

DGH MANUFACTURING LIMITED – TERMS & CONDITIONS OF SALE

1. DEFINITIONS

'Seller' is DGH Manufacturing Ltd. T/A Andura Coatings.
'Buyer' is the person or firm to whom the Seller's goods are sold.

2. GENERAL

- (a) All goods are sold by the Seller subject to these Conditions of Sale and unless otherwise expressly agreed in writing no terms or Conditions of Sale which are at variance with these Conditions of Sale or any of them shall be construed as having any effect on any contract to which these Conditions of Sale apply.
- (b) These conditions of Sale shall override and take the place of any other terms and conditions contained in any printed conditions attached to orders or to any documents emanating from the Buyer in concluding a contract with the Seller.
- (c) No representation warranty or statement made by any representative on behalf of the Seller shall vary these Conditions of Sale unless such representation warranty or statement shall be made in writing and signed by a director of the Seller and shall be stated to be made specifically in pursuance of this Condition.
- (d) If any of the provisions of these Conditions of Sale or any part or parts hereof shall be invalid or unenforceable all other provisions hereof shall remain in full force and effect.

3. FORMATION OF CONTRACT AND PRICE

- (a) No order resulting from any quotation price list or other similar document made or issued by the Seller shall be binding unless and until accepted by the Seller in writing. The Seller in its absolute discretion and for any reason whatsoever may accept or reject any order.
- (b) If the price of any raw material or any of the Seller's costs including (without prejudice to the foregoing) the cost of labour, parts accessories, services, currency values, duties, taxes, freight or insurance, change after the date on which an order placed by the Buyer has been accepted in writing by the Seller, the Seller may vary the contract price and 14 days after notice thereof has been sent to the Buyer, such variation shall be effective in respect of all consignments delivered thereafter.
- (c) Any amounts not paid on the due date shall bear interest at the rate of 4% above Barclays Bank plc base rate per annum from time to time in force until payment in full has been made by the Buyer.
- (d) All prices are exclusive of Value Added Tax.
- (e) Payment for each consignment shall usually be required before delivery of the goods provided that if it is not so required then payment shall be made at the date specified on the pro-forma invoice rendered by the Seller or on such other date as may be agreed in writing between the Seller and the Buyer.
- (f) The Seller shall at any time after the due date for payment in its absolute discretion be entitled to demand by written notice payment in full together with any interest thereon within seven (7) days of the date of such written notice and if the Buyer fails to pay the whole of the price outstanding and interest thereon the Seller shall be entitled to take whatever action it shall consider necessary to recover all monies due to it from the Buyer including (if practicable) requiring the immediate redelivery of the goods at the Buyer's expense and the Seller's representative shall have the right to enter the Buyer's premises without notice in order to recover the goods without prejudice to any other rights and claims it may have against the Buyer for breach of contract or loss suffered.
- (g) The Seller reserves the right to suspend all deliveries where payment is not received in accordance with paragraph (e) above, or in accordance with any alternative arrangement agreed between the Seller and the Buyer in writing until arrangements as to payment or credit have been established which are to the Seller's satisfaction.
- (h) The purchase price for goods returned and found to be defective and repaired or replaced by the Seller in accordance with Condition 10 shall be paid by the Buyer in full immediately upon redelivery of such goods.
- (i) The Buyer shall in no circumstances be entitled to make any deduction from the purchase price of any goods supplied by the Seller under any contract by way of set-off or otherwise in respect of any claim or counterclaim which it may make against the Seller.

4. SEPARABILITY

Each order the Buyer places or each consignment (where an order calls for consignments at different dates) shall be treated as a separate contract. If there shall at any time be more than one contract in the course of performance between the parties, any claim which may arise in respect of any one contract or the terms on which it may be settled, shall not affect in any way the performance of the other contracts.

5. CANCELLATION AND RETURNS

Orders may not be cancelled and (subject as provided in Condition 10), goods supplied may not be returned without in either case the Seller's consent and on terms which will indemnify the Seller against loss.

6. RISK AND PROPERTY

- (a) The ownership of all and any consignments of goods delivered by the Seller will only be transferred to the Buyer when the Buyer has paid all sums owing to the Seller in relation to all and any consignments delivered. Prior to such payment or payments the Seller will retain ownership of the goods.
- (b) Until the date of payment of all such sums as aforesaid all goods supplied to the Buyer in respect of any consignment concerned so long as they remain unused shall be stored by the Buyer in such a way that they remain clearly identifiable as the Seller's property subject to paragraph (d) below.
- (c) If the buyer attaches or incorporates any of the Seller's goods to into or with (as the case may be) any other goods belonging to the Buyer then the Seller shall nevertheless continue to retain the ownership of the original goods supplied by it a security for the full payment of all sums owing to it by the Buyer in respect of such goods and the Seller shall be entitled to detach or remove such goods from the other goods concerned in order to recover possession notwithstanding any damage which may be thereby occasioned to the other goods concerned, and the Buyer shall indemnify the Seller against any liability to any third party arising from any such damage.
- (d) Until payment in full of what the Buyer owes the Seller for all and any consignments concerned the Buyer shall keep all the consignments of goods supplied by it and the goods in question for the Seller in the Buyer's capacity as fiduciary owner or trustee and as the Seller's bailee of the goods if supplied. Nevertheless the Buyer will be entitled to sell both the original goods supplied by the Seller and other objects to which they may have become attached or in or with which they may have become incorporated as constituent parts to a purchaser for full market value on condition that the Buyer so long as it remains indebted to the Seller assigns to the Seller its claims against its purchaser resulting from such transaction and retains separately for the Seller a separately identifiable form sufficient of the proceeds of sale received by it to represent the unpaid price of the goods supplied by the Seller PROVIDED ALWAYS that this last mentioned condition shall not apply to goods supplied by the Seller to Buyers carrying on business in Scotland.
- (e) If the Buyer remains in default of any payment for which it is liable to the Seller on any account whatsoever the Seller shall be entitled to stop all further deliveries irrespective of which contract they are to be made under and to rescind the contract in question without prejudice to any other rights and remedies available to the Seller.
- (f) If the Buyer defaults in payment the Seller shall be entitled to enter the Buyer's premises with such transport and staff as may be necessary and repossess its goods to which it has title hereunder.
- (g) Notwithstanding that title to the goods does not pass to the Buyer until payment in full has been received by the seller for all and any consignments, the goods, once delivered, shall be held at the Buyer's risk.

7. DELIVERY DATES

Dates quoted by the Seller are given in good faith and in the light of circumstances prevailing at the time. Whilst the Seller will use all reasonable endeavours to deliver the goods within the time stated therefore any time for delivery stated is not of the essence of any contract entered into between the Seller and the Buyer and the Seller will not be liable for any delays in the delivery of the goods or any losses whatsoever due to any such delays howsoever caused. Where partial supplies or deliveries of the goods are made the balance of the goods will be supplied or delivered as soon as possible thereafter and delivery in such manner shall not affect the terms of payment for the goods unless otherwise agreed between the Seller and the Buyer.

8. LOSS OR DAMAGE TO GOODS IN TRANSIT

- (a) All goods supplied by the Seller shall be examined and checked immediately upon receipt by the Buyer.
- (b) The Seller will repair or at its option replace free of charge, or, if through circumstances beyond its control repair or replacement is not possible then the Seller shall refund the proportionate amount of the purchase price, or insofar as such purchase price has not yet been paid, give credit accordingly provided that the Buyer shall inform the Seller and the carrier in writing (otherwise than by a qualified signature on the carrier's delivery note) received at the Seller's registered office within the following time limits:
 - (i) in the case of non-delivery of the whole of any consignment, within seven (7) days of despatch of such consignment;
 - (ii) in the case of partial loss, damage or non-delivery of any separate part of a consignment within seven (7) days of the date of delivery of the consignment or part consignment.
- (c) The Seller shall not in any circumstances be further liable than as provided in paragraphs (i) and (ii) above or, in particular, be responsible for any consequential loss allegedly caused by such loss or damage howsoever occasioned.

9. FORCE MAJEURE

The Seller shall not be responsible for any failure to fulfil any term of any contract if fulfilment shall have been hindered, delayed or prevented by any circumstances beyond the reasonable control of the Seller including (but without affecting the generality of the foregoing) war, fire, floods, explosions, accident, plant breakdown, shortage of labour, materials or components, breakdown in the supply of electricity, water or other utilities, strikes and lockouts (wheresoever occurring) or compliance with orders given by any competent authority or any other cause whatsoever beyond the Seller's reasonable control. The Seller shall be at liberty to cancel the contract or the unfulfilled balance of the contract or at its option suspend delivery until such cause shall have ceased to operate and the Seller shall not be liable for any loss or damage arising therefrom.

10. WARRANTY AND EXCLUSION OF LIABILITY

- (a) The Seller shall at its option replace or repair or if, through circumstances beyond its control, repair or replacement is not possible then the Seller shall refund the proportionate amount of the purchase price, or insofar as such purchase price has not yet been paid, give credit accordingly, any goods which are discovered by the Buyer and subsequently proven to be defective in design (other than a design made, furnished or specified by the Buyer) materials or workmanship provided always that the Seller shall not be liable for any claim hereunder unless:
 - (i) written notice of the defect is received by the Seller at its registered office within 21 days of receipt of the goods by the Buyer, or where the defect is not apparent on a reasonable inspection of the Products, such latent defects must be notified to Supplier within 9 months of delivery. For this purpose, a defect which is not apparent on a reasonable inspection if (inter alia) the defect arises over time.
 - (ii) the goods in question have been properly stored and used by the Buyer as recommended by the Seller prior to the alleged defect occurring; and
 - (iii) the Buyer making no further use of the allegedly defective goods after the time at which it discovers or ought to have discovered the alleged defect; and
 - (iv) the goods in question have been returned to the Seller if it shall have so required.
- (b) The warranty in paragraph (a) excludes batch colour variations from production standards less than 1 Delta E.
- (c) The warranty in paragraph (a) above is given in lieu of all other warranties whether express or implied or arising by common law, statute, custom of trade, course of dealing or otherwise. In particular but without affecting the generality of the foregoing the Seller gives no warranty whatsoever that any goods made to the Buyer's own specifications will be fit for their purpose or perform in a manner expected or required of them by the Buyer.
- (d) Save as provided in paragraph (a) the Seller will accept no responsibility for any defects in the goods howsoever caused, and in particular even in respect of defects for which the Seller may have accepted responsibility in accordance with the provisions of paragraph (a) the Seller will not in any circumstances be liable for any consequential losses whatsoever including (without prejudice to the generality of the foregoing) loss of profits, loss of contracts, damage to the property of the Buyer or any third party, whether arising out of the inability of the Buyer or any other party to use the goods or out of any use made of them howsoever occasioned.
- (e) Where in these Conditions of Sale the Seller excludes or limits its liability in respect of any loss or damage, it does not intend or propose thereby to exclude or limit liability for death or personal injury resulting whether wholly or in part from its own negligence or that of its employees or agents and these Conditions of Sale shall take effect accordingly.
- (f) Notwithstanding the preceding paragraphs of this Condition 10 the Seller's liability for any one claim or for the total of all claims arising from any one act of default (whether the claim arises from the Seller's negligence or otherwise) shall not exceed the purchase price of the goods in respect of which the claim arises or the claims arise (as the case may be).
- (g) If the buyer knowingly accepts goods which do not conform to the warranty given in paragraph (a) above the Seller shall not be liable for any damage whatsoever arising from such acceptance.
- (h) All recommendations and advice given by the Seller to the Buyer or contained in any of the Seller's publications regarding use, performance, characteristics, storage, application or use of the Seller's products are given in good faith but without acceptance of liability on the part of the Seller. The Buyer should therefore satisfy himself from other sources as to the suitability of the Seller's goods for the Buyer's intended application.

11. DRAWINGS, SPECIFICATIONS, ETC.

- (a) All drawings, designs, specification and particulars of weights and dimensions submitted to the Buyer by the Seller do not constitute any warranty, guarantee, representation, or opinion as to the efficiency, safety or otherwise of the goods. The Seller accepts no responsibility for any drawings, designs, or specifications prepared by the Buyer or for the Buyer or any other persons, company, or firm.
- (b) All drawings, designs, specifications and particulars of weights and dimensions submitted by the Seller to the Buyer are the Seller's copyright. All such copyright material and all information and 'know-how' whenever supplied, shall at all times be treated by the Buyer as confidential and shall not, without the Seller's written consent be used by the Buyer or communicated by the Buyer or its employees or agents or any third party except for the purpose of
 - (i) the contract (if any) entered into by the Seller and the Buyer; and
 - (ii) using the goods supplied hereunder.

12. HEADINGS

The headings to Conditions are for convenience only and do not form part of the text of these Conditions of Sale.

13. INTERPRETATION

Any contract between the Seller and the Buyer shall in all respects operate and be construed as an English contract and be governed by English law provided that all contracts for the supply of goods by the Seller to the Buyer in Scotland are governed by Scottish law.