

Deeley Fabrications MK Ltd Terms and Conditions of Sale - Business to Business

1. Definitions

In this document the following words shall have the following meanings:

Agreement	means the documents comprising an Agreement and includes the Conditions, an Order Acknowledgement and its related Purchase Order for Goods. If there is any inconsistency between the documents comprising an Agreement, they shall have precedence in the order listed herein.
Buyer	means the organisation or person with whom an Agreement is made by the Seller, whether directly or indirectly through an agent or third party who is acting for or instructed by or whose actions are ratified by such organisation or person.
Conditions	means these terms and conditions as amended from time to time in accordance with clause 10 (alterations) and clause 19 (variation).
Goods	means the articles or things, or part of them, described in an Order Acknowledgement and / or Purchase Order including, without limitation, raw materials, processed materials or fabricated products.
Intellectual Property Rights	means patents, all rights to inventions, prototypes, products, discoveries, techniques or processes, systems, data, information, copyright and related rights, moral rights, trade marks and service marks, trade names, domain names, brand names, rights to goodwill, rights in design, rights in computer software (including source code and object code), database rights, rights in confidential information (including know how and trade secrets) and any other intellectual property rights relating to the Goods in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extensions of, such rights owned by the Seller and similar or equivalent rights which subsist or will subsist now or in the future in any part of the world.
Order Acknowledgement	means the Seller's acknowledgement of a Purchase Order for Goods confirming acceptance of that Purchase Order.
Parties	means the Buyer and the Seller.
Purchase Order	means an order for the purchase of Goods submitted to the Seller by the Buyer.
Sales of Goods Act	means the Sales of Goods Act 1979.
Seller	means Deeley Fabrications MK Limited.

2. Construction

2.1. In these Conditions, the following rules apply:

- 2.1.1. A person includes a natural person, corporate or unincorporated body (whether or not they have separate legal personality).
- 2.1.2. A reference to a party includes its personal representatives, successors or permitted assigns.
- 2.1.3. A reference to 'writing' or 'written' includes faxes and emails.
- 2.1.4. Any reference to a statutory provision is a reference to that provision as modified or re-enacted or both from time to time and to any subordinate legislation made under the statutory provision.
- 2.1.5. Any phrase introduced by the terms 'including' or 'include' or any similar expression shall not limit the sense of the words preceding those terms.

3. General

3.1. The Conditions shall apply to all contracts for the sale of Goods by the Seller to the Buyer to the exclusion of all other terms and conditions referred to, offered or relied on by the Buyer, whether in the negotiation or at any stage in the dealings between the Parties, including any standard or printed terms tendered by the

Buyer, unless the Buyer specifically states in writing, separately from such terms, that it wishes such terms to apply and this has been agreed by the Seller in writing.

4. Orders

- 4.1. Unless verbal or telephone Purchase Orders and any variations to Purchase Orders are confirmed in writing by the Buyer to the Seller, the Seller shall not be responsible for errors or subsequent misunderstandings.
- 4.2. Notwithstanding that the Seller may have given a detailed quotation, no Purchase Order shall be binding on the Seller unless and until it has been accepted in writing by the Seller by means of an Order Acknowledgement.

5. Price and payment

- 5.1. All prices estimated, quoted or invoiced are in Sterling (UK Pounds).
- 5.2. The price of the Goods will be the price stated in the Order Acknowledgement, being, unless otherwise stated by the Seller, the list price of the Company current at the date of the Order Acknowledgement. The Seller's prices are subject to adjustment to take account of any variation in the Seller's costs including (without limitation) variations in wages, the cost of materials, exchange rate fluctuations, alterations of duties and other costs since the date of the Seller's quotation or (if no quotation is issued) the Purchase Order. The Seller accordingly reserves the right to adjust the invoice price by the amount of any increase or decrease in such costs after the price is quoted or the Purchase Order is submitted (as applicable). The invoice so adjusted shall be payable as if the price set out therein were the original Agreement price.
- 5.3. The price is exclusive of VAT, which will be charged at the appropriate rate. The price is also exclusive of transport, packaging, insurance and any other applicable duties or taxes, unless otherwise explicitly agreed.
- 5.4. Where a credit account has been set up, all invoices of the Seller shall, unless otherwise agreed in writing by the Seller, be paid by the Buyer within 30 days of the date of the Seller's invoice without deduction or withholding and free of set off or counterclaim. Time for payment shall be of the essence. The Seller shall be entitled to render an invoice for the Goods sold under an Agreement as soon as the Seller has provided an Order Acknowledgement.
- 5.5. The Seller shall be entitled to charge interest on overdue invoices from the date when payment becomes due until the date of payment at the rate of 5.00% per annum above the base rate of the Bank of England.
- 5.6. If the payment of the price or any part thereof is not made by the due date, the Seller shall be entitled to:
 - 5.6.1. require payment in advance of delivery in relation to any Goods not previously delivered;
 - 5.6.2. refuse to make delivery of any undelivered Goods whether ordered under an Agreement or not and without incurring any liability whatsoever to the Buyer for non-delivery or any delay in delivery;
 - 5.6.3. terminate the Agreement.

6. Specification of Goods

- 6.1. No description, specification or illustration contained in any product pamphlet or other sales or marketing literature of the Seller and no representation written or oral, correspondence or statement made by the Seller or any of its employees, agents or representatives, whether expressed or implied, shall form part of any Agreement.
- 6.2. Goods described in the Seller's literature or elsewhere are subject to a continuing process of technical change and development and the Seller therefore reserves the right to alter specifications without notice at any time before delivery. All descriptions, illustrations, specifications and dimensions are approximate and are only intended to present a general guideline as to the type of Goods represented thereby. It is therefore agreed by the Buyer that Goods supplied may not comply in all respects with the description in the Seller's literature or elsewhere.

7. Delivery and risk

- 7.1. The date of delivery specified by the Seller is an estimate only given in good faith.
- 7.2. The Seller undertakes to use reasonable endeavours to carry out templating, installation or despatch the Goods on the agreed date, but does not guarantee to do so.
- 7.3. Time of delivery shall not be the essence of the Agreement, unless expressly agreed in writing by the Seller and the Seller shall not be liable for any loss, damage or expense suffered by the Buyer or any other party by reason of any alleged delay in delivery.
- 7.4. Where the Seller is authorised or required by the Buyer to deliver the Goods to the Buyer:
 - 7.4.1. the Goods will be deemed to be delivered upon delivery of the Goods to a carrier (whether named by the Buyer or not);

- 7.4.2. all risk in the Goods shall pass to the Buyer on delivery, such that the Buyer shall be liable for any subsequent loss or damage to Goods however caused;
 - 7.4.3. the Parties agree that the Seller will be under no obligation to give a notice under section 32(3) of the Sale of Goods Act;
 - 7.4.4. the Buyer authorises the Seller to enter into an agreement with the carrier on its standard terms and conditions which the Buyer confirms shall satisfy the requirements of the Seller under section 32(2) of the Sale of Goods Act.
- 7.5. Goods collected by the Buyer from the Seller's premises shall be deemed to be delivered and risk shall pass to the Buyer upon the Buyer arriving at the Seller's premises.
 - 7.6. Goods transported by the Seller shall be deemed to be delivered and risk shall pass to the Buyer when they are ready to be unloaded at the site specified by the Buyer and the Buyer agrees that Section 32(3) of the Sale of Goods Act shall not apply to Goods sent by the Seller.
 - 7.7. If delivery is refused by the Buyer or is delayed, suspended or made by instalments at the request of the Buyer, risk in the Goods (or any of them not delivered in these circumstances) shall pass to the Buyer immediately upon such refusal or request by the Buyer and (without prejudice to the generality of the foregoing) the Seller shall place such Goods into store and the Buyer shall be responsible to pay the costs of storage and insurance of such Goods and of any attempted delivery of such Goods.
 - 7.8. No liability for non-delivery, loss of or damage to the Goods occurring prior to delivery or for any claim that the Goods are not in accordance with an Agreement will attach to the Seller unless claims to that effect are notified in writing by the Buyer to the Seller: (a) within 5 days of delivery for loss damage or non-compliance with the Agreement or (b) for non-delivery within 10 days of the delivery date specified by the Seller. If the Buyer fails to give such notice the Goods shall be deemed to be in all respects in accordance with the Agreement and, without prejudice to earlier acceptance by the Buyer, the Buyer shall be bound to accept and pay for the same accordingly.
 - 7.9. In the event of a valid claim for non-delivery, loss, damage or non-compliance with the Agreement the Seller undertakes at its option either to repair or replace the Goods at its expense but shall not be under any further or other liability to any person in connection with such non-delivery loss damage or non-compliance.
 - 7.10. If forwarding instructions are not received within 5 days, or 14 days for export orders, of the Seller's advice to the Buyer that Goods are ready for despatch, the Seller shall be entitled to make an appropriate storage charge from the date of such advice.

8. Title

- 8.1. In spite of delivery having been made, title in the Goods shall not pass from the Seller until the Buyer has paid the price of all the Goods under any Agreement and no other sums are due from the Buyer to the Seller.
- 8.2. Until the property in the Goods passes to the Buyer, the Buyer shall hold the Goods and each of them on a fiduciary basis as a custodian/bailee for the Seller. The Buyer shall store the Goods separately from all other Goods in its possession and marked in such a way that they are clearly identified as the property of the Seller. The Buyer shall not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods. The Buyer shall maintain the Goods in satisfactory condition and keep them insured on the Seller's behalf for their full price against all risks to the reasonable satisfaction of the Seller. On request the Buyer shall produce the policy of insurance to the Seller.
- 8.3. Notwithstanding that the Goods remain the property of the Seller; if the Buyer is a trade or commercial customer, the Buyer may sell the Goods in the ordinary course of the Buyer's business at full market value for the account of the Seller. Until title in the Goods passes from the Seller, the entire proceeds of sale or otherwise of the Goods shall be held on trust by the Buyer for the Seller.
- 8.4. Until such time as title in the Goods passes from the Seller to the Buyer, the Buyer shall, upon request, deliver up such Goods as have not ceased to be in existence or resold, to the Seller. If the Buyer fails to do so, the Seller may enter upon any premises owned or occupied or controlled by the Buyer where the Goods are situated and repossess the Goods.
- 8.5. The Seller shall have the right to pursue an action for the price of the Goods notwithstanding that title may not have passed to the Buyer.

9. Buyer's obligations

- 9.1. The Buyer shall provide the Seller with any information reasonably required by the Seller as well as obtain all necessary permissions and consents including (without prejudice to the generality of the foregoing) promptly obtaining all necessary import licences, clearances and other consents necessary for the purchase of the Goods.

- 9.2. Without prejudice to any other rights to which the Seller may be entitled, in the event that the Buyer unlawfully terminates or cancels any Agreement, the Buyer shall be required to pay to the Seller, as agreed damages and not as a penalty, the full amount of any third party costs to which the Seller has committed and in respect of cancellations on less than 10 days' written notice the full price of the Goods as set out in the Agreement, and the Buyer agrees this is a genuine pre-estimate of the Seller's losses in such a case.

10. Alterations to the Agreement

- 10.1. Subject to clause 19.1, the Parties may, at any time, mutually agree upon variations to an Agreement, save for an Order Acknowledgement, provision for which is set out below.
- 10.2. Any alterations in the scope of Goods to be provided under an Agreement shall be set out in a revised Order Acknowledgement, which shall reflect the changed Goods and price and all other terms agreed between the Parties.
- 10.3. The Buyer may at any time within 5 days of the Order Acknowledgement request in writing alterations to it. On receipt of the request for alterations, the Seller shall, within 7 days, or such other period as may be agreed between the Parties, advise the Buyer by notice in writing whether it is prepared to alter the Order Acknowledgement in accordance with the Buyer's request and, if it is, the basis upon which it is prepared to do so having regard to the changes which the Seller shall require to the price and any other terms previously agreed between the Parties ('an alteration notice').
- 10.4. The Buyer shall, within 5 days of receipt of an alteration notice, or such other period as may be agreed between the Parties, advise the Seller by notice in writing whether or not it wishes an Agreement to be altered on the basis set out in the alteration notice. If such a notice is given by the Buyer, the terms of the altered Agreement shall be set out in a revised Order Acknowledgement.

11. Warranty

- 11.1. The Seller warrants that it has the right to sell the Goods, but otherwise the Goods are provided on an 'as-is' basis without warranty of any kind, express or implied, oral or written.
- 11.2. Where the Goods have been manufactured by the Seller and are found under proper use (fair wear and tear excepted) to be defective, the Seller shall repair, or in its sole discretion, replace such defective Goods free of charge within 90 days from the receipt of notification from the Buyer, subject to the following conditions:
- 11.2.1. the Buyer notifying the Seller in writing immediately upon the defect becoming apparent;
- 11.2.2. the defect being solely due to faulty design, materials or workmanship.
- 11.3. Any Goods to be so repaired or replaced shall be returned to the Seller at the Buyer's expense.
- 11.4. Where the Goods have been manufactured and supplied to the Seller by a third party, any warranty granted to the Seller shall be passed on to the Buyer to the extent that the Seller is able and subject to the Goods having been accepted and paid for by the Buyer.
- 11.5. The Seller shall be entitled in its absolute discretion to refund the price of defective Goods in the event that such price has already been paid.

12. Indemnity

- 12.1. The Buyer shall indemnify the Seller against all claims (including but not limited to loss of profit), costs and expenses in respect of any dispute, suit, action, arbitration or proceedings that arise out of, or in connection with an Agreement (including without limitation legal fees and other professional fees) which the Seller may incur and which arise, directly or indirectly, from the Buyer's breach of any of its obligations under an Agreement.

13. Limitation of liability

- 13.1. The following provisions set out the entire financial liability of the Seller (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of:
- 13.1.1. any breach of any Agreement;
- 13.1.2. any use made or resale by the Buyer of any of the Goods, or of any product incorporating any of the Goods; and
- 13.1.3. any representation, statement or tortious act or omission (including negligence) arising under or in connection with any Agreement.
- 13.2. To the extent permitted by law, no liability of any nature shall be incurred or accepted by the Seller in respect of any representation made by the Seller, or on its behalf, to the Buyer, or to any party acting on the Buyer's behalf, prior to the making of an Agreement, where such representations were made or given in relation to:
- 13.2.1. the correspondence of the Goods with any description;

- 13.2.2. the quality of the Goods; or
- 13.2.3. the fitness of the Goods for any purpose whatsoever.
- 13.3. No liability of any nature, including, but not limited to negligence, shall be incurred or accepted by the Seller in respect of any express term in any Agreement where such term relates in any way to:
 - 13.3.1. the correspondence of the Goods with any description;
 - 13.3.2. the quality of the Goods; or
 - 13.3.3. the fitness of the Goods for any purpose whatsoever.
- 13.4. Without limitation, any implied term under sections 13 to 15 of the Sale of Goods Act 1979 as to the quality, fitness for purpose or description of the Goods, all of which are specifically and unreservedly excluded to the fullest extent permitted by law. In particular, but without limitation, no warranty is given that the Goods are suitable for any specific purpose intended by the Buyer.
- 13.5. An Agreement shall not constitute a sale by description or sample.
- 13.6. Save as expressly provided in the Agreement, all conditions, warranties and other terms implied by statute or common law are to the fullest extent permitted by law excluded from any Agreement.
- 13.7. The Seller'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 any Agreement shall be limited to the price stated in the Order Acknowledgement.
- 13.8. In no event shall the Seller be liable to the Buyer for any loss of business, loss of opportunity, loss of profits, depletion of goodwill and/or similar losses, loss of anticipated savings, loss of contract, loss of use, loss or corruption of data or information or for any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses whatsoever (howsoever caused) which arise out of or in connection with any Agreement. This shall apply even where such a loss was reasonably foreseeable or the Seller had been made aware of the possibility of the Buyer incurring such a loss.
- 13.9. Nothing in an Agreement shall exclude or limit the Seller's liability for death or personal injury resulting from the Seller's negligence or that of its employees, agents or sub-contractors.

14. Termination

- 14.1. The Seller may, by written notice, terminate any Agreement immediately if the Buyer is in breach of any of the terms of an Agreement, which, if capable of remedy, is not remedied within 7 days of a notice served by the Seller requiring such breach to be remedied. Failure to pay any sums due is a breach of the terms of the Agreement which is not capable of remedy.
- 14.2. Any Agreement shall be terminated if an order is made for bankruptcy of the Buyer or an effective resolution is passed for the winding-up of the Buyer or the Buyer makes a composition with its creditors or if a supervisor, receiver, administrator, administrative receiver or other encumbrancer takes possession of or is appointed over the whole or any part of the assets of the Buyer.
- 14.3. Any Agreement shall be terminated if either party ceases to carry on its business or substantially the whole of its business or where either party is declared insolvent.
- 14.4. Termination of an Agreement shall not affect any rights or obligations of the Parties arising prior to such termination.

15. Intellectual property rights

- 15.1. The specification and design of the Goods and all Intellectual Property Rights therein shall as between the Parties be the property of the Seller. Where any designs or specifications have been supplied by the Buyer for manufacture by the Seller or to the order of the Buyer then the Buyer warrants that the use of those designs or specifications for the manufacture, processing, assembly or supply of the Goods shall not infringe the rights of any third party and the Buyer shall indemnify the Seller against all claims, costs, damages and expenses which the Seller may incur and which arise, directly or indirectly, from the Buyer's breach of such warranty.
- 15.2. The Buyer shall not:
 - 15.2.1. claim any right of property in any of the Seller's Intellectual Property Rights;
 - 15.2.2. register or cause to be registered any Intellectual Property Rights that is similar to or an imitation of any Intellectual Property Rights of the Seller;
 - 15.2.3. make any modifications to the Goods or their packaging;
 - 15.2.4. alter, remove or tamper with any marks, numbers or other means of identification used on or in relation to the Goods;
 - 15.2.5. use any of the Seller's Intellectual Property Rights in any way that might prejudice their distinctiveness or validity or the goodwill of the Seller in them;

15.2.6. use in relation to the Goods any intellectual property rights other than the Intellectual Property Rights without obtaining the prior written consent of the Seller.

15.3. For the avoidance of doubt, nothing in an Agreement confers upon the Buyer any rights whatsoever in the Seller's Intellectual Property Rights or the goodwill associated with them. The Buyer acknowledges that, except as expressly provided in this Agreement, it will not acquire any rights in respect of the Seller's Intellectual Property Rights and goodwill and that they are, and shall remain, vested in the Seller.

16. Force majeure

16.1. The Seller shall not be liable for any delay or failure to perform any of its obligations if the delay or failure results from events or circumstances outside its reasonable control, including but not limited to, acts of God, decrees or restraints by civil authorities including acts of local and national government, extreme weather conditions, labour disputes of whatever nature including, without prejudice to the generality of the foregoing, work to rule, strikes and lockouts, perils of the sea or air, fire, flood, drought, explosion, pandemic, embargo, war, riots, civil commotions, sabotage, terrorism, breakdown of plant or machinery or shortage or unavailability of labour or raw materials from a natural source of supply, and the Seller shall be entitled in these circumstances to delay or cancel delivery or to reduce the amount delivered.

17. Assignment

17.1. The Buyer shall not be entitled to assign an Agreement or any part of it without the prior written consent of the Seller.

17.2. The Seller may assign an Agreement or any part of it to any person, firm or company.

18. Waiver

18.1. The failure by either party to enforce, at any time or for any period, any one or more of the terms and conditions of the Agreement shall not be a waiver of them or of the right at any time subsequently to enforce all terms and conditions of an Agreement.

19. Variation

19.1. Any variation to the Conditions (including any special terms and conditions agreed between the Parties) shall be inapplicable unless agreed in writing by and signed by an authorised person on behalf of the Seller.

20. Severability

20.1. If any term or provision of the Conditions is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if the Conditions had been agreed with the invalid, illegal or unenforceable provision eliminated.

21. Rights of third Parties

21.1. The Parties do not intend any part of an Agreement to be enforceable by any person not a party to it, by virtue of the Contracts (Rights of Third Parties) Act 1999.

22. Governing law

22.1. This Agreement shall be governed by and construed in accordance with the law of England and Wales and the Seller and the Buyer irrevocably agree that the courts of England and Wales have exclusive jurisdiction in respect of any dispute, suit, action, arbitration or proceedings which arises out of, or in connection with an Agreement.