

Terms and Conditions of Sale

1. Acceptance of Terms and Conditions

- (a) All contracts and transactions between Deanston Electrical Wholesalers Limited ("the Company") and its customers whether verbally or in writing are subject to these terms and conditions which shall be deemed to be incorporated in any contract between the Company and all or any customers of the Company.
- (b) These terms and conditions shall constitute the whole agreement between the Company and any of its customers and may not be modified or varied unless specifically accepted by the Company in writing and signed by a director of the Company.
- (c) In the event of any conflict between these terms and conditions and the terms and conditions if any, in any communication from the Purchaser, these terms and conditions shall prevail over and exclude entirely any terms, stipulations or conditions which the Purchaser may purport to introduce even if such conditions contain a provision similar to this one.
- (d) In these conditions:-
"The Goods" shall mean all goods, including but not limited to electrical equipment supplied by the Company.
"The Contract" shall mean an order for the supply of the Goods made by the Purchaser (whether or not in writing) and accepted by the Company (whether or not in writing) together with these terms and conditions
"The Company" shall mean Deanston Electrical Wholesalers Limited registered in Scotland under number 137486.
"The Purchaser" shall mean any person who shall accept a quotation of the Company for the sale of Goods or who shall place an order for the Goods (whether or not in writing) with the Company or with any person who is deemed to be an agent of the Company and which is accepted by the Company.

2. Quotations

All quotations given by the Company shall be regarded as invitations to treat only and shall not be binding on the Company. Such quotations are based on the cost of production or supply current on the date of quotation and the Company reserves the right to vary all or part of such quotations on or after acceptance by the Company of the Purchaser's order to take account of any rise or fall in such cost.

3. Limit of Contract

The Company's obligation shall extend only to the Goods, work and services specified or referred to in the Contract with the Purchaser. No variations shall be made unless the same shall be agreed in writing between the Company and the Purchaser.

4. Advertisements, Illustrations and Descriptions

All catalogues, price lists, advertising materials, photographs, drawings, illustrations, descriptions and other similar information supplied by the Company with quotations are approximate only and while the same are compiled in good faith, they are intended only as a general indication of the type of goods and services described therein and shall not form part of any contract to follow on acceptance of any quotation lodged or made by the Company. No oral statement, undertaking or representation made at any time prior to the Contract shall be a term of the Contract.

5. Delivery

- (a) Unless otherwise specified in writing, "delivery" in these Conditions shall mean the point at which the Goods are delivered to the place specified by the Purchaser and agreed by the Company in writing.
Note: in the event that no place is specified/agreed, then the law will imply that delivery takes place at the seller's premises.
- (b) Any time quoted for delivery will run from the date of receipt by the Company of a written order to proceed with the supply of the Goods and all other necessary information.
- (c) Any dates given by the Company for delivery are forecasts and shall not be binding on the Company, nor shall such delivery dates be of the essence of the Contract. The Company will not be liable for any loss, damage or expense arising directly or indirectly from any delay or failure to deliver howsoever caused.
- (d) If the performance of the Contract shall be delayed due to reasonable circumstances or conditions beyond the reasonable control of the Company the obligations on the Company shall be suspended for as long as such circumstances prevail.
- (e) Any boxes or packaging provided with the Goods will remain the property of the Company and, if requested by the Company, the Purchaser will return same to the Company at the expense of the Purchaser.
- (f) In the event of non-acceptance of the Goods by the Purchaser on delivery in accordance with Clause 5(a) hereof (other than for rejection of the Goods in terms of Clause 10 hereof), the Company reserves the right (i) to invoice the Purchaser in full for the contract price, notwithstanding that the Goods have not been delivered; and/or (ii) to place any or all of the Goods in such storage facilities as the Company shall deem appropriate, at the Purchaser's sole expense. Thereafter, the Purchaser shall arrange such other date and time for delivery as shall be acceptable to the Company and the Company shall deliver the Goods in accordance with such agreement at the Purchaser's sole expense provided that any further non-acceptance of the Goods by the Purchaser shall be dealt within the same manner as is provided for in these Clause 5(f).

6. Terms of Payment

- (a) All prices and charges quoted by the Company are exclusive of Value Added Tax or other government charges, packing and delivery charges, unless otherwise stated, and are subject to variation in the event of fluctuations in the cost of labour, materials and overheads. Any increase in the costs to the Company in purchasing the Goods to be supplied incurred after the date of Contract may be added to the quoted price. The amount of any tax or other governmental charge upon the production, sale and/or shipment or otherwise of the Goods whether now imposed by any government or other authority or hereafter becoming effective shall be added to the prices and charges specified and shall be payable by the Purchaser.
- (b) Payment in respect of the Goods supplied shall be made on or prior to taking delivery of the Goods unless credit arrangements have been agreed in advance in writing with the Company. In that event the invoices price shall be paid by the Purchaser within the terms of credit agreed with the Company. The Company does not give settlement discounts unless its prior agreement in writing has been given. The Company reserves the right to invoice progress payments in respect of labour and material costs up to and including the date of such invoice (which shall not exceed 50% of the contract price) before actual delivery and installation of the Goods has taken place.
- (c) The time of payment shall be a material condition and of the essence of the Contract and unless otherwise agreed in writing between the Company and the Purchaser, interest at the rate of 4% above the base lending rate charged by the Bank of Scotland or such other rate as may be intimated by the Company from time to time will be payable by the Purchaser on all sums remaining unpaid after the due date for payment.

7. Reservation of Title

- (a) Until the Purchaser has paid the Company the full purchase price of the Goods and also of any other goods or services at any time supplied by the Company and all other sums due or to become due to or liabilities present, future or contingent of the Purchaser to the Company and all sums due in any way by the Purchaser to any holding company or subsidiary company of the Company (or any subsidiary of such holding company) and any agent or distributor of the Company the ownership of such goods shall not pass to the Purchaser, the Company may terminate the Purchaser's power of sale at any time, and the Company may repossess such goods.
- (b) The Purchaser shall be entitled to sell the goods in the ordinary course of business on the basis that to the extent permitted by law the proceeds of sale shall be the property of the Company. The Purchaser agrees to account to the Company on demand in respect of such proceeds and, if so required, to execute a formal assignment of all claims against its sub-purchaser.
- (c) The Company reserves the right at any time to terminate the Purchaser's power of sale.
- (d) if the Purchaser's power of sale is so terminated, the Purchaser shall immediately make the Goods available for collection by the Company and the Purchaser hereby irrevocably authorises the Company to enter upon any premises belonging to the Purchaser or under its control for the purpose of recovering the Goods.
- (e) In the event that the Company shall exercise its right hereunder to repossess the Goods:-
(i) the Company shall have no obligation to account to the Purchaser for any amount received by it on sale thereof whether in excess of that due by the Purchaser to the Company or not;
(ii) if the amount received by the Company on sale of such repossessed goods shall be less than the amount due by the Purchaser either in respect thereof or on any other ground whatsoever such repossession shall not extinguish the liability of the Purchaser either for any deficiency in the amount received by the Company on such sale or for damages in respect of any loss occasioned by the Company as a result of its exercising its rights hereunder.
(iii) the Purchaser shall be liable to the Company in addition to any other amount for which it may be liable, for all costs, charges and expenses (including legal costs) on a full recovery basis occasioned by such exercise by the Seller of its said right to repossess

- (iv) the Purchaser undertakes to store the Goods, until they have been paid for, in such a way that they are readily identifiable as the property of the Company and are easily recoverable.
- (v) Nothing in this clause shall confer any right on the Purchaser to return the Goods to the Company or to refuse or delay payment thereof. If any such return is so agreed the Purchaser shall be liable to the Company for any loss suffered by the Company thereby and the return of the Goods shall not extinguish any claim by the Company in respect thereof.

8. Risk

Notwithstanding that property in the Goods has not passed under Clause 7 hereof, the risk of loss or damage to the Goods shall pass to the Purchaser on delivery. If the Purchaser has paid for the Goods or part thereof prior to taking delivery, the Purchaser shall insure the Goods to the full replacement value thereof against loss or damage by accident, fire or theft at any stage prior to delivery.

9. Fitness for Purposes

- (a) No condition is made or implied nor is any warranty given or to be implied as to the life of the Goods supplied or that they will be suitable for any particular purpose or for the use under any specific conditions, notwithstanding that such purpose or conditions may be known or made known to the Company. The Purchaser shall be deemed to have full knowledge of the nature and properties of the Goods supplied and of any hazards they involve and the proper treatment, storage and handling thereof. In particular Goods are supplied on the basis that they shall be used in normal conditions appropriate for such goods, and that they shall be properly maintained and not be abused.
- (b) The Purchaser agrees that apart from the express terms contained herein or in any quotation or in any document expressly stipulated therein to form part of the Contract and to be outside the provisions of this Clause, no statement or representation has been made by the Company relating to the Goods supplied, or if any such statements or representations have been made by the Purchaser warrants that he understood them to be statements of opinion only and did not rely on them.
- (c) Notwithstanding anything else contained in these terms and conditions the Company shall not be liable to the Purchaser for loss of profits or contracts or other indirect or consequential loss whether arising from negligence, breach of contract or howsoever.

10. Quality of Goods

- (a) The Purchaser shall be deemed to have accepted the Goods delivered as being in accordance with the Contract and free from all defects (including defects in installation and/or commissioning where applicable) which would be apparent on a reasonable examination unless, within three days after receipt of the Goods, the Purchaser shall have given to the Company a written notice specifying the matters complained of, the invoice number in respect of the Goods and shall thereafter afford the Company a reasonable opportunity to inspect the Goods before they have been used or processed.
- (b) The Company shall not be liable for defects (including defects in installation and/or commissioning where applicable) which would not be apparent on a reasonable examination unless, within three months after the receipt of the Goods and forthwith upon the discovery if such defect, the Purchaser shall have given the Company a written notice specifying the matters complained of, the invoice number in respect of the Goods and shall thereafter afford the Company a reasonable opportunity of inspecting the Goods in their alleged defective state.
- (c) Provided that the Purchaser has complied with the requirements as to notice in terms of this Clause if the Goods or any part thereof are found by the Company to be defective or otherwise not in accordance with the Contract then, if the Company and the Purchaser do not agree that the Purchaser should accept the Goods at an agreed value and subject to the provisions of sub-clause hereof the Company undertakes to accept a return of the relevant Goods and either, at the Company's sole option:-
(i) to repay or credit the Purchaser with the invoice price thereof and any reasonable transport costs incurred by the Purchaser in returning the relevant Goods from the place of delivery of such Goods to the Company's premises; or
(ii) to remedy any defects or replace the Goods as soon as may be reasonably practical.
- (d) Notwithstanding the provisions of sub-clause (c) hereof, the Company shall not be obliged to accept the return of nor to repair or replace any part of the Goods.
(i) which has been modified without the Company's written consent or
(ii) which has been subjected to unusual physical or electrical stress or
(iii) on which the original identification marks have been removed or altered or
(iv) where repairs or parts replacement is required as a result of causes other than ordinary use including without limitation accident, hazard, misuse, failure or fluctuation of electric power or environmental conditions or
(v) which has been used other than full in accordance with the Company's recommendations.

11. Liabilities

- (a) Without prejudice to Clause 10 (c), the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the price paid by the Purchaser for the consignment of Goods in question.
- (b) The Company shall not be liable to the Purchaser for any indirect or consequential loss or damage (whether for loss of profit, loss of business, depletion of goodwill or otherwise), costs, expenses or other claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.
- (c) Nothing in this Agreement excludes or limits the Company's liability for death or personal injury caused by the Company's negligence or fraudulent misrepresentation.
- (d) The Purchaser shall not be entitled to withhold payment of any amount payable under the Contract to the Company because of any disputed claim of the Purchaser in respect of faulty Goods or any other alleged breach of the Contract, nor shall the Purchaser be entitled to set-off any amount payable under the Contract to the Company against any monies which are not then presently payable by the Company or for which the Company disputes liability.

12. Confidential Information

The Purchaser shall keep all and any information relating to the Goods or the Company or its supplier's products, formulae, processes, business methods, research, development and business in general (the "Confidential Information") which might come into the Purchaser's possession secret and confidential at all times and the Purchaser shall not use or divulge the Confidential Information except with the express written consent of the Company. The Purchaser acknowledges that any patent, copyright, registered and unregistered design rights or other intellectual property in the Confidential Information are and shall remain the property of the Company or of its suppliers.

13. Termination

- (a) The Company shall be entitled without prejudice to its other rights and remedies either to terminate wholly or in part any Contract between itself and the Purchaser or to suspend any further deliveries under any or every such contract in any of the following events:-
(i) the non-payment of any sum due by the Purchaser to the Company on the due date thereof.
(ii) the failure by the Purchaser to provide any prepayment, Bill of Exchange or any other security required by the Contract, provided that in such event the aforesaid rights of termination or suspension shall apply only in regard to the particular contract in respect of which the Purchaser shall have so failed.
(iii) the failure by the Purchaser to take delivery of any of the Goods under any contract between the Purchaser and the Company otherwise than in accordance with the Purchaser's contractual rights.
(iv) the Purchaser becoming apparently insolvent or compounding with his or its creditors or the appointment of a Liquidator, Receiver or Administrator over all or any of its assets or carrying out or undergoing any analogous act or proceeding under foreign law.
- (b) The Company shall be entitled to exercise its aforesaid rights of termination or suspension by notice in writing to the Purchaser at any time during the continuance of the event or default giving rise thereto and in the event of any such suspension the Company shall be entitled as a condition of resuming delivery under any Contract between it and the Purchaser to require prepayment or such security as it may require for the payment of the price of any further delivery.

14. Notices

Any notice required under a Contract or these terms and conditions may be delivered personally or sent by first class recorded delivery post or airmail or transmitted by telex or facsimile transmission, in each case to the registered office or business address of the party to whom the notice is addressed and any such notice shall be deemed to have been validly served if sent by post on the expiry of forty eight hours from the time of posting and if delivered personally or transmitted by telex or facsimile transmission at the time of delivery or transmission provided that any such telex or facsimile transmission is confirmed by letter sent within twenty four hours of transmission.

15. General

- (a) The Purchaser shall not be entitled to assign the Contract or any other benefit thereunder. The Company shall be entitled to sub-contract the performance of any part of the Contract but shall remain primarily responsible to the Purchaser.
- (b) The Contract shall be deemed to have been made in Scotland and shall be governed by and interpreted according to the Law of Scotland.