

Standard Terms & Conditions of Purchase

1. Definitions

In these Terms and Conditions the following definitions shall apply and the Supplier's attention is specifically drawn to the provision of clauses 8(c) and 17:

The "Company" means Denco Lubrication Limited, also known as Denco Fluid Systems.

The "Supplier" means any company, firm or individual named in this order.

The "Works" means the goods, materials, plant, or machinery to be sold, supplied and/or manufactured hereunder, or the services to be performed for the Company. Where services are to be performed any reference to delivery of goods shall be construed as being a reference to the performance of the services.

The "Price" means the total price stated on this Order, or where applicable, the total price payable under this Order as determined by reference to unit rates.

"Terms and Conditions" means the terms and conditions set out below and any specific conditions printed or typed on the face of this Order. Clause headings are for guidance only and do not form part of the contract. In any case of conflict between the terms and conditions set out below and any such specific conditions the latter shall prevail, provided always that any reference to the Suppliers quotation on the face of this Order or on any Form of Acknowledgement shall not constitute acceptance of the Supplier's own terms and conditions.

The "Contract" means this Order accepted by the Supplier.

"Main Contract" means the Contract which requires the Company to obtain the Works. "The Construction Act" means Part II of the Housing Grants, Construction & Regeneration Act 1996. "Construction Contract" means a construction contract within the meaning of the Construction Act.

2. Acceptances

Unless otherwise agreed in writing by the Company, the Company does business only on these Terms and Conditions and any Supplier who makes offers to the Company or accepts offers made or Orders placed by the Company (whether expressly or by beginning to perform the Contract), shall be deemed to accept these Terms and Conditions to the exclusion of all others including the Supplier's own terms and conditions whether or not expressly contained or referred to in the Supplier's offer or acceptance. In particular, but without prejudice to the generality of the foregoing, the Company will not accept any conditions whereby the Supplier retains or attempts to retain title to the Works unless expressly agreed in writing by the Company.

3. Prices

All rates and prices are firm and fixed unless otherwise specifically agreed in writing by the Company. Save where otherwise stated in this Order, the price charged will be deemed to include:

- all services and materials necessary for the satisfactory execution of the Contract.
- the cost of packing and carriage to the place of delivery.
- all VAT, tax, and duties relating to the manufacture, transportation, export, import, sale or delivery of the Works.

4. Description and Quality

The Works shall:

- correspond in all respects with the particulars referred to on the Order
- conform with any sample, pattern, drawing, design specification or data sheet approved or supplied by the Company
- correspond in all respects with any such sample, pattern, drawing, design specification or data sheet proposed by the Supplier and accepted by the Company
- be of sound materials and workmanship
- meet any standard of inspection or of performance stated or referred to in the Order or otherwise communicated in writing by the Company to the Supplier and unless specified otherwise shall comply with the relevant British Standard, and any standards set down in the Supplier's own specification
- be fit for any purpose expressly or impliedly made known to the Supplier or otherwise for their ordinary purposes
- comply with the relevant requirements of Common Law, any statute, order, or other regulation having the force of law which may be in operation on delivery
- comply with the terms and conditions of the Main Contract.

5. International Quality Systems

If the Supplier has approval to ISO 9000 – Quality Systems, then the specified requirements of this Order must be met by complying with that standard unless otherwise stated in the Order. In any event the Supplier must work within the intent of that standard.

6. Discrepancies

Should any discrepancy occur between any drawings, design specification or Order as issued by the Company, the Supplier shall immediately give notice in writing to the Company of such discrepancy and, subject to the Company exercising the right to terminate the Contract within 5 days of such notice, the Supplier shall carry out the Works thereafter in accordance with the Company's written instructions.

7. Order of Execution and Time of Delivery

- The Supplier shall supply the Works in the sequence, if any, specified in the Order and in the Main Contract.
- The time for completion of the Works and/or delivery dates specified in the Order shall be of the essence and the Company shall be entitled to refuse to take delivery of any Works delivered at a time other than such time as is specified in the Order.
- The Supplier shall ensure that all Works shall be accompanied by documentation indicating the Company's order number, reference number (if stated on the Order), date, delivery address, number of packaging, full description of the contents, quantity ordered, quantity sent, balance outstanding, and any certification requested on the Order.
- Prior to the delivery the Supplier shall, where applicable, supply the Company with a shipping specification in accordance with the Company's requirements.
- The outside of all containers or packages containing goods or parts thereof is to be indelibly marked and/or labelled in accordance with the Company's requirements.

8. Payment

Payment shall be made in accordance with the Order provided that:

- where no payment terms are specified in the Order, payment shall be made 60 days from the invoice date, or the delivery and acceptance of the Works whichever is later, and in the event of the Works being rejected by the Company in accordance with the Contract, these payment terms shall commence from acceptance of the Works;
- where the Contract is a Construction Contract the payment terms of Denco Lubrication's standard form of Sub-Contract SC4 shall apply mutatis mutandis.
- where the Contract is not a Construction Contract, and where the Company is to be paid in whole or in part for the Works by a third party with whom the Company is in contract (a "Third Party"), the Company shall not be liable to pay the Supplier to the extent that the Company does not receive an equivalent payment in respect of the Works from the Third Party, due to (i) the Third Party's insolvency or (ii) breach of this Contract by the Supplier or (iii) any reason outside the reasonable control of the Company and payment shall be made to the Supplier 60 days from receipt by the Company of payment in full from the Third Party; and time shall not be of the essence in relation to payment and interest on any payment which is not paid when due shall be at a rate of 0.1% per annum on such outstanding amount, provided that the Company has accepted the Works and there is no dispute relating to the Works or the Price.

9. Property and Risk

- Title to the Works or any part thereof shall pass to the Company upon delivery or payment or part payment (whichever occurs first).
- All risk of loss or damage to or arising as a result of the Works shall remain with the Supplier until the goods reach the place of delivery and are placed in the possession of the Company.

10. Packing Materials and Protection of Works

The Supplier shall package or protect the Works to withstand freight handling and periods of storage. If the Works are damaged due to faulty or inadequate packing the damaged Works or parts thereof shall be repaired or replaced at the expense of the Supplier whether or not delivery has been accepted.

11. Company's Property and Confidentiality

(a) Any items provided to the Supplier by the Company (including, but without prejudice to the generality of the foregoing, original designs, drawings, patterns, dies, moulds, gauges, specification, material, or computer programmes, whether by way of free issue or not) for use in conjunction with this Order, whether for incorporation in the Works or not, are the property of the Company and the Supplier shall:

- bear the risk of all loss of or damage to such items and the Company may without prejudice to any other rights which it may have against the Supplier in respect of such loss or damage require the Supplier to effect reinstatement or replacement of such items as are lost or damaged at the Supplier's sole cost.
- affix and keep affixed a clear sign upon each item indicating that it is the property of the Company.

(iii) not without the Company's prior written consent use or allow the use of any item on any work other than the Works specified in the Contract.

(iv) not without the Company's prior written consent part possession with, disclose or allow the disclosure of any item or any information relating thereto to any person whatsoever save for the purposes of the proper performance of the obligations owed to the Company by the Supplier.

(v) at the Company's request on the completion of the Works return all such items.

(b) The Company reserves the right to disclose to its customers any articles, drawings, information, or any other materials whatsoever received from the Supplier in connection with the performance of its obligations under the Contract.

(c) Nothing related to the Contract shall, without the Company's prior written consent, be used in any way for the purpose of advertisement or publicity.

(d) Without prejudice to any of its other rights and remedies, the Company shall have the right on termination of the Contract for whatever reason, to enter upon the premises of the Supplier and repossess and take any property including but not limited to the Works and the items specified in Clause 11(a) hereof, which is the property of the Company and the Supplier undertakes to secure for the Company the same rights against the Supplier's sub-contractors.

12. Modifications or Variations

(a) The Company may by notice in writing before delivery or completion of the Works, require the Supplier to carry out any modification or variations to the Works, including the processes or methods of manufacture applied thereto. Subject to sub-clauses (b) and (c) hereof the Supplier shall comply with Company's requirements and these conditions shall apply in full to any such modification or variation.

(b) Upon receipt of the Company's written notice specifying the modifications or variations the Supplier shall within 7 days notify the Company in writing of his assessment of:

- any increase or decrease in price that will result from the carrying out of the modifications or variations specified in the Company's notice.
- any extension or reduction of time for the completion of the Works that will result.

(c) Where the Works are being supplied in order for the Company to comply with a Main Contract the Supplier shall only be entitled to an additional payment or extension of time commensurate with any payment or extension of time obtained by the Company.

(d) Failure by the Supplier to so notify the Company may prejudice the Supplier's right to recovery of any such alteration.

(e) No variation or modification shall be made to the Works otherwise than as provided for in these conditions.

13. Cancellation or Suspension

(a) If the Company is for any reason beyond its reasonable control unable to accept the delivery of the Works at the times stated in the Order, or at all, then the Company may by notice in writing to the Supplier cancel or suspend the delivery of any of the undelivered Works. If the Works or any part thereof are manufactured to the Company's specifications the Supplier shall, upon receipt of any notice requiring cancellation, cease performance in respect of such Works unless otherwise directed by the Company.

(b) If the Contract is cancelled or suspended for the reasons stated in sub-clause (a) above, the Supplier, if not in default, will only be entitled to be paid:

- agreed unit prices for the Works delivered, and
- where the Works are manufactured to the Company's specifications such other cost which in the opinion of the Company are reasonably incurred by the Supplier.

(iii) If the Supplier is found in default of sub-clause (d) below, the order will be deemed null and void, with no payments made.

(c) Under no circumstances shall the total payments under sub-clauses (b) (i) and (ii) above exceed the Price. Upon such payments the title to any undelivered or uncompleted Works shall pass to the Company.

(d) The Company retains the right to either suspend or cancel Works, where it believes that an infringement of National or International legislation regarding government sanctions has taken place.

14. Default by Supplier in Performance of Contract

Without prejudice to any other rights or remedies which the Company may have against the Supplier, the Company shall be at liberty:

- to refuse to accept and/or reject any of the Works which do not conform in all respects with this Order
- to return, at the Supplier's risk and expense, any of the Works which are not accepted or rejected pursuant to sub-clause (a) (i) above or which are delivered in excess of quantity or otherwise in error
- by notice in writing to terminate the Contract forthwith if the Supplier: (a) shall go into liquidation whether voluntary or otherwise (except for the purposes of and followed by an amalgamation or reconstruction) or shall cease to trade or shall have a receiver or administrative receiver of the whole or any part of its assets appointed or shall enter into any composition or arrangement with or for the benefit of its creditors or shall be subject of an administration order; or (b) shall fail to carry out the Company's reasonable instructions; or (c) shall fail to carry out the Works at a rate of progress sufficient to meet the completion dates specified in the Contract or in the Main Contract; or (d) shall be in breach of any part of the Contract; or (e) fails to meet any delivery date specified in the Contract. In the event of termination the Company will not be liable for any loss, damage or expense resulting therefrom.

(iv) to carry out or have carried out at the Supplier's expense, any of the Works which are not accepted or rejected or which the Supplier has failed to remedy pursuant to a notice under sub-clause (a) and the Company shall be entitled to retain any monies due to the Supplier and to use the same in satisfaction of any action claim demand loss cost damage or expense incurred thereby.

In the event that any or all of these exceeds the monies so retained the Supplier shall on demand reimburse the Company to the extent of such excess and the Company may, without prejudice to the foregoing, set off any such excess against any monies held by the Company which are due or may become due to the Supplier, whether or not arising out of this Order.

(v) to carry out or have carried out at the Supplier's expense, any of the Works which are not accepted or rejected or which the Supplier has failed to remedy pursuant to a notice under sub-clause (a) and the Company shall be entitled to retain any monies due to the Supplier and to use the same in satisfaction of any action claim demand loss cost damage or expense incurred thereby.

In the event that any or all of these exceeds the monies so retained the Supplier shall on demand reimburse the Company to the extent of such excess and the Company may, without prejudice to the foregoing, set off any such excess against any monies held by the Company which are due or may become due to the Supplier, whether or not arising out of this Order.

15. Intellectual Property Rights

The Supplier shall fully indemnify the Company against any action, claim, damages, costs or expenses arising out of or in connection with any infringements or alleged infringements of any patents, registered designs and designs, trade marks or copyright by reason of the Company's use or sale of the Works provided that the Supplier's ability to indemnify the Company shall be reduced in proportion to the extent that any act or neglect of the Company contributes to any infringement or resulting loss or damage.

All intellectual property rights in the Works shall vest in the Company and the Supplier undertakes to execute all documents required to ensure such ownership.

16. Indemnity and Warranty

The Supplier shall indemnify the Company in respect of all loss, damage or injury whatsoever involving any person or property and against any action claim, demand, cost charge or expense arising in connection herewith, including for liquidated damages under the Main Contract to the extent that the same shall have been caused or contributed to by any breach by the Supplier, his Directors, Employees, Agents, or Sub-contractors.

17. Liability for Defects

The Supplier shall indemnify the Company against all loss cost charge or expense arising out of defects which may arise in the Works.

In the event of such defects arising the Company may either:

- carry out or have carried out at the Supplier's expense all necessary remedial work. In this event the Company shall (without prejudice to the generality of Clause 17 hereof) be entitled to retain any monies due to the Supplier and to use these in satisfaction of any loss cost charge or expense incurred thereby.

In the event of such loss cost charge or expense exceeding the monies so retained the Supplier shall on demand reimburse the Company to the extent of such excess and the Company may, without prejudice to the foregoing, set off any such excess against any monies held by the Company which are due or may become due to the Supplier whether or not arising out of this Order or (ii) require the Supplier to remedy them at his expense.

18. 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 Supplier.

19. Compliance with Specification

Should a performance be specified in the Contract, then the Supplier warrants that the Works will achieve the performance. The Company is at all times relying upon the skill and knowledge of the Supplier. Should the Works fail to achieve the required performance it shall be deemed to be a defect in the Works.

20. Assignment and Sub-Letting

(a) The Supplier contracts as principal and shall not assign transfer or otherwise make over the Contract nor any interest or benefit arising hereunder whether in whole or in part (including without prejudice to the generality of the foregoing the right to receive any payment from the Company) without the prior written consent of the Company. In all such cases the Supplier shall remain responsible to the Company for all or any of its obligations under this Contract.

(b) The Supplier shall not sub-contract or delegate any part of the Work to be done pursuant to this Order unless agreed in writing by the Company provided always that the Supplier may so sub-contract or delegate in regard to raw materials, minor details or any item stated or referred to on this Order as being supplied by a named third-party, the Supplier in each case remaining fully responsible therefore.

21. Inspection

(a) The Company or its nominee shall have the right to test and inspect the Works at the Supplier's premises or elsewhere at the Company's discretion, at all stages of their execution and the Supplier shall afford all reasonable facilities and assistance free of cost to the Company and/or its nominee. The Company shall have the right to reject all or any portion of the Works that it considers defective in workmanship, material or design or does not correspond in all respects with the particulars referred to on the Order. Any portion of the Works so rejected shall be immediately replaced or repaired at the Supplier's expense. Acceptance of any test result shall not relieve the Supplier of his obligations or liability hereunder. Any part replaced or repaired under this clause shall be re-tested at the expense of the Supplier.

(b) The Company reserves the right to gain access to the Supplier's premises at all reasonable times for the purpose of examining the Supplier's records and data in connection with the Works with a view where necessary to expediting the Works.

(c) Without prejudice to the foregoing the Company may in its absolute discretion have the Works tested by a third party and the Company shall not be obliged to return the Works to the Supplier in order for it to test them to verify if they are defective or not.

22. Severability

Each and every 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.

23. Statutory and other Regulations

(a) The Supplier shall comply with each and every obligation whether imposed by Common Law, Statute, Statutory Instrument, Regulation, Bye Law or otherwise and whether imposed upon Company or the Supplier.

(b) Without prejudice to the generality of the foregoing, the Supplier shall comply with any obligations imposed by the Health and Safety at Work Act 1974 and any subordinate legislation made thereunder (including the Control of Substances Hazardous to Health Regulations 1999) and without limitation to the foregoing shall keep the Company informed of any hazards which may be associated with the use of any Article or Substance for use at work (as defined in the Health & Safety at Work Act 1974) supplied by the Supplier.

24. Local Conditions

Unless otherwise agreed in writing the Supplier shall be deemed to have full knowledge of any local conditions that may be relevant to the proper performance of its obligations hereunder.

25. Adjudication

Where the Contract is a Construction Contract within the meaning of the Construction Act the Company and the Supplier each has the right to refer any dispute under the Contract to adjudication 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.

The decision of the adjudicator shall be binding until the dispute is finally determined by legal proceedings.

26. 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.

Where the Contract is a Construction Contract the obligations of the parties hereunder shall be varied so as to comply with Denco Lubrication's standard form of Sub-Contract SC4 the terms of which shall apply mutatis mutandis.

27. 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 effect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.