

DURA PUMP LTD - GENERAL CONDITIONS FOR TRADE SUPPLIES OR SUPPLY ONLY CONTRACTS

1. DEFINITIONS

“The Purchaser” means the person or company with whom the Supplier has supplied goods or materials.

“The Supplier” means Dura Pump LTD or any subsidiary company

“The Contract” means the Purchaser’s contract order or any Purchase Order given to the Supplier but excluding any terms or conditions of contract contained therein unless specifically agreed in writing by a Director of the Supplier

“The Specification” includes the description of the goods to be provided as set out in the Contract including requirements, samples, patterns and any drawings forming part of the Purchaser’s own contract with his Employer insofar as they are provided to the Supplier by the Purchaser within such reasonable time to enable the Supplier to incorporate such Specification into his supply.

“Guarantee” means the guarantee issued by the Supplier to the Purchaser which shall, in any event, be limited to 12 months from the contract date.

2. These Conditions shall form part of the Supply agreement. Unless expressly accepted in writing by a Director of the Supplier, no alternative to or qualification of these terms and conditions shall be deemed to apply to the Supply agreement whether contained in any of the Purchaser’s written or printed documents or otherwise. For the avoidance of doubt, the provisions of these terms shall prevail.

3. All Goods and Materials provided under the Supply contract shall be in accordance with the Specification unless specified otherwise.

4. Material samples submitted for approval by the Supplier show substance and general character only. Colour, size, thickness or shape cannot be guaranteed. Technical information quoted is based on information generally distributed by manufacturers and the Supplier cannot warrant its accuracy.

5. All Goods and Materials either collected by the Purchaser or delivered to the Purchaser’s site by the Supplier will remain the Supplier’s property with title fully vested in the Supplier until the Purchaser has paid for the Goods and Materials in full and if the Purchaser defaults in respect of any obligations to make payments under the contract the Supplier may enter the site and repossess and remove the materials until such time as all sums due have been paid in full. The risk of loss or damage to the goods remains at all times with the Purchaser.

6. The prices quoted are based upon dimensions, quantities, drawings and specifications given at time of order. Should any variation to the Supply by way of addition, omission, alteration or substitution result in additional costs to the Supplier, the Purchaser shall pay such additional costs including any such reasonable profit that the Supplier may apply.

7. Time for completion is not of the essence of this contract. Delivery dates quoted by the Supplier may be extended without express agreement of the Purchaser if delay in supply of the materials is caused by circumstances beyond the Supplier’s reasonable control. The Supplier will use his best reasonable endeavors to ensure that the Goods being supplied are supplied within the time stated in the Supplier’s Quotation, otherwise within a reasonable time.

8. Payment (Trade Accounts)

(a) The following terms will apply to Trade Accounts unless notified otherwise in writing by a Director of the Supplier.

(b) The Supplier may invoice for interim payments each month, as the Works proceed. The sums on each interim invoice become due upon the date of issue, and the final date for payment shall be no more than 28 days thereafter. The full price (less any interim payments and any agreed retention) + VAT will be invoiced on completion of the Works and the final date for payment shall be 28 days after the date of the invoice.

(c) The Purchaser will not be entitled to withhold payment in whole or in part of any sum due unless he issues a written notice of intention to withhold payment not less than 3 days before the final date for payment specifying the amount proposed to be withheld and the ground for the withholding or if there is more than one ground each ground and the amount attributable to it. In any event no set-off or abatement will be permitted by reference to any sum due under one or more other contracts. Discrepancies shall be notified by the Purchaser to the Supplier within 7 days of the date of supply

(d) The Purchaser will not be entitled to make any retention, unless provided for in the Quotation or otherwise agreed in writing by a Director of the Supplier.

(e) If any payment is not made by the Purchaser by the expiry of its respective Final date for Payment the Supplier will be entitled to statutory compensation and to charge interest, pursuant to the Late Payment of Commercial Debts Act. The applicable rate is 8% per annum above Bank of England base rate from time to time. In addition the Supplier will after the expiry of seven days from the giving of written notice to this effect to the Purchaser, be entitled to cease or suspend the Works and any works under any other contract with the Purchaser until such outstanding sum is paid

(f) The Supplier reserves the right to refuse to execute any order or contract if the arrangements for payment of the Purchaser’s credit are not satisfactory. In the case of non-payment of any account by its Final date for Payment or in the case of death, incapacity, bankruptcy or insolvency of the Purchaser or when the Purchaser is a Limited Company in the case of liquidation or the appointment of a receiver the purchase price of all goods delivered to date and/or any sums already due from the Purchaser shall become due and payable immediately from the Purchaser and in addition the Supplier has the right to cancel every contract made with the Purchaser or to cancel, suspend or discontinue delivery of goods and materials for same. This provision acts without prejudice to the Purchaser’s right to recover any loss sustained, caused by the above circumstances.

9. Payment (Non-Trade & Cash Accounts)

(a) The following terms will apply to Non-Trade and Cash Accounts unless notified otherwise in writing by a Director of the Supplier.

(b) The Supplier will invoice for the full sum, plus any applicable VAT and less the deposit previously paid, upon collection (or delivery) of the Goods and Materials ordered by the Purchaser. It is a condition precedent of this contract that the sums on the invoice become immediately due and are immediately payable. The Supplier reserves the right not to release such Goods and Materials to be supplied until payment is made in full.

(c) Payment shall be by way of cash, bank transfer, cheque or money order made payable to the company.

10. Guarantee

(a) The Supplier will rectify at its own cost any defects or faults which appear and are notified by the Purchaser to the Supplier in writing within 7 days of completion of the supply taking place and are due to defective workmanship by the Supplier or defective materials supplied by the Supplier. The Supplier shall be afforded reasonable opportunity and facilities to investigate such claims.

(b) All goods are supplied on the basis that no guarantee is given regarding freedom from condensation, minor imperfections or shape variations in the glass

11. The Supplier will take reasonable care to supply materials of adequate quality and to manufacture the Works in a good and workmanlike manner, but will not be liable for any consequential loss or damage suffered by the Purchaser however arising save for any manufacturer’s warranty.

12. The Supplier reserves the right to cancel all or part of orders to the Purchaser without charge.

13. The Purchaser shall be liable for and shall maintain such insurances as necessary to indemnify the Supplier against any liability, loss, claim, or proceedings whatsoever arising in respect of personal injury to or death of any person or in respect of any injury or damage whatsoever to any property arising out of the course of or caused by the carrying out of the supply of the goods being provided by the Supplier unless due to any act or neglect of the Supplier, his servants or agents.

14. The Purchaser shall not have the right to set off against any amount due from him to the Supplier any sum or sums which at the date of set off are due and owing to the Supplier under any Contract whatsoever between the Purchaser and the Supplier or between the Purchaser and any company which is either a subsidiary of the Supplier within the meaning of Section 736 of the Companies Act 1985 or which is an associated company of the Supplier. For the purposes of this clause only “associate company” means (a) a company which directly or indirectly owns or holds more than 50% of the share capital or voting interest of the Sub-Supplier or (b) a company in which more than 50% of the share capital or voting interests are owned or held directly or indirectly by a company falling within sub-paragraph (a) above.

15. Notwithstanding that this contract is a contract for the supply of Materials and Goods, either party may at any time by giving written notice to the other, refer any dispute or difference under or in connection with the Supply Contract to adjudication. Unless otherwise agreed the adjudicator shall be appointed and the adjudication conducted in accordance with the adjudication procedures as set out in the Scheme for Construction Contracts. The adjudicator’s decision is binding until the dispute or difference is finally determined by Arbitration under the CIMAR rules, or the Courts.

16. This Supply contract shall be construed in accordance with English law.