the terms of any relevant Incoterms provisions which the Buyer and Seller have agreed shall apply to an Order).

1.5 No terms or conditions endorsed upon, delivered with or contained in the Buyer's request for Goods or acceptance form or similar document shall form part of the Order and the Buyer waives any right it might have to rely on its terms and conditions for purchase.

1.6 An order for Goods shall be deemed conclusive evidence of the Buyer's acceptance of these terms and conditions.

1.7 Any variation to these conditions shall have no effect until expressly agreed in writing and signed by a director or authorised signatory of DEKS Industries Europe Ltd.

1.8 Each right or remedy of the Seller under these terms and conditions is without prejudice to any other right or remedy of the Seller whether under these terms and conditions or not.

1.9 If any provision of these terms and conditions is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall, to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness, be deemed severable from the remaining provisions of these terms and conditions and the remainder of these provisions shall continue in full force and effect.

1.10 Failure or delay by the Seller in enforcing or partially enforcing any provision of these terms and conditions shall not be construed as a waiver of any subsequent breach or default and shall in no way affect the other provisions of these terms and conditions.

1.11 The Seller may at any time assign, transfer, charge or sub-contract or deal in any other manner with all its rights and obligations under an Order.

1.12 The parties to these terms and conditions do not intend that any term of these terms and conditions shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person who is not party to them.

2 ESTIMATES, QUOTATIONS AND ORDER PROCESS

2.1 Orders are accepted subject to supplies of the Goods and/or the materials required to manufacture the Goods being available.

2.2 Upon specific request from the Buyer the Seller shall provide a written quote to the Buyer setting out the price payable for the Goods (including details of the quantity of Goods to be supplied and proposed delivery terms). This quote shall also specify any particular Incoterms which shall apply to the Order. Quotes shall be valid for 30 days only unless specified otherwise.

2.3 Where the Buyer has specified that the Goods shall be of a certain colour or size such specifications shall be subject to reasonable commercial variation, other than where specifically agreed with the Seller.

3 PRICING AND PAYMENT

3.1 The price payable by the Buyer for the supply of the Goods shall be as specified in any quote supplied to the Buyer in accordance with clause 2.2 above or, in the absence of a quote, as agreed between the Seller and Buyer each time the Buyer places an Order.

3.2 Unless otherwise agreed in writing payment for the goods will be due on receipt of the Order by the Seller, and the Buyer will provide the Seller with a pro-forma invoice for this purpose. The Buyer shall pay each invoice in full together with any VAT at the appropriate rate and other expenses to the Seller and the time of payment shall be of the essence.

3.3 Unless otherwise agreed between the parties invoices will be raised and dated by the Seller on the date of dispatch of the Goods.

3.4 If the Buyer fails to pay any sums due by the due date or does not comply with any other obligation imposed on the Buyer then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to withhold the supply of any Goods to be supplied or delivered to the Buyer until such payment is made.

3.5 In the event of late payment the Seller reserves the right to charge to the Buyer all reasonable debt recovery costs.

3.6 The Seller reserves the right to charge interest to the Buyer on any sums, fees or other charges which are not paid on the due date under the Late Payment of Commercial Debts (Interest) Act 1998. Such interest will be charged, on a daily basis from the date such payment was due until payment is received, at the statutory rate of eight per cent (8%) per annum above the Bank of England base rate (the "reference rate") set from time to time.

3.7 Where payment for Goods is to be made by instalments the full amount due to the Seller shall become immediately payable in the event that the Buyer (being a Company) goes into liquidation or (being an individual) has a Receiving Order made against him or her, or purports to give or create any mortgage or charge over the Goods supplied by the Seller or commits an Act of Bankruptcy, or if the Buyer misses an agreed instalment date for payment.

3.8 No disputes arising under or in connection with an Order nor delays beyond the reasonable control of the Seller shall release the Buyer from its obligation to ensure prompt payment in full to the Seller on the agreed due date or dates for payment for the Goods.

3.9 The Buyer shall not be entitled to make any deduction from the price in respect of any set off or counterclaim unless both the validity and the amount thereof have been admitted in writing by the Seller.

4 DELIVERY

4.1 The Seller or its agent shall deliver the Goods to any premises (whether in the United Kingdom or worldwide) as notified to the Seller by the Buyer and unless otherwise agreed the Buyer shall be liable for any costs incurred by the Seller in relation to carriage, postage and packing and any other applicable taxes and duties.

4.2 Unless otherwise agreed the Seller's terms of delivery within the UK are on an ex-works (EXW) basis.

4.3 The Seller's default terms of delivery for exports will be set out by the seller on agreement of the terms of sale however from time to time the Buyer and Seller may agree that different Incoterms shall apply to the Order. Where different Incoterms are to apply these will be either set out by the Seller in any quote supplied to the Buyer in accordance with clause 2.2, or in the absence of a written quote, shall be agreed by the Buyer and Seller at the time of the placing of the Order in accordance with clause 3.1.

4.4 Any time or date for delivery given by the Seller is an estimate only and the Seller shall not be liable for the consequences of any delay. In particular, the Seller shall not be liable for any loss whether direct, indirect or consequential arising from any failure by the Seller to deliver the Goods to the Buyer on a specific date or at a specific time.

4.5 Where the Goods are mixed with others so as physically to lose their separate identity, whether or not they are sold by the Buyer, the Buyer or its receiver or liquidator shall hold the proceeds of sale or the necessary part of such mixed Goods on trust for the Seller.

4.6 In any case where the Buyer holds any goods or proceeds of sale on trust for the Seller, it shall deliver them to the Seller immediately upon request by the Seller.

4.7 Without prejudice to any other rights and remedies available to it, so long as title with the Goods remains in the Seller and the Buyer is in default of any of its obligations under these terms and conditions and/or the Order the Seller shall have the right with or without prior notice to the Buyer to re-possess the Goods and may (either itself or by its agents or employees) enter the Buyer's premises for this purpose.

5 TITLE AND RISK

5.1 The Buyer agrees that it shall inspect all Goods delivered to it by the Seller, and notify the Seller of any defects or inaccuracies within 3 working days of their arrival at their premises or other agreed place for delivery.

5.2 The Seller will in its absolute discretion either make good or replace free of charge any defective Goods (or alternatively provide a refund or credit note for such defective Goods) provided that samples of any Goods complained of are sent to the Seller at the cost of the Buyer and accompanied by full details of the complaint within seven days following delivery.

5.3 If a complaint is not made to the Seller in accordance with these terms and conditions then the Goods shall be deemed to be accepted by the Buyer and to be in accordance with the Order and the Buyer shall be bound to pay for the Goods accordingly.

5.4 Where a consignment of Goods delivered to the Seller contains some defective or inaccurate Goods and some Goods which are accurate and working the Buyer shall be entitled to reject only those Goods which do not so conform or are defective, and will be liable to pay the purchase price for the remainder.

6 GENERAL EXCLUSIONS AND LIMITATION OF LIABILITY

6.1 To the maximum extent permissible in law all conditions and warranties which are to be implied by statute or otherwise by general law into these terms and conditions or relating to the Goods are excluded. Notwithstanding this any Goods supplied under these terms and conditions will conform substantially to any specifications given in relation to them.

6.2 The total liability which the Seller shall owe the Buyer in respect of any claims under each Order shall not exceed the purchase price paid by the Buyer for the Goods.

6.3 Save for death or personal injury caused by the negligence of the Seller, the Seller shall not be liable for any loss or damage or consequential loss of any kind (whether direct or indirect) incurred or suffered by the Buyer or any other person as a result of any fault or defect in the Goods or any negligence of the Seller or its servants or agents.

7 FORCE MAJEURE

7.1 The Seller shall be under no liability to the Buyer and reserves the following rights in the event that the Seller is prevented from or delayed in carrying out its business by acts, events, omissions or accidents beyond its reasonable control, including strikes, lock-outs or other industrial disputes (whether involving the Seller's workforce or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors:

7.2 The right to defer the proposed date of delivery of the Goods; and

7.3 The right to cancel or vary the Order.

8 CANCELLATION OF ORDERS

8.1 The Seller may without prejudice to its other rights and remedies cancel an Order if there is any breach by the Buyer of the terms of the Order.

8.2 In the event of the Buyer (being a Company) going into liquidation or (being an individual) having a Receiving Order made against him or her, or purporting to give or create any mortgage or charge over the Goods supplied by the Seller or having committed an Act of Bankruptcy the Seller shall be entitled to cancel any Order in whole or in part by notice in writing without prejudice to any right or remedy accrued or accruing to the Seller.

8.3 The Seller reserves the right to discontinue deliveries of any Goods the manufacture, sale or use of which in its opinion would involve the infringement of the intellectual property rights of third parties.

9 TECHNICAL SUPPORT

9.1 The Seller at the Buyer's request may provide technical advice from time to time in relation to use of the Goods, but it is expressly agreed that there is no obligation for the Seller to provide any such advice and that if any advice or assistance is given (which will be without charge) it shall be given and accepted at the Buyer's risk and the Seller shall not be responsible or liable for the advice or assistance given or any consequences of reliance on such advice.

10 INTELLECTUAL PROPERTY RIGHTS

10.1 All drawings, designs and specifications in the Goods shall remain the intellectual property of the Seller and shall not be disclosed, given, copied or sold to any third party without the Seller's written consent.

11 NOTICES

11.1 Any notice to be given under this agreement shall be in writing and shall be sent by first class mail or air mail, or by facsimile to the registered office address of the relevant party or to the relevant facsimile number set out in the Order, or such other address or facsimile number as each party may from time to time notify the other party of in accordance with this clause.

11.2 Notices sent out as above shall be deemed to have been received three working days after the day of posting (in the case of inland first class mail), or seven working days after the date of posting (in the case of air mail), or on the next working day after transmission (in the case of facsimile).

12 GOVERNING LAW

These terms and conditions shall be governed by English law and shall be subject to the exclusive jurisdiction of the English Courts to which the parties submit.

A copy of these terms and conditions is available upon request – sales@deks.co.uk or on our website www.deks.co.uk