

DARGLOW ENGINEERING LIMITED ('DEL')
TERMS OF BUSINESS

1 INTERPRETATION

1.1 In these conditions

"BUYER" means the person who accepts a quotation of the Seller for the sale of the Goods or whose order for the Goods is accepted by the Seller.

"GOODS" means the goods (including any installation of the goods or any parts for them) which the Seller is to supply in accordance with the Conditions.

"SELLER" means Darglow Engineering Limited (registered in England and Wales under number _____)

"CONDITIONS" means the standard terms and conditions of sale set out in this document and (unless the contract otherwise requires) includes any special terms and conditions agreed in writing between the Buyer and Seller.

"CONTRACT" means the contract for the purchase and sale of the Goods.

"WRITING" includes telex cable facsimile electronic transmission and comparable means of communication.

1.1.1 Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended re enacted or extended at the relevant time

1.1.2 The headings in these Conditions are for convenience only and shall not affect their interpretation

2 BASIS OF THE SALE

The Seller shall sell and the Buyer shall purchase the Goods in accordance with any written quotation by the Seller which is accepted by the Buyer or any written order by the Buyer which is accepted by the Seller subject in either case to these Conditions which shall govern the evaluation of any other terms and conditions subject to which any such quotation is accepted or purported to be accepted or any such order is made or purported to be made by the Buyer.

2.1 No variation to these Conditions shall be binding unless agreed in writing between the authorised representatives of the Seller and the Buyer.

2.2 The Seller's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Seller in writing. In entering the Contract the Buyer acknowledges that it does not rely on any such representations which are not so confirmed.

2.3 Any advice or recommendation given by the Seller or its employees or agents to the Buyer or its employees or agents to the Buyer or its employees or agents as to storage application or use of the Goods which is not confirmed in writing by the Seller is followed or acted upon entirely at the Buyer's own risk and accordingly the Seller shall not be liable for any such advice or recommendation which is not so confirmed.

2.4 Any typographical clerical or other error or omission in any literature quotation price list acceptance of offer invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.

3 ORDER AND SPECIFICATIONS

3.1 No order submitted by the Buyer shall be deemed to be accepted by the Seller unless and until confirmed in writing by the Seller's authorised representative.

3.2 The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any order (including any applicable explanation) submitted by the Buyer and for giving the Seller any necessary information relating to the Goods within a sufficient time to enable the Seller to give the Seller's charges for transport packaging and insurance.

3.3 The quantity quality and description of and any specification for the Goods shall be as stated in the Seller's quotation (if accepted by the Buyer) or the Buyer's order (if accepted by the Seller).

3.4 No order which has been accepted by the Seller may be cancelled by the Buyer except without the agreement in writing and on terms that the Buyer shall indemnify the Seller in full against all loss (including loss of profit) costs (including the cost of labour and materials used) damages charges and expenses incurred by the Seller as a result of cancellation.

4. PRICE OF THE GOODS

4.1 The price of the Goods shall be the Seller's quoted price or where no price has been quoted (or a quoted price is no longer valid) the price listed in the Seller's published price list current at the date of acceptance of the order. Where the Goods are supplied for export from the United Kingdom the Seller's published export price list shall apply. All prices quoted are valid for 30 days only or until earlier acceptance by the Buyer after which time they may be altered by the Seller without giving notice to the Buyer.

4.2 The Seller reserves the right by giving notice to the Buyer at any time before delivery to increase the price of the Goods to reflect any increase in the cost to the Seller which is due to any factor beyond the control of the Seller (such as without limitation any foreign exchange fluctuation currency regulation alteration or duties significant in costs of labour materials or other costs of manufacture) any change in delivery dates quantities or specifications for the Goods which is requested by the Buyer to give the Seller adequate information or instructions.

4.3 Except as otherwise stated under terms of any quotation or in any price list of the Seller and unless otherwise agreed in writing between the Buyer and Seller and where the Seller agrees to deliver the Goods otherwise than at the Seller's premises the Buyer shall be liable to pay the Seller's charges for transport packaging and insurance.

4.4 The price is exclusive of any applicable Value Added Tax which the Buyer shall be additionally liable to pay the Seller. If the Goods are to be exported within the EU a valid VAT number from the destination country must be submitted to the Seller prior to the dispatch of the Goods. If no valid VAT number is submitted UK VAT will be charged on all liable Goods.

4.5 The cost of pallets and returnable containers will be charged to the Buyer in addition to the price of the Goods but full credit will be given to the Buyer provided they are returned undamaged to the Seller before the due payment date.

5. TERMS OF PAYMENT

5.1 If there are no special terms agreed in writing between the Buyer and the Seller then a 50 % deposit will be required upon confirmation of order and full payment received prior to dispatch or agreed delivery date whichever is the sooner.

5.2 A Trade Buyer subject to receiving an acceptable trade reference shall pay the price of the Goods (less any trade discount to which the Trade Buyer is entitled but without further deduction) within 30 days of the date of the Seller's invoice and the Seller shall be entitled to recover the price notwithstanding that delivery may not have taken place and the property in the Goods has not passed to the Buyer. The time for payment of the price shall be of the essence of the Contract. Receipts for payment will be issued only upon request.

5.3 If the Buyer fails to make any payment on the due date then without prejudice to any other right or remedy available to the Seller the Seller shall be entitled to:

5.3.1 Cancel the Contract and resell the Goods

5.3.2 Appropriate any payment made by the Buyer to such of the Goods (or Goods supplied under any other contract between the Buyer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer) and

5.3.3 Charge the Buyer interest (both before and after any judgment) on the amount unpaid at the rate of 2% per month until payment in full has been made.

6 DELIVERY

6.1 Delivery of the Goods shall be made by the Buyer collecting the Goods at the Seller's premises at any time after the Seller has notified the Buyer that the Goods are ready for collection or if some other place for delivery is agreed by the Seller by the Seller delivering the Goods to that place.

6.2 Any dates quoted for delivery of the Goods are approximate only and the Seller shall not be liable for any delay in delivery of the Goods however caused. Time for delivery shall not be of the essence of the Contract unless previously agreed by the Seller in writing. The Goods may be delivered by the Seller in advance of the quoted delivery date upon giving reasonable notice to the Buyer.

6.3 Where the Goods are to be delivered by instalments each delivery shall constitute a separate contract and failure by the Seller to deliver any one or more of the instalments in accordance with these conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.

6.4 If the Seller fails to deliver the Goods (or any instalment) for any reason other than any cause beyond the Seller's reasonable control or the Buyer's fault and the Seller is accordingly liable to the Buyer the Seller's liability shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest available market) of similar goods to replace those not delivered over the price of the Goods.

6.5 If the Buyer fails to take delivery of the Goods or fails to give the Seller adequate delivery instructions at the time stated for delivery (otherwise than by the Seller's fault) then without prejudice to any right or remedy available to the Seller the Seller may:

6.5.1 Store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage or

6.5.2 Sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the price under the Contract or charge the Buyer for any shortfall below the price under the contract.

7 RISK AND PROPERTY

7.1 Risk of damage to or the loss of goods shall pass to the Buyer:

7.1.1 In the case of Goods to be delivered at the Seller's premises at the time when the Seller notifies the Buyer that the Goods are available for collection or:

7.1.2 In the case of Goods to be otherwise than at the Seller's premises at the time of delivery or if the Buyer wrongfully fails to take delivery of the Goods the time when the seller tendered delivery of the Goods.

7.2 Notwithstanding delivery and the passing of risk in the Goods or any other provision of these Conditions the property in the Goods shall not pass to the Buyer until the Seller has received in cash or cleared funds payment in full of the price of the Goods and all other goods agreed to be sold by the Seller to the Buyer for which payment is then due.

7.3 Until such time as the property in the Goods passes to the Buyer the Buyer shall hold the Goods as the Seller's fiduciary agent and bailee and shall keep the Goods separate from those of the Buyer and third parties and properly stored protected and insured and identified as the Seller's property but shall be entitled to resell or use the Goods in the ordinary course of its business

7.4 Until such time as the property in the Goods passes to the Buyer (and provided that the Goods are still in existence and have not been resold) the Seller shall be entitled at any time to require the Buyer to deliver up the Goods to the Seller if required to do so forthwith to enter upon any premises of the Buyer or any third party where the Goods are stored and recover the Goods.

7.5 The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Seller but if the buyer does so all moneys owed by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.

7.6 The Seller and its employees accept no responsibility for loss damage or delay arising from any cause whatsoever unless such loss damage or delay was caused by or resulted from the seller's negligence or deliberate act or that of those for whom the Seller is responsible. Subject to that exception all goods are repaired worked on otherwise managed and kept at the sole risk of the Buyer. The Buyer is required to adequately insure against all risks and third party risk as they may be liable for damage caused by themselves or their servants or agents whilst on or about the Seller's premises

8. WARRANTIES AND LIABILITY

8.1 Subject to the Conditions set out below the Seller warrants that the Goods will correspond with their specification at the time of delivery and will be free from defects in material and workmanship for a period of one year from the date of their initial use or one year from delivery whichever is the first to expire unless otherwise as stated in respect of individual products.

8.2 The above warranty is given by the Seller subject to the following conditions:

8.2.1 The seller shall be under no liability in respect of any defect in the Goods arising from drawing design or specification supplied by the Buyer nor in respect of any defect arising from fair wear and tear wilful damage negligence abnormal working conditions failure to follow the Seller's instructions (whether oral or in writing) misuse alteration or repair of the Goods without the Seller's approval.

8.2.2 The Seller shall be under no liability under the above warranty (or any other warranty condition or guarantee) if the total price for the Goods has not been paid by the due date for payment

8.2.3 The above warranty does not extend to parts materials or equipment not manufactured by the Seller in respect of which the Buyer shall only be entitled to the benefit of any such warranty guarantee as if given by the manufacturer to the Seller. Subject as expressly provided in these Conditions and except where the Goods are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977) all warranties conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

8.4 Where the Goods are sold under a consumer transaction (as defined by the Consumer Transactions (Restrictions on Statements) Order 1976) the statutory rights of the Buyer are not affected by these Conditions.

8.5 Any claim by the Buyer which is based upon any defect in the quality of the Goods or their failure to correspond with specification (whether or not delivery is refused by the Buyer) be notified to the Seller within 7 days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure. If delivery is not refused and the Buyer does not notify the Seller accordingly the Buyer shall not be entitled to reject the Goods and the Seller shall have no liability for such defect or failure and the Buyer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.

8.6 Where any valid claim in respect of any of the Goods which is based on any defect in the quality or condition of the Goods or their failure to meet specification is notified to the Seller in accordance with these Conditions the Seller shall be entitled to replace the Goods (or the part in question) free of charge or at the Seller's sole discretion refund to the Buyer the price of the Goods (or a proportionate part of the price) but the Seller shall have no further liability to the Buyer. Except in respect of death or personal injury caused by the Seller's negligence the Seller shall not be liable to the Buyer by reason of any representation (unless fraudulent) or any implied warranty condition or other term or any duty at common law or under the express terms of the Contract for any indirect special or consequential loss or damage (whether for loss of profit or otherwise) costs expenses or other claims for compensation whatsoever (whether caused by the negligence of the Seller's employees or agents or otherwise) which arise out of or in connection with the supply of the Goods or their resale by the Buyer and the entire liability of the Seller under or in connection with the Contract shall not exceed the price of the Goods except as expressly provided in these Conditions.

8.8 The Seller shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing or any failure to perform any of the Seller's obligations in relation to the Goods if the delay or failure was due to any cause beyond the Seller's reasonable control. Without prejudice to the generality to the foregoing the following shall be regarded as caused beyond the Seller's reasonable control:

8.8.1 Act of God explosions flood tempest fire or accident;

8.8.2 War or threat of war sabotage insurrection civil disturbance or requisition;

8.8.3 Acts restrictions regulations by laws prohibitions or measures of any kind on the part of any governmental parliamentary or local authority;

8.8.4 Import or export regulations or embargoes;

8.8.5 Strikes lock outs or other industrial actions or trade disputes (whether involving employees of the Seller or of a third party);

8.8.6 Difficulties in obtaining raw materials labour parts or machinery;

8.8.7 Power failure or breakdown in machinery.

9. INDEMNITY

9.1 If any claim is made against the Buyer that the Goods infringe or that their use or resale infringes the patent copyright design trade mark or other industrial or intellectual property rights of any other person then unless the claim arises from the use of any drawing design or specification supplied by the Buyer the Seller shall indemnify the Buyer against all loss damages costs and expenses awarded against or incurred by the Buyer in connection with the claim or paid or agreed to be paid by the Buyer in settlement of the claim provided that:

9.1.1 The Seller is given full control of any proceedings or negotiations in connection with any such claim;

9.1.2 The Buyer shall give the Seller all reasonable assistance for the purposes of any such proceedings or negotiations;

9.1.3 Except pursuant to a final award the Buyer shall not pay or accept any such claim or compromise any such proceedings without the consent of the Seller (which shall not be unreasonably withheld);

9.1.4 The Buyer shall do nothing which would or might vitiate any policy of insurance or insurance cover which the Buyer may have in relation to such infringement and this indemnity shall not apply to the extent that the Buyer recovers any sums under any such policy cover (which the Buyer shall use its best endeavours to do);

9.1.5 The Seller shall be entitled to the benefit of and the Buyer shall accordingly account to the Seller for all damages and costs (if any) awarded in favour of the Buyer which are payable by or agreed with the consent of the Buyer (which consent shall not be unreasonably withheld) to be paid by any other party in respect of any such claim; and

9.1.6 Without prejudice to any duty of the Buyer at common law the Seller shall be entitled to require the Buyer to take such steps as the Seller may reasonably require to mitigate or reduce any such loss damages costs or expenses for which the Seller is liable to indemnify the Buyer under this clause.

10. INSOLVENCY OF BUYER

10.1 This clause applies if:

10.1.1 The Buyer makes any voluntary agreement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction) or;

10.1.2 An encumbrancer takes possession or a receiver is appointed of any of the property or assets of the Buyer or;

10.1.3 The Buyer ceases or threatens to cease to carry on business or;

10.1.4 The Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly

10.2 If this clause applies then without prejudice to any other right or remedy available to the Seller the Seller shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Buyer and if the Goods have been delivered but not paid for the price shall become immediately payable notwithstanding any previous agreement or arrangement to the contrary.

11. EXPORT TIME

11.1 In these or any other Conditions agreed by the Seller and the Buyer "Incoterms" means the international rules for the interpretation of trade names of the International Chamber of Commerce as in force at the date when the Contract is made. Unless the context otherwise requires any term or expression which is defined in or given a particular meaning by the provisions of Incoterms shall have the same meaning in these Conditions but if there is any conflict between the provisions of Incoterms and these Conditions the latter shall prevail.

11.2 Where the Goods are supplied for export from the United Kingdom the provisions of this clause 11 shall (subject to any special terms agreed in writing between the Buyer and the Seller) apply notwithstanding any other provision of these conditions

11.3 The Buyer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and for the payment of any duties on them

11.4 Unless otherwise agreed in writing between the Buyer and the Seller the Goods shall be delivered FOB for air or seaport of shipment and the Seller shall be under no obligation to give notice under Section 32 (3) of the Sale of Goods Act 1979

11.5 The Buyer shall be responsible for arranging for testing and inspection of the Goods at the Seller's premises before shipment. The Seller shall have no liability for any claim in respect of any defect in the Goods which would be apparent on inspection and which is made after shipment or in respect of any damage during transit

11.6 The Buyer undertakes not to offer the Goods for resale in any other country except as agreed by the Seller to the Buyer at or before the time the Buyer's order is placed or to sell the Goods to any person if the Buyer knows or has reason to believe that that person intends to resell the Goods in any such country -

12. GENERAL

Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to that party at its registered office or principle place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.

12.1 No waiver by the Seller of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.

12.2 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provision in question shall not be affected.

12.3 The Contract shall be governed by the laws of England and the Buyer agrees to submit to the non exclusive jurisdiction of the English courts.