

# Conditions of sale

## 1. Definitions

In these Conditions, the following words shall bear the following meanings:

'Business Day' shall mean a day (other than a Saturday, Sunday or public holiday in England and Wales) when banks in London are open for business.

'Company' shall mean Denco Lubrication Limited (CRN 05005412) whose registered office is situated at Ramsden Court, Ramsden Road, Rotherwas Industrial Estate, Hereford HR2 6LR, UK

'Contract' shall mean any arrangement between the Company and the Customer incorporating these Conditions for the sale of the Goods and (if applicable) the Services.

'Customer' shall mean the party for whom the Company is providing the Goods and (if applicable) the Services.

'Designated Premises' shall be the premises where the Services are to be provided.

'Goods' shall mean any goods agreed in the Contract to be supplied to the Customer by the Company (including any part or parts of them).

'Intellectual Property Rights' shall mean patents, rights to inventions, copyright and related rights, moral rights, trademarks and service marks, trade names and domain names, rights in get-up, rights to goodwill or to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future or in any part of the world.

'Services' shall mean the installation of the Goods at the Designated Premises together with any other services which the Company agrees to provide to the Customer.

Where such expressions as EX WORKS, FOB, and CIF are used, they shall bear the meanings assigned to them in INCOTERMS 2000.

## 2. Validity of Quotations

Any quotation issued by the Company is open for acceptance within the period stated therein or, when no period is stated, within 30 days only after its date, provided that the Company has not previously withdrawn it.

## 3. Acceptance

3.1 No order placed by the Customer shall be binding on the Company unless and to the extent that it has been accepted in writing by a duly authorised officer of the Company. Unless otherwise agreed in writing by a duly authorised officer of the Company, these Conditions shall override and operate to the exclusion of all terms and conditions contained in any document emanating from the Customer and shall not be varied except as specifically agreed by the Company in writing acting by a duly authorised officer.

3.2 When deemed necessary, customer orders will not be accepted until written verification has been received, that goods ordered will not be re-sold or transferred, either directly or indirectly to Russia or other sanctioned territories.

## 4. Price

4.1 The price of the Goods and (if applicable) the Services will be as set out in the quotation or if no quotation has been issued, in the written acceptance of order issued by the Company.

4.2 Unless otherwise stated by the Company in writing all prices quoted are exclusive of:

4.2.1 VAT (which shall be charged at the appropriate rate at the date of delivery of the Goods);

4.2.2 carriage, freight, insurance and other transport costs incurred by the Company in the delivery of Goods;

4.2.3 any tax or duty relating to the manufacture, transportation, export, import, sale or delivery of the Goods (whether initially charged or payable by the Company or the Customer);

4.2.4 packaging and packaging materials, all of which shall be added to the price of the Goods and Services.

4.3 Where packaging is stated to be returnable by the Customer to the Company the cost of such packaging shall be credited to the Customer in full upon receipt by the Company provided such packaging is in good condition. Where packaging is not returnable, it shall be disposed of by the Customer in accordance with all regulations applying to such disposal at that time.

4.4 In the event of a variation to design, specification, quantity or time scale specified in the Contract which has been requested by the Customer and agreed by the Company, the price for the Goods and (if applicable) the Services shall be adjusted accordingly by the Company. Where the price for the Goods or Services is varied due to a variation pursuant to this clause, the price as varied shall be binding on the Customer and shall not give the Customer the right to cancel the Contract.

4.5 Where the Customer orders Goods of a type, size or quality not normally produced by the Company, the Company will use all reasonable endeavors to execute the Contract for such Goods but if it proves impossible, impractical or uneconomical to carry out or complete the order for such Goods, the Company reserves the right to cancel the Contract or the uncompleted part of it in which event the Customer shall only be liable to pay for the part of it delivered or performed.

4.6 Quotations in a currency other than sterling are based on the rate of exchange at the time of quoting and, unless otherwise stated, the price may be subject to revision up or down if any different rate of exchange is ruling at the date of the invoice.

## 5. Drawings, Intellectual Property Rights and Testing

5.1 All specifications, drawings and particulars of quantities, weights, dimensions and stated performances submitted with the quotation issued by the Company are approximate only, and the descriptions and illustrations contained in any catalogues, price lists and/or other advertisement matter issued by the Company are intended merely to present a general idea of the Goods described therein and none of these shall constitute any representation, term, condition, warranty or otherwise form part of the Contract.

5.2 After acceptance by the Company of the Customers offer to purchase Goods, the Company may issue, a set of certified outline drawings of the Goods if requested by the Customer.

5.3 The Company reserves the right to charge for the time spent in the preparation of any drawings requested by the Customer under Condition 5.2.

5.4 All Intellectual Property Rights in specifications and drawings and particulars of quantities, weights, dimensions and stated performances or other documents vested in or emanating from the Company shall be and shall remain the property of the Company and shall not be reproduced, used or disclosed to third parties without the express permission of the Company in writing.

5.5 The Goods are carefully inspected and, where practicable, submitted to standard tests by the Company before despatch. If tests other than those specified in the quotation, or tests are to be in the presence of the Customer or the Customer's representative, or tests are to be carried out by a third party, the Company will charge for these tests. In the event of any delay on the Customer's part in attending such tests or in carrying out any inspection required by the Customer on the dates specified by the Company, the tests will proceed in the Customer's absence and shall be deemed to have been made in the Customer's presence.

5.6 If the performance figures obtained on any test carried out under the Contract are outside the acceptance limits specified therein, the Customer shall (subject to clause 5.7) be entitled to reject the Goods within 3 Business Days of the Company notifying the Customer of the test results.

5.7 Before the Customer becomes entitled to reject the Goods under clause 5.6 the Company shall be given reasonable time and opportunity to rectify the Goods. If the Customer becomes entitled to reject the Goods under clause 5.6, the Company will repay to the Customer any sum paid by the Customer to the Company for the rejected Goods.

5.8 The Company shall not be liable for any failure to attain any performance figures quoted by the Company in respect of the Goods unless the Company has specifically guaranteed that the Goods will attain such performance figures.

## 6. Payment

6.1 For Goods and Services sold to Customers who have credit agreed in writing by a duly authorised officer of the Company, payment shall be made in sterling within 30 days of the Company's invoice subject to condition 6.2 and 6.3. For all other Customers, payment must be made by the Customer in full before delivery or collection.

6.2 For Goods and Services sold outside the United Kingdom, unless otherwise agreed in writing by a duly authorised officer of the Company, payment must be made by the Customer in full upon presentation of shipping documents and the Company's invoices in the United Kingdom against an irrevocable and confirmed letter of credit confirmed by a leading United Kingdom clearing bank. All bank charges associated with the letter of credit shall be payable by the Customer.

6.3 Where the Company has agreed that the Customer may pay for the Goods in instalments, the Customer shall ensure that the Goods are serviced quarterly, until such time as payment has been made to the Company in full.

6.4 Where the Customer fails to effect payment by the due date, without limiting any other remedies or rights the Company may have, the Company may:

6.4.1 suspend or cancel the Customer's credit with the Company;

6.4.2 suspend or cancel any outstanding order for Goods;

6.4.3 where the supply of the Services has begun, suspend all Services until payment has been made in full; and

6.4.4 charge interest to the Customer on the overdue amount at the rate of 4% a year above the base lending rate of the Company's bank from time to time. This interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment.

6.5 Payment by the Buyer must be settled in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Customer has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Customer.

6.6 No payment shall be deemed to have been received until the Company has received cleared funds.

6.7 Time for payment shall be of the essence.

6.8 All payments payable to the Company under the Contract shall become due immediately on its termination despite any other provision.

## 7. Title

7.1 Title in the Goods shall not pass to the Customer until payment in full of all sums due to the Company under the Contract have been made. Until title to the Goods passes to the Customer the Customer shall keep the Goods separately and readily identifiable as the Company's property.

7.2 Any resale of the Goods by the Customer in which property has not passed to the Customer shall be made by the Customer as agent for the Company.

7.3 At any time before title to the Goods passes to the Customer, if the Customer breaches this agreement or defaults in payment, the Company may retake possession of all or part of the Goods and the Customer grants an irrevocable licence to the Company to enter any premises where the Goods are stored for that purpose. The Customer shall ensure that until the Goods have been paid for in full and title in them has passed to the Customer that the Goods do not become annexed to any property and premises and can be easily and readily detached from any property and premises in the event of the Company retaking possession of the Goods.

7.4 The Customer's right to possession of the Goods shall terminate immediately if:

7.4.1 the Customer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Customer or notice of intention to appoint an administrator is given by the Customer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up of the Customer or for the granting of an administration order in respect of the Customer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Customer; or

7.4.2 the Customer suffers or allows any execution, whether legal or equitable, to be levied on its property or obtained against it, or fails to observe or perform any of its obligations under the Contract or any other contract between the Company and the Customer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Customer ceases to trade; or

7.4.3 the Customer encumbers or in any way charges any of the Goods.

7.5 The Company shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Company.

7.6 On termination of the Contract, howsoever caused, the Company's (but not the Customer's) rights contained in this clause 7 shall remain in effect.

## 8. Risk

8.1 Risk in the Goods shall pass to the Customer upon delivery to or collection by the Customer. From the time risk passes to the Customer and until the Company receives payment of all sums due to the Company under the Contract the Customer shall insure the Goods with a reputable insurer and shall hold monies received by virtue of any insurance in respect of the Goods on trust for the Company.

8.2 Where the Company has delivered the Goods, the Company will repair or (at the Company's option) replace free of charge any Goods which are lost or damaged in transit, provided that the Company is given written notification of such loss or damage within such time as will enable the Company to comply with the carrier's conditions of carriage as affecting loss or damage in transit or, where delivery is made by the Company's own transport, within a reasonable time after receipt of the delivery note.

## 9. Delivery

9.1 Unless otherwise agreed by the Company, the Customer shall collect the Goods from the Company's place of business.

9.2 The Customer shall collect the Goods within 5 days of the Company giving it notice that the Goods are ready for collection.

9.3 Where the Company has agreed to deliver the Goods, any dates specified by the Company for delivery are intended to be an estimate and time for delivery shall not be made of the essence by notice. If no dates are so specified, delivery shall be within a reasonable time.

9.4 Subject to the other provisions of the Contract, the Company shall not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods (even if caused by the Company's negligence), nor shall any delay entitle the Customer to terminate or rescind the Contract unless such delay exceeds 60 Business Days.

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- 9.5 Where the Company has agreed to deliver the Goods, the Customer shall:
- 9.5.1 provide the Company with the correct delivery address, which shall be easily accessible and shall be a kerbside address; and
- 9.5.2 Unless otherwise agreed by the Company, provide at the delivery address and at its expense adequate and appropriate equipment and manual labour for unloading the Goods.
- 9.6 If the Customer fails to collect the Goods, accept delivery of any of the Goods (for any reason) when they are ready for delivery, or the Company is unable to deliver the Goods on time because the Buyer has not provided the correct delivery address, the delivery address is not a kerbside address or the Company's delivery vehicles are unable to access the delivery address:
- 9.6.1 risk in the Goods shall pass to the Buyer;
- 9.6.2 the Goods shall be deemed to have been delivered;
- 9.6.3 the Company may store the Goods until delivery, whereupon the Customer shall be liable for all related costs and expenses (including, without limitation, storage and insurance); and
- 9.6.4 the Company may after giving the Customer reasonable prior notice, resell or otherwise dispose of part or all of the Goods.
- 9.7 The Company may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the Contract. Each instalment shall be a separate Contract and no cancellation or termination of any one Contract relating to an instalment shall entitle the Customer to repudiate or cancel any other Contract or instalment.

## 10. Non-Delivery

- 10.1 The quantity of any consignment of Goods as recorded by the Company on despatch from the Company's place of business shall be conclusive evidence of the quantity received by the Customer on delivery unless the Customer can provide conclusive evidence proving the contrary.
- 10.2 The Company shall not be liable for any non-delivery of Goods (even if caused by the Company's negligence) unless the Customer gives written notice to the Company of the non-delivery within 2 days of the date when the Goods would in the ordinary course of events have been received.
- 10.3 Any liability of the Company for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods.

## 11. Fluctuations

Unless otherwise stated all prices quoted are based on costs current at the date of quotation and are subject to adjustment in accordance with the appropriate BEAMA or NEDO contract price adjustment formula to reflect changes in cost of labour and/or materials between the date of quotation and the date of the Contract.

## 12. Suspension

- 12.1 If at the request of the Customer the Company agrees to suspend or delay the manufacture and/or delivery or collection of the Goods the Customer shall pay to the Company the value of all the work performed to the date of suspension or delay and all costs, losses and expenses incurred as a result of the suspension or delay including (without limitation) overheads, wasted expenditure and/or loss of profit and cost of materials and labour.
- 12.2 If the suspension or delay continues for a period of one calendar month (or beyond such longer period as the Company may have agreed) then the Company may at any time, by giving 7 days' notice, require the Customer to agree to a resumption of manufacture, delivery and/or the provision of the Services. Failure by the Customer to agree will entitle the Company to terminate the Contract.

## 13. Import Licences

The Contract shall be subject to the procurement by the Customer at his expense, of any import licences or other documentation required for the import of the Goods into the country to which they are to be delivered.

## 14. Warranty

- 14.1 The Company provides no warranty in connection with the Goods or Services, other than those warranties which are implied into the Contract by law and which cannot legally be excluded from the Contract. Such warranties are invalidated if the goods are re-sold or transferred to another party.
- 14.2 The Customer assumes responsibility that Goods purchased by the Customer are sufficient and suitable for the Customer's purposes.
- 14.3 Where the Company is not the manufacturer of the Goods, the Company shall endeavour to transfer to the Customer the benefit of any warranty or guarantee given to the Company.
- 14.4 Where the manufacturers' warranty or guarantee can be transferred to the Customer, such warranty or indemnity is in addition to the Customer's statutory rights as referred to in clause 14.1.

- 14.5 The warranties provided in accordance with this Contract do not apply to any defect in the Goods or Services arising from fair wear and tear, where the Customer has not had the Goods serviced quarterly, wilful damage, accident, negligence by the Customer or any third party, if the Customer uses the Goods in a way that the Company or the manufacturer of the Goods do not recommend, the Customer's failure to follow the Company's or the manufacturer's instructions, or any alteration or repair the Customer carries out without the Company's prior written approval.

## 15. Liability for Defects

- 15.1 Where a claim is made by the Customer under the Contract and either the Company admits liability or the claim has been adjudicated on by a court of competent jurisdiction and found in favour of the Customer and no right of appeal lies in respect of such adjudication, the Company will make good, by repair any defects provided always that:
- 15.1.1 The defect is notified to the Company in writing and in any event not later than 12 calendar months (unless otherwise agreed by the Company) after the Goods are delivered or collected (The Defects Liability Period);
- 15.1.2 The defective part has been returned to the Company (upon request of the Company). The Company shall refund the cost of carriage on any parts so returned and repaired or new parts which are supplied under this clause will be supplied by the Company free of charge and delivered by or on behalf of the Company by any method of transport, however, the Company shall be under no obligation to install the defective Goods.

## 16. Limitation of Liability

- 16.1 Subject to clause 16.3, if the Company fails to comply with the Contract, the Company shall not be responsible for any losses that the Customer suffers as a result, except for those losses which are a foreseeable consequence of the failure to comply with these Conditions.
- 16.2 The Company shall not be responsible for losses that result from the Company's failure to comply with these Conditions including, but not limited to, losses that fall into the following categories:
- 16.2.1 loss of income or revenue;
- 16.2.2 loss of business;
- 16.2.3 loss of anticipated savings;
- 16.2.4 loss of data; or
- 16.2.5 any waste of time.
- 16.3 This clause does not include or limit in any way the Company's liability for:
- 16.3.1 death or personal injury caused by our negligence; or
- 16.3.2 fraud or fraudulent misrepresentation; or
- 16.3.3 any breach of the obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
- 16.3.4 losses for which it is prohibited by section 7 of the Consumer Protection Act 1987 to limit liability.

- 16.4 Subject to clause 16.3, the Company's total liability for any claims arising under this contract shall be limited to the price received by the Company for the Goods and (if applicable) the Services.

- 16.5 The company shall not be responsible for any infringement of National or International legislation regarding government sanctions by other parties.

## 17. Force Majeure

The Force Majeure (Exemption) clause of the International Chamber of Commerce (ICC publication no. 421) shall be incorporated into the contract.

## 18. Liability for Damage or Injury

The Customer shall indemnify and keep the Company harmless from any claims arising out of any damage or injury to persons or property (including the Goods) in connection with the Goods or Services save where caused by the negligence or breach of Contract of the Company, and the Customer shall be responsible for arranging and paying for satisfactory insurance in the joint names of the Company and the customer to cover the risks.

## 19. Permissions

It shall be the Customer's responsibility to obtain all necessary permissions from landlord, local authority or other body for the carrying out of any work to which the contract with the Customer relates.

## 20. Termination

- 20.1 The Company shall be entitled without prejudice to any other rights forthwith to terminate any contract in the event that the Customer:
- 20.1.1 is in default of any of its obligations or
- 20.1.2 goes into liquidation whether voluntary or otherwise (except for the purposes of and followed by an amalgamation or reconstruction) or is adjudicated bankrupt or fails to pay any of its debts as and when they fall due or
- 20.1.3 has a receiver, administrative receiver or manager appointed to any part of its business or becomes subject to an administration order or
- 20.1.5 prevents or hinders the Company from performing the contract or if the Company is otherwise prevented from performing the contract for any cause beyond its reasonable control
- 20.1.6 has attempted to mislead the company as to the true end-user of the goods

- 20.2 The Company shall be entitled without prejudice to any other rights to recover an appropriate portion of the price and any additional costs incurred as a result of such termination including overheads, wasted expenditure and/or loss of profit.

## 21. Severability

Each and every clause, sub-clause or any part thereof appearing in these terms and conditions is a separate and severable provision and any such found to be void shall be deemed deleted and the remaining provisions shall continue in full force and effect.

## 22. Assignment

- 22.1 The Company shall be entitled to transfer, assign or sub contract the contract with the Customer without any reference to the Customer.
- 22.2 The Contract with the Company and the rights and interests arising thereunder are personal to the Customer who shall not be entitled to assign the same in any manner whatsoever, either in whole or in part.

## 23. Dispute Resolution

- 23.1 The Company and the Customer each has the right to refer any dispute under the Contract to adjudication but are not obliged to do so and either party may at any time give notice in writing (hereinafter called the Notice of Adjudication) to the other of its intention to refer the dispute to adjudication. Any dispute referred to adjudication shall be conducted in accordance with TeCSA Adjudication Rules or any amendment or modification thereof being in force at the time of appointment of the adjudicator.
- 23.2 The decision of the adjudicator shall be binding until the dispute is finally determined by legal proceedings.
- 23.3 Subject to the TeCSA rules any adjudication shall be conducted and have effect as if this contract was a construction contract within the meaning of Part II of the Housing Grants, Construction & Regeneration Act 1996, ("the Construction Act") or any amendment thereof.

## 24. Legal Construction and Interpretation

Unless otherwise agreed in writing the contract shall in all respects be construed and operate as an English contract and in conformity with English law and the English courts shall have exclusive jurisdiction over any matter arising out of the Contract or otherwise.

## 25. Third Party Rights

A person who is not a party to the Contract between the Company and the Customer shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the terms of the Contract. This clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

## 26. Set Off

Any claim on the part of the Company or any of its subsidiary associated or holding companies and each subsidiary undertaking thereof (as defined by sections 258 and 736 of the Companies Act, 1985 and section 146 of the Income and Corporation Taxes Act, 1988) whether arising out of the Contract or otherwise and whether present or future, certain or contingent ascertained or sounding only in damages, may be set off against any claim on the part of the Customer.

## 27. Price increase, beyond the control of the Company

The Company reserves the right, by giving written 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 Company which is due to any factor beyond the control of the Company (including, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Goods which are requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Company adequate information or instructions.

## 28. Limitation of Liability – S M Seals – Replacement Components and Spare Parts

- 28.1 The Company is willing to support customers with the provision of replacement components and spare parts for axial mechanical seals in accordance with S M Seals designs. Subject to clause 16.3 the Company shall have no liability for the design of such replacements or spare parts of S M Seals goods. For the avoidance of doubt any sales of replacement components and/or spare parts of axial mechanical seals are made on the strict understanding that the Company shall not be liable for the design or operational effectiveness of any replacement components or spare parts.
- 28.2 This clause 28 does not seek to exclude liability of the Company for any manufacturing fault in the provision of replacement components and spare parts for axial mechanical seals which does not conform to the original S M Seals design, and as such clause 14 of these terms and conditions shall apply.