

DALEN LIMITED TERMS AND CONDITIONS OF SALE

Dalen Limited, Valepits Road, Garretts Green, Birmingham B33 0TD, UK

1. DEFINITIONS

- 1.1. The terms "TOP-TEC", "Dalen Healthcare", "Dalen Design Concepts" and "Dalen" shall mean Dalen Limited and vice versa.
- 1.2. The term "supplier" shall mean Dalen Limited so named in any quotation.
- 1.3. The term "purchaser" shall mean the person, firm or company so named in the purchase order.
- 1.4. The term "goods" shall mean the goods and/or services to be supplied by the supplier as identified in the quotation.
- 1.5. The term "quotation" shall mean the tender or supply quotation issued by the supplier for the supply of goods including these conditions, the specification, drawings, or other documents annexed or referred to by the supplier in the quotation.
- 1.6. The term "purchase order" shall mean the order for purchase issued by the purchaser to the supplier for the purchase of the goods.
- 1.7. The "contract" shall mean the contract between the supplier and the purchaser consisting of and limited to, the supplier's quotation, these conditions of sale, the purchase order accepting the quotation, other terms and conditions in force by the supplier, excluding any other terms and conditions incorporated in or referred to in the purchase order to which the supplier has not expressly agreed.
- 1.8. The term "date for delivery" shall mean the expected date for delivery of the goods based upon standard delivery lead times, expected during usual trading conditions.
- 1.9. The term "confirmed date for delivery" shall mean a firm date for the delivery of goods contained in the quotation or agreed and confirmed by the supplier, in writing or by email following receipt of a purchase order.
- 1.10. The term "contract price" shall mean the sum stated in the quotation to be paid by the buyer to the seller for the supply of goods together with such other sums as may be payable to the supplier under these conditions of sale.
- 1.11. The term "business day" shall mean a time and day, between 9am and 5pm, other than a Saturday, Sunday or public holiday in England.
- 1.12. The term "CIS" shall mean Construction Industry Scheme.

2. GENERAL

- 2.1. These conditions of sale and the quotation supersede any other terms and conditions including any terms or conditions, summarised terms, or descriptions, or statements as to the delivery, quality or performance of the goods or their suitability for any purpose appearing in any advertisements, catalogues, or other literature relating to the goods and override and exclude other terms and conditions, descriptions and statements as to quality and performance or suitability of the goods stipulated or referred to by the purchaser whether in the purchase order or otherwise.
- 2.2. No representative or agent of the supplier has any authority to agree any terms or make any representations that are inconsistent with these conditions or the quotation. The supplier will not be bound by any statements made by any person purporting to act on the supplier's behalf as to these conditions or the quotation or any statements as to the delivery, quality, performance, or suitability of the goods unless any such statement is specifically confirmed in writing by a duly authorised officer of the supplier and annexed to the contract.

3. SPECIFICATION AND DESCRIPTION

- 3.1. The description of the goods given in any advertisement, catalogue or other literature is for information purposes only and does not constitute a term of the contract.
- 3.2. The supplier undertakes that the goods will conform with:
 - 3.2.1. The provisions of the quotation (except in minor respects which do not materially affect the usage of the goods). The supplier reserves the right to change and improve the specification of the goods in line with its policy of progressive development provided that any substituted materials shall be of the same or better quality than those specified in the quotation and that any such change will not materially affect the usage of the goods;
 - 3.2.2. The supplier's normal standards of manufacture;
 - 3.2.3. The requirements of any legislation in force at the time of the submission of the quotation.

4. QUALITY AND FITNESS FOR PURPOSE

- 4.1. The goods shall be in accordance with the quality specified in the supplier's quotation and if no quality is specified, within the normal industrial quality for the type of goods in question at the contract price.
- 4.2. If the purchaser has specified expressly that the goods shall be suitable for a particular purpose and the supplier has agreed in the quotation expressly to supply goods suitable for that purpose, then the goods shall be so suitable within the limits specified by the supplier in his quotation except in minor respects which do not materially affect the purpose for which the goods have been supplied.

5. DELIVERY

- 5.1. The supplier undertakes as a warranty and not as a condition of the contract that if a date for delivery or delivery period has been stated in the quotation that the supplier will deliver the goods by such date or within such period or any extended date or period as provided for under section 5.
- 5.2. The supplier shall deliver the goods to the delivery point stated in the quotation, provided that if in accordance with the quotation the goods are to be given to a carrier designated by the purchaser, other than the suppliers' carrier, for onward transmission to the purchaser, then delivery of the goods to the carrier shall constitute delivery to the purchaser.
- 5.3. For deliveries to sites under construction, or where installation work is being undertaken, then a delivery survey may be required. If access to the site is more complex than quoted for, the supplier reserves the right to requote the delivery.
- 5.4. Deliveries can be made to sites under construction, but this must be arranged prior to delivery, and is subject to a delivery survey. Dalen Limited do does not require CSCS credentials to attend site, and can supply evidence of this if required. We cannot be held liable for any delays to delivery caused by limited site access, and in such instances may charge to recover any additional costs.
- 5.5. Quotations for delivery and installation are based on immediate access to site being granted on arrival. In the event of delays due to inductions or other imposed requirements which were not covered by the initial quotation, the supplier reserves the right to recover any resulting costs from the purchaser.
- 5.6. Unless otherwise stated, delivery is limited to a ground floor location, at a single business address in the UK Mainland only, excluding the UK Highlands and Islands. Additional charges will apply outside of these criteria.
- 5.7. Delivery on a date or time which is not within a standard Business Day may be subject to an additional charge, to be notified to the purchaser at the time that any such request is made.
- 5.8. In the event that the supplier is unable to deliver goods or services due to site closure, refused access, restrictions, or refused delivery for reasons other than damage to goods, then the supplier reserves the right to charge to recover any additional costs.
- 5.9. Unless the supplier has included a confirmed date for delivery, the date for delivery shall only constitute a warranty and not a condition of the contract and the purchaser shall not have the right to reject the goods or terminate the contract by reason of any delay in delivery.
- 5.10. If the supplier is delayed in the performance of the contract by any act or default of the purchaser, or any industrial dispute, national emergency or any circumstance beyond the supplier's reasonable control, then the date for delivery or confirmed date for delivery shall be extended by such period as may be reasonable.
- 5.11. If the supplier shall fail to deliver the goods by a confirmed date for delivery or any agreed extended confirmed date for delivery, then the supplier shall retain the right to supply the goods at a later date.
- 5.12. In the event that the purchaser requests for the delivery of goods to be delayed beyond the date for delivery, the supplier reserves the right to charge 3% of the value of goods being stored per month.

6. PASSING OF PROPERTY

- 6.1. The property of the goods shall not pass to the purchaser until payment has been received by the supplier in full for the goods and for any other goods supplied by the supplier or any associated company of the supplier.
- 6.2. For the purpose of this clause the purchaser undertakes that until the purchaser has made payment in accordance with sub-clause 6.1:
 - 6.2.1. to take full responsibility for the goods once the goods have been delivered under the terms of clause 5.2 and ensure that said goods are kept in good condition and free from damage under the terms of clause 7.1;
 - 6.2.2. not to remove, deface or cover up any identification marks on the goods or marks indicating that the goods are the property of the supplier;
 - 6.2.3. to allow the supplier unrestricted access to the purchaser's Works or other place where the goods are stored for the purpose of removal of the goods;
 - 6.2.4. to ensure proper insurance of the goods, at its own cost, for the benefit of the supplier whilst the purchaser is responsible for the risk in the goods under clause 7.1.

7. PASSING OF RISK

- 7.1. The risk in the goods shall pass to the buyer on delivery as defined in clause 5.2 above.
- 7.2. If delivery is to be made by a carrier designated by the supplier for onward transmission to the purchaser, then the supplier will arrange for the benefit of the supplier, insurance of the goods in transit.
- 7.3. The purchaser will ensure that where the property of the goods remains with the supplier under the terms of clause 6.1 and the goods are to be collected by the purchaser or delivered by a carrier of the purchaser's choice, the purchaser will ensure that adequate insurance for the said transport and carriage of the good is in place.

8. CONTRACT PRICE

- 8.1. The price stated in the quotation is for the goods as specified and is valid for the period specified in the quotation, normally 30 days, but subject to alteration at the supplier's discretion. Unless the purchaser confirms the price with a purchaser order, relating specifically to the goods contained in the quotation, within the period for which the quotation is valid, the supplier is under no obligation to maintain the price in the quotation.

- 8.2. All quotations are based on Dalen's standard terms and conditions unless specifically referenced otherwise. We reserve the right to re-quote for items where the customer requests a variation to these standard terms.
- 8.3. The price stated in the quotation is for the goods as specified, if a purchase order received by the supplier from the purchaser is for alternative, additional or fewer goods or an alteration to the specification contained in the quotation then the supplier retains the right to review the price and provide a new or altered contract price.
- 8.4. Quotations are presented in GBP and valid for 28 days as standard, unless otherwise specified. For quotations in currencies other than GBP, Dalen reserve the right to adjust the price based on the prevailing exchange rate at the time of order.

9. PAYMENT TERMS

- 9.1. The supplier shall be entitled to request payment at the time of the receipt of the purchase order unless credit terms are in place for the purchaser.
- 9.2. Dalen use credit insurance for customer debts. Credit terms may be reduced or removed in line with our credit insurance provider's cover.
- 9.3. Where credit terms have been agreed with the purchaser the supplier shall be entitled to invoice for the goods on delivery.
- 9.4. The purchaser shall pay the supplier's invoice within 30 days of date of invoice.
- 9.5. If the purchaser fails to pay the supplier's invoice on the due date, then the supplier shall be entitled to:
- 9.5.1. charge interest on the outstanding amount at the rate of 4% per annum above the prevailing Barclays' Bank Interest Rate accruing daily;
- 9.5.2. decline to deliver any further goods to be supplied under this contract or any other contract between the purchaser and the supplier until payment has been received in full of any amounts outstanding, and payment has been made by the purchaser in advance for any goods not yet delivered without thereby incurring any liability whatsoever to the purchaser;
- 9.5.3. terminate the contract if the delay in payment exceeds 30 days.
- 9.6. Value Added Tax (VAT) where applicable shall be added to the contract price as an extra charge. The amount of VAT added to the contract price shall be at the rate in force at the time of the invoice being raised irrespective of the rate at the time of the quotation being presented or purchase order received.
- 9.7. Dalen's standard Incoterms are DAP (Delivered At Place), with the DAP location agreed at time of quotation.

10. ACCEPTANCE

- 10.1. The purchaser shall inspect the goods immediately on their receipt to ensure that the goods have not been damaged in transit and sign for the goods to indicate that they have been received in good order. The supplier accepts no responsibility for the receipt of goods and/or service damaged in transit where the purchaser has confirmed to the carrier that they have been received in good order.
- 10.2. The purchaser shall be deemed to have accepted the goods from the supplier as in good order unless within 14 days after their receipt the purchaser shall have notified the supplier that the goods are rejected as having been found not to be in accordance with the contract. This does not affect the purchaser's statutory rights.
- 10.3. If the purchaser does so notify the supplier within 14 days then the supplier shall be given the opportunity to inspect the goods and if reasonably satisfied that the goods are not in accordance with the contract for a reason for which the supplier is responsible, shall be given the option by the purchaser to remedy the situation by repair or replacement within a reasonable time period and without further claim against the supplier. At the supplier's request the purchaser shall return the goods to the supplier at the supplier's expense. The supplier shall be responsible for all costs involved in the repair or replacement of the goods and for their re-delivery to the purchaser.

11. DEFECTS LIABILITY

- 11.1. The supplier shall repair or replace at the supplier's option the goods which are, or which become, defective within 12 months (or the warranty period if greater) from delivery due to faulty workmanship, materials or faulty design, if the supplier is responsible for design, provided that the purchaser has used the goods for their intended purpose, have operated, fitted or consumed them using properly trained staff and have generally used, operated and maintained the goods in a reasonable and professional manner. In order to seek remedy for any fault with the goods the purchaser shall have notified the supplier in writing of such defect and have given the supplier a reasonable opportunity to inspect the defective goods and a reasonable time frame in which to effect such repair or replacement.
- 11.2. Free issue or customer supplied goods are not covered by the supplier's standard warranty terms.
- 11.3. Quality and warranty is not implied or given if the supplier's product has been modified by a third party in any way.
- 11.4. The supplier shall pay, where the supplier is deemed to be responsible for the repair or replacement of defective goods, all expenses incurred by the supplier in connection with the repair or replacement, including all costs of transportation.
- 11.5. The supplier's liability in respect of defects in the goods shall be limited to those stated in this clause and the purchaser's statutory rights, the supplier shall not be liable whether in contract or in tort, including but not limited to negligence, or by reason of breach of statutory duty or otherwise, for any damage or loss whatsoever suffered by the purchaser arising out of or attributable to such defects.

12. LIMITATION OF LIABILITY

- 12.1. The obligations and liabilities of the supplier in respect of the description of the goods, the quality of the goods or their fitness for purpose are limited to those which are expressly stated in sections 3,4,10 and 11 above. All conditions, warranties and intermediate terms relating to the description of the goods, their quality and their fitness for purpose implied by common law or by statute or otherwise are hereby excluded from the contract.
- 12.2. Neither party shall be liable to the other for any indirect or consequential loss or damage, loss of profit, loss of use or production or of contracts which the other may suffer arising out of any breach by a party of its obligations under the contract and whether the same be due to the negligence of that party or not.
- 12.3. The supplier shall not accept deductions, retentions, application payment schedules, liquidated damages, or any other CIS terms and conditions.

13. FORCE MAJEURE

- 13.1. Neither party shall be liable to the other for its failure to perform any of its obligations under the contract to the extent that such failure is a result of circumstances beyond its reasonable control, provided that the other party is notified in writing of such circumstances by the party affected as soon as they become aware of their occurrence.

14. INTELLECTUAL PROPERTY

- 14.1. The supplier retains the intellectual property rights relating to its products and drawings and does not permit any re-creation or reverse engineering unless agreed to in writing or expressly permitted by Law.

15. SET-OFF

- 15.1. The purchaser shall not be entitled to exercise any right of set-off or counter-claim.

16. LAW

- 16.1. The contract shall in all respects be governed by and interpreted in accordance with English law.

17. DISPUTE RESOLUTION

- 17.1. If any dispute or difference shall arise between the parties in connection with or arising out of the contact which cannot be settled amicably between the parties, then either party shall give to the other 14 days' written notice to such effect and such dispute or difference shall, in the first instance, be referred to a single arbitrator agreed between the parties.