

DENGENSHA EUROPE LTD - STANDARD CONDITIONS OF SALE

1. ACCEPTANCE OF CONDITIONS

Only these terms shall apply. If the Purchaser places an order and if the terms and conditions stated in the Purchaser's order are inconsistent, or if they contain a provision in similar terms to this Condition, the Company's acceptance of the Purchaser's Order shall constitute a counter-offer and the Purchaser shall be deemed to have accepted these Conditions and the provisions of the Sale of Goods Act 1893 not inconsistent herewith unless it notifies the Company to the contrary within five days of receiving the Company's acceptance of this order.

2. VARIATION OF ORDER

- (a) **Specification of design.** The quotation is based on the quoted specification and/or schematic design and in accordance with complete and correct samples (if any) submitted at the time of quotation. If such specification or schematic design is revised, either by mutual agreement or at the request of the Purchaser but without reference to price, the Company shall be entitled to adjust the quoted price to include such revision provided that the Company shall not be bound to accept any such revisions.
- (b) **Cancellation of order.** In the case of special purpose equipment, the specification can only be fully determined at the detailed design stage after the receipt of order. Therefore, in the event of the company deciding as a result of design study undertaken after the contract date that the specification or design of special purpose equipment is more complex than as specified in the Company's quotation, or that such equipment cannot be manufactured at the quoted price, the Company shall be entitled to withdraw from the contract prior to manufacture notwithstanding its acceptance of it. In the event of the Company cancelling for the latter reason, the Company shall be bound to attempt to re-negotiate terms with the Purchaser if the Purchaser so requests.
- (c) **Special equipment.** The Company's obligations are subject to the qualification made on page one. In addition, if it shall appear to the Company in the course of carrying out an order for special equipment that an engineering change is necessary to enable the equipment to function in accordance with the Purchaser's requirements, or to improve its performance, the Company shall notify the Purchaser of the proposed change and the Purchaser shall be deemed to have accepted the change unless the Company is notified to the contrary within five days. If the Purchaser accepts, or is deemed to have accepted the change without reference to price, the Company shall be entitled to adjust the quoted price to include a reasonable amount for such change. Without prejudice to the generality of Condition 10 hereof because of unforeseen difficulties which can arise whilst a special design is being developed, the Company accepts no liability whatsoever for delay in delivering equipment manufactured to a special design. All drawings and designs prepared by the Company shall remain the property of the Company.

3. AVAILABILITY OF MATERIALS AND INFORMATION

- (a) The Company will rely in its manufacture of the equipment upon supplies of components, materials and services from proprietary sources and from sub-contractors. The parties hereto acknowledge that although the Company will take all reasonable steps to ensure that such supplies are regularly available to it, it cannot guarantee such supplies. The Company will not be liable for any failure by it to perform under the Agreement if such supplies are not available to the Company when required by it.
- (b) The Purchaser will promptly supply on demand and free of charges to the Company all such suitable designs, drawings, information and other material as the Company shall at any time reasonably require in writing to enable it to design, manufacture, test and (where appropriate) install the equipment. In the case of the non-availability of any item to be provided by the Purchaser (including, but without prejudice to the generality of the fore-going, samples or materials for testing the equipment strictly in accordance with drawings, samples or materials initially supplied to the Company) the Company shall be entitled to discontinue manufacture and to charge the Purchaser with any loss or additional expense caused to the Company.

4. TAXES

All prices quoted include Import Duty into the EEC but exclude any additional amount of any sales, excise or similar taxes applicable either to the equipment or to any components or samples for testing, paid by the Company shall be added to the price and be payable by the Purchaser.

5. TERMS OF PAYMENT

Unless otherwise specified in the Contract payment shall be made 30 days following notification by the Company that the equipment is ready for despatch. In the event of default in making punctual payment under this or any other contract between the Company and the Purchaser, the Company shall be entitled to withhold deliveries under this contract or any other contract between the Company and the Purchaser until all outstanding payments have been made. Further, the Company shall at its option be entitled to treat any default in payment under this contract as a repudiation of this contract by the Purchaser.

6. TESTS

All equipment is inspected and where practicable submitted to the Company's standard tests before despatch. If required by the Company the Purchaser shall promptly supply the Company free of charge (including collection or transport to the Company's works) with suitable materials and samples for testing and the Company shall not be liable for any loss of production or other direct or indirect loss or scrapping of materials used in any tests. The Company shall be entitled to charge extra for any special tests which the Purchaser may request, or for the supply of necessary materials and samples not provided by the Purchaser.

Tests will be conducted at the Company's works or such other place as the Company may notify the Purchaser. If the Company requires to make such tests at the Purchaser's works, the Purchaser shall give the Company complete facilities for so doing. If the Purchaser, having given the Company due notice that it wishes to attend special tests fails punctually to be present after seven days' notice thereof, the tests will proceed in the Purchaser's absence.

If the equipment fails to operate by reason only of the incorporation therein of a part or parts specified by the Purchaser but which are incompatible with the design of the equipment and the proper operation thereof, the Company shall be under no liability whatsoever to the Purchaser for such failure to operate but shall, at the Purchaser's expense, use its reasonable endeavours to replace such part or parts and to ensure the proper operation of such equipment.

7. ACCEPTANCE

The Company's obligations under this contract do NOT include pre-production or large volume proving tests or development of special equipment to final Production State. The Company's obligation in respect of special equipment shall be limited to tests demonstrating that the equipment will function in accordance with specification.

- (a) Standard equipment shall be accepted upon delivery.
- (b) In the case of special equipment, acceptance shall be deemed to have taken place either upon delivery (or completed installation if part of the contract) or completion of any agreed special tests, whether at the Company's or the Purchaser's premises and in either case the sole obligation upon the Company shall be to test the machine and demonstrate compliance with specification.
- (c) The Purchaser shall not be entitled to reject special equipment which complies with specification on the grounds only that further testing or development is required to achieve final production state.

8. STORAGE

If the Company does not receive forwarding instructions within seven days after date of notification that the equipment is ready for despatch, the Purchaser shall arrange storage. If the Purchaser arranges storage, this will not affect or postpone the Purchaser's liability to pay for the equipment. If storage facilities permit, the Company will store the equipment at the Purchaser's risk and at the Company's charges then current until the equipment is despatched. If lack of space precludes storage by the Company, it shall be entitled to arrange storage elsewhere for the Purchaser's account and at the Purchaser's risk.

9. DELIVERY DATE

Any dates quoted for completion or delivery are to date from receipt by the Company of a written order to proceed or the date of full availability as mentioned in Condition 3, whichever is the latter.

Unless otherwise expressly agreed in writing, delivery dates quoted are estimates only and are not guaranteed. In particular, in the case of special purpose equipment, delivery may be delayed by the need for development and tryout work during test and for modifications.

10. TITLE

All goods remain the Company's property until the full amount payable in respect thereof has been paid. Retention of title by the Company shall not affect the passing of risk under Condition 12.

11. RISK, CARRIAGE AND INSURANCE

- (a) All equipment is at the Purchaser's risk from the time it leaves the Company's factory unless otherwise agreed and this applies where the equipment is leaving for special tests under condition 6 and where the Company's installing the equipment under Condition 13.
- (b) For delivery within the United Kingdom where the Company's price expressly includes delivery the Company will arrange carriage at the Company's expense on behalf of the Purchaser. If the Purchaser shall require some method of carriage different from that chosen by the Company such carriage shall be for the account of the Purchaser.
- (c) For delivery abroad the quotation is ex-works unless otherwise stated. The Company shall not be obliged to give notice under Section 32(3) of the Sale of Goods Act 1893. If the quoted price is stated to be c.i.f., delivery will be made at the port stated in the quotation. No lighterage, landing charges, dock, wharf or customs dues or duties are included. Freight and insurance charges are based on the rates obtainable at the date of the quotation. If these rates increase or decrease from any cause between the date of quotation and the date on which the goods are shipped, the price will be increased or decreased by the net amount of the increase or decrease due to the variation of such rates.
- (d) A document certifying in proper form that insurance has been effected (and whether or not other goods have been included in or covered by such insurance) and endorsed by the Company may, at the Company's option, be tendered instead of a policy of insurance in respect of any equipment shipped, and the Purchaser shall accept such document in lieu of a policy, together with invoices and bills of lading, as complete tender of shipping documents by the Company.
- (e) The Purchaser shall afford immediate and unimpeded access to an unloading site and shall promptly provide free of charge labour and tackle for unloading if required.

12. INSTALLATION

Unless otherwise specified in the contract, installation of equipment shall be the Purchaser's responsibility at its cost and the conditions set out below shall apply. Where installation is specified in the contract to be the Company's responsibility, this Condition shall not apply, but the remaining Conditions shall apply in addition to any terms separately agreed.

The equipment shall be installed by and at the expense of the Purchaser. The Company shall, where the same are available, provide instruction sheets and wiring diagrams for the use of the Purchaser in installing and operating the equipment and where the same are supplied the Purchaser, shall ensure that all its employees or persons under its control comply strictly therewith. Upon receipt by the Company of advice in writing that the installation has been completed and the equipment is ready to operate, at the request and expense of the Purchaser; the Company will provide an engineer to demonstrate and adjust the equipment and to instruct the Purchaser's personnel as to proper operation and maintenance. A quotation for such charges and services will be sent on request.

The Purchaser shall provide all necessary facilities to enable the Company to provide such services or any other work which it may be agreed shall be performed on site.

13. WARRANTY

- (a) Subject as mentioned below the Company warrants that any of the equipment manufactured by it will on delivery be free from defects in materials and workmanship and will comply with the quoted specification and/or schematic design for that equipment. The Company further warrants that, if properly and normally used and maintained, such equipment will be kept free from such defects for a period of twelve months from the date upon which the equipment is delivered. During that period, the Company will remedy any such defects and will remedy any non-compliance with the quoted specification and/or schematic design by repair or replacement (at the Company's option) of the equipment or parts thereof.
- (b) The warranty shall not apply to defects in materials where those materials are in all respects in accordance with the Purchaser's specification.
- (c) When the equipment is sold to be used in combination with other equipment not of the Company's design or manufacture, the warranty is limited to the separate equipment of the Company's design.
- (d) The warranty shall not apply to repairs and damaged necessitated or caused by alterations, additions or repairs made to the equipment without the Company's consent or by the Purchaser's failure to use and maintain the equipment in a normal and proper manner.
- (e) In respect of replacement parts supplied by the Company under this Condition, the warranty period specified above shall not apply and the warranty period for the original equipment shall apply instead.
- (f) In respect of any of the equipment not manufactured by the Company, the Company will transmit to the Purchaser the benefit of any warranties or conditions it receives from the manufacturer or supplier which are capable of transmission. The Company itself gives no warranty hereunder in respect of any such equipment.

14. LIMITATION OF LIABILITY

This Condition shall not confer rights or remedies on the Purchaser to which it would not otherwise be legally entitled.

- (a) Except where this contract is of the description contained in Section 26 of the Unfair Contract Terms Act 1977 (International supply Contracts) the Company does not exclude liability for death or personal injury insofar as it results from the negligence of the Company or for any breach of the undertakings by it implied into this Agreement by Section 12 of the Sale of Goods Act and the following limitations shall be construed accordingly.
- (b) The Purchaser's remedies (Whether in contract or in tort including negligence) against the Company for any default shall be limited to damages which shall be subject to the limitations in this Condition.
- (c) The Purchaser shall immediately inform the Company of any default in respect of the equipment during the warranty period specified in Condition 14 of this Agreement and shall afford the Company every reasonable opportunity and facility to correct the default.
- (d) The damages in respect of which the Company is liable in respect of any one cause of action shall not exceed the lesser of €50,000 or a sum equal of 100% of the purchase price specified in this Agreement. This limit shall not apply to any liability of the Company referred to in sub-clause (a) above.
- (e) If any provision of this Condition shall be deemed omitted, the parties expressly agree that the other limitations and provisions in this Condition shall then apply to any loss or damage to which the Company becomes liable as a result of that omission.
- (f) Except in the cases provided in sub-clause (a) above in no event whatsoever shall the Company be liable for the following loss or damage howsoever caused:
 - (i) Loss of profits, business revenue, goodwill or anticipated savings
 - (ii) Damages in respect of special indirect or consequential loss or damage except in the cases provided in sub-clause (a)
- (g) The use and maintenance of the equipment is under the control of the Purchaser and, accordingly, the Purchaser agrees both that it is fair and reasonable for the Company to limit its liability under this Agreement and that, except as expressly set forth in this Agreement, all representations, conditions or warranties express or implied, statutory or otherwise are hereby excluded.
- (h) The Company shall not be liable for any loss or damage caused by the Purchaser's failure to fulfil its obligations under this Agreement or arising from any matter within the Purchaser's control.

15. CANCELLATION BY PURCHASER

Orders accepted by the Company can be cancelled only with the written consent of the Company and then only upon payment of cancellation charges agreed with the Company, which shall include expenses already incurred and commitments made by the Company and all losses to the Company arising from the cancellation.

16. CANCELLATION BY COMPANY

- (a) The company shall be entitled to cancel the contract at any time and recover the reasonable costs and expenses incurred by the Company up to the date of cancellation if the Purchaser shall go into liquidation or any distress execution or other legal process is taken or threatened upon any goods in the premises of the Purchaser or a receiver is appointed of the undertaking of the Purchaser or of any of its properties or assets or the Purchaser stops payment or ceases or threatens to cease to carry on its business or meet its debts.
- (b) The Company shall be entitled to cancel the contract at any time and recover the reasonable costs and expenses incurred by the Company up to the date of cancellation in the event of the Purchaser failing to supply in accordance with its obligations (if any) under the contract designs, drawings, information and materials so as to allow the Company to proceed with the contract within a reasonable period from receipt of the signed contract from the Purchaser, and to continue manufacture thereafter without interruption.
- (c) If the Company exercises its right to cancel under any of the aforesaid sub-clauses, it shall in no case be liable for any loss or damage direct or indirect which may be caused to or sustained by the Purchaser.

17. PATENTS

- (a) Provided that all equipment sold under the contract and all parts thereof shall have been used only in a manner or for a purpose and within an area reasonably to be inferred by the Company from the nature of the equipment or disclosed to the Company in writing prior to the making of the contract, if any claim or action is made or brought against the Purchaser in respect of infringement of any Patent Trade Mark or Registered Design arising from the manufacture or sale by the Company of goods sold under the contract the Purchaser shall forthwith give notice to the Company of such claim or action and the Company shall be at liberty at its own expense, but with the Purchaser's assistance if required and in the name of the Purchaser, to contest such claim or action or conduct any negotiations for the settlement thereof. The Purchaser shall not make any admission which might be prejudicial to any such negotiation or litigation.
- (b) Subject to the proviso contained in sub-clause (a) hereof the Company shall indemnify the Purchaser in respect of any such claim or action mentioned therein.
- (c) The Purchaser shall indemnify the Company against all claims and actions made or brought against the Company for infringement of any Patent Trade Mark or Registered Design where goods are manufactured and supplied to the Purchaser's design and/or specification.
- (d) In case the equipment is held to constitute an infringement of a Patent liable to indemnify the Purchaser as aforesaid the Company shall at its option either redesign or reconstruct the equipment to avoid the infringement or procure a royalty free licence to the Purchaser for the continued use of the equipment.
- (e) Any invention disclosure or information acquired by the Company in the performance of any order shall remain its property.

18. DESIGN

All designs, patterns, specifications, schematic drawings and other property whatsoever supplied to the Purchaser by the Company or to its order must be delivered to the Company immediately on demand and must not be used for or in connection with the installation or production of any equipment whatsoever other than equipment ordered from the Company. The Company reserves the copyright in all its drawings, prints, plans and other data.

19. SUBCONTRACTING

The Company reserves the right to sub-contract the fulfilment of the order or any part thereof or any other work it is obliged to carry out under the order of these conditions.

20. COMPLIANCE WITH CODES

Where the contract requires or implies compliance with any legislation codes regulations standards or other rules, the Company only accepts responsibility for compliance with such legislation codes regulations standards or rules as published at the date of the Company's tender or quotation.

21. ILLUSTRATIVE MATERIAL

Unless otherwise stated, only the specifications set out in the quotation are (subject to Condition 2) to be binding on the Company in respect of the execution of the Purchaser's order and all descriptive drawings and particulars of weights and dimensions which may be enclosed with this quotation and in particular (but without prejudice to the generality of the foregoing) the descriptions and illustrations contained in the Company's catalogues, price lists and other printed matter and descriptions and/or demonstrations of products or processes prior to or after the quotation are merely to present a general idea of the equipment described therein and shall not form part of the contract. After acceptance of the quotation, a set of certified outline prints will be supplied free of charge if requested.

22. FORCE MAJEURE

In the event of any circumstances, contingency or force majeure occurring beyond the Company's control or any lock-out by the Company of its own workmen preventing, impeding or interfering with the manufacture or despatch of the whole or part of the equipment, the Company reserves the right to suspend and/or cancel the contract or delivery without incurring liability for any direct or consequential loss, injury or damage which may be caused or sustained by the Purchaser and/or any third party in consequences of such suspension and/or cancellation.

23. LAW

All contracts shall be governed in all respect by English law and the English courts (unless otherwise mutually agreed in writing) shall have exclusive jurisdiction.