

DEWHURST (HONG KONG) LTD

CONDITIONS OF SALE



The acceptance of our tender or the sending to us of your order with or without previous enquiry, includes the acceptance of the following terms and conditions.

- 1. GENERAL**

All prices quoted are subject to the addition of Value Added Tax at the prevailing rate and to import duties and local taxes, if any, pertinent to the country or point of destination. Unless otherwise specified all sales are on E.X.W. basis.
- 2. WHOLE AGREEMENT**

There are no representations, warranties or conditions, whether express, implied, statutory or otherwise except for those contained or referred to in these Conditions and no agreement or waiver collateral to these Conditions shall be binding unless in writing and signed by you and by us.
- 3. VALIDITY**

Unless previously withdrawn, our tender is open for acceptance within the period stated therein or when no period is so stated, within thirty days only after its date.
- 4. ACCEPTANCE**

The acceptance of our tender must be accompanied by sufficient information to enable us to proceed with the order forthwith, otherwise, we shall be at liberty to amend the tender prices to cover any increase in cost which has taken place after acceptance. Any samples submitted to you and not returned to our works within one month from date of receipt shall be paid for by you.
- 5. PRICE**

We reserve the right to invoice all goods at the price current at the date of despatch.
- 6. VARIATIONS**

In the event of variation or suspension of work by your instructions or lack of instructions, the contract price shall be adjusted accordingly.
- 7. PACKING**
 - (A) Reusable packaging. Unless otherwise specified in our tender, all packing cases, skids, drums and other packing materials must be returned to our works at your expense and in good condition within one month from date of receipt. If not so returned they will be charged for.
 - (B) One way packaging. Unless otherwise specified in our tender, packing in accordance with our standard export practice is included.
- 8. LIMITS OF CONTRACT**

Our tender includes only such goods, accessories and work as are specified therein.
- 9. DRAWINGS ETC**

All specifications, drawings and particulars of weights and dimensions submitted with our tender are approximate only, and the descriptions and illustrations contained in our catalogues, price lists and other advertisement matter are intended merely to present a general idea of the goods described therein, and none of these shall form part of the contract. After acceptance of our tender a set of certified outline drawings will on request be supplied and these will be charged for.
- 10. INSPECTION AND TESTS**

Our products are carefully inspected and, where practicable, submitted to our standard tests at our works before despatch. If tests other than those specified in our tender or tests in the presence of you or your representative are required, these will be charged for. In the event of any delay on your part in attending such tests after seven days' notice that we are ready, the tests will proceed in your absence and shall be deemed to have been made in your presence. By arrangement visual inspection can be made without extra charge.
- 11. PERFORMANCE**

We will accept no liability for failure to attain any performance figures quoted by us unless we have specifically guaranteed them, subject to any tolerances specified or agreed to by us, in an agreed sum as liquidated damages. In the performance figures obtained on test in our works, provided for in the contract, are outside the rejection limits specified therein, you will be entitled to reject the goods. Before you become entitled to claim liquidated damages or to reject the goods we are to be given reasonable time and opportunity to rectify their performance. If you become entitled to reject goods, we will repay to you any sum paid by you to us on account of the contract price and any sum to which you may be entitled as at the date of such rejection under Clause 12 for delay in despatch. You assume responsibility that goods stipulated by you are sufficient and suitable for your purpose, save in so far as you stipulations are in accordance with our advice.
- 12. DESPATCH**

Any times quoted for despatch are to date from receipt by us of a written order to proceed and of ALL NECESSARY INFORMATION AND DRAWINGS TO ENABLE US TO PUT THE WORK IN HAND. All such times are to be treated as estimates only. In all cases, whether a time for despatch be quoted or not, the time for despatch shall be extended by a reasonable period if delay is caused by instructions, or lack of instructions from you or by industrial disputes or by any cause, whatsoever beyond our reasonable control.
- 13. DELIVERY**
 - (A) Hong Kong. Unless otherwise specified in our tender delivery will be by any method of transport at our option. The cost of carriage and packing will be charged in accordance with our schedule of packing charges which is obtainable on request.
 - (B) Export. Delivery will be made E.X.W. We shall not be required to give you the notice relating to insurance mentioned in section 32(3) of the UK Sale of Goods Act, 1979.
- 14. FREE ISSUE**

Whilst every care will be taken of material sent as free issue for incorporation in your ordered equipment, we cannot accept liability for loss or damage howsoever caused. We reserve the right after reasonable notice has been given to invoice and despatch orders that have been completed to acknowledged delivery dates by await receipt of free issue items.
- 15. STORAGE**

If we do not receive forwarding instructions sufficient to enable us to despatch the goods within 14 days after the date of notification that they are ready for despatch you shall take delivery or arrange for storage. If you do not take delivery or arrange for storage, we shall be entitled to arrange storage either at our own works or elsewhere on your behalf and all charges for storage, for insurance or for demurrage shall be payable by you.
- 16. LOSS OR DAMAGE IN TRANSIT**

If the price quoted includes delivery we will repair or at our option replace free of charge goods lost or damaged in transit. No claim for damage in transit, shortage of delivery or loss of goods will be entertained unless the following procedures are adhered to.
 - (A) In the case of damage in transit or shortage of delivery, a separate notice in writing must be given to the carrier concerned within three days and to us within seven days of the receipt of goods, followed by full particulars of the claim in writing within fourteen days of the receipt of goods.
 - (B) In the case of loss of goods, notice in writing must be given to the carrier concerned and to us, together with full particulars of the claim in writing, with in twenty-one days of the date of the consignment.
- 17. TERMS OF PAYMENT**
 - (A) Hong Kong. Unless otherwise agreed, payment in full shall be due for goods on notification by us that they are ready for despatch.
 - (B) Export. The Prices quoted are strictly net and payment in full shall be due for any goods shipped upon presentation of shipping documents and invoices or, if we are unable by reason of your instructions or lack of instructions to ship goods when ready, upon presentation of invoices and notification from us that the goods are ready for despatch. Failure to Pay. If the customer wrongfully fails to make payment within the time stipulated then we reserve the right to impose a compound surcharge at the rate of 1 ½ per cent in respect of the whole or part of each month that the amount outstanding shall remain unpaid.
- 18. RETENTION OF TITLE**

Notwithstanding delivery and the passing of risk legal and equitable ownership of the goods which reserves the right to dispose of the goods shall remain with us until you have paid in full all monies owed by you to us under this contract together with all monies owed by you to us under any other contract made on or before the date of this contract (such payment is referred to in this clause as "payment in full"). Until such time as payment in full has been made by you to us you shall hold the goods solely as bailee for us and you shall store such goods on your premises at no cost to us separately from your own goods or those of any other person and in a manner which makes them clearly identifiable as belonging to us. Payment in full shall be become due immediately upon the commencement of any act or proceeding in which your solvency is involved. If payment in full is overdue in whole or in part, we may without prejudice to our other rights and remedies, recover or resell the goods or any part thereof and may enter upon your premises by our servants or agents for that purpose. You are licenced to agree to resell the goods subject to the express condition that the entire proceeds thereof are held in trust for us and are not mixed with any monies or paid into any overdrawn bank account and shall be at all times clearly identifiable as our monies. If before payment in full is made the goods are incorporated in any assembly with other goods belonging to you or any other person, we shall nonetheless be entitled to exercise our rights under this Clause and for those purposes disconnect and remove our goods from such assembly; in so doing we shall have no liability to you or any third party for damage caused or otherwise. For the purposes of construing this Clause each paragraph hereof should be read as being entirely separate and independent of the remaining paragraphs.
- 19. DEFECTS AFTER DELIVERY**

We will make good, by repair or at our option by the supply of a replacement, defects which under proper use appear in the goods within a period of twelve calendar months after the goods have been delivered and arise solely from faulty design, materials or workmanship. Provided always that defective parts are promptly returned by you free to our works unless otherwise arranged. The repaired or new parts will be delivered by us free of charge as provided in Clause 13. Provided further that in respect of parts or components not of our manufacture, we will give you a guarantee equivalent to the guarantee (if any) which we may have received from the suppliers of such parts of components in respect thereof, but not so as to impose on us in respect of such parts or components a liability greater than that imposed on us by the preceding paragraph of this Clause.
- 20. LIMITATION OF LIABILITY**

Our liability under Clause 19 shall be in lieu of any warranty or condition whether express, implied, statutory or otherwise save only for those implied by Section 12 of the UK Sale of Goods Act 1979. Save as provided in Clause 19 we shall not be under any liability to you or to any other person, whether in contract, tort or otherwise, in respect of:
 - (A) Defects in goods delivered;
 - (B) Injury to person or damage to or loss of property or value which is caused otherwise than by the negligence of ourselves, our sub-contractors or agents;
 - (C) Damages, losses or expenses in excess of the price of defective goods; or
 - (D) Consequential damages, losses or expenses including (without limitation) loss of profit or of contract.
- 21. FORCE MAJEURE**

Any liability on our part is excluded to the extent that it wholly or partly is caused by, or arises as a result of, fire, flood, war, riot, civil commotion, strike or other industrial dispute, unforeseen contingency or accident, Act of God or other cause whatsoever beyond our reasonable control.
- 22. ARBITRATION**

If at any time any question, dispute or difference whatsoever shall arise between you and ourselves upon, in relation to, or in connection with the contract, either of us may give to the other notice in writing of the existence of such question, dispute, or difference, and the same shall be referred to the arbitration of a person to be mutually agreed upon, or failing agreement within 14 days of receipt of such notice, of some person appointed by the President for the time being of the Institution of Electrical Engineers.
- 23. LEGAL CONSTRUCTION**

Unless otherwise agreed in writing, the contract shall in all respects be constructed and operate as an English contract and in conformity with English Law.