

# STANDARD CONDITIONS OF CONTRACT FOR THE SALE OF GOODS

These are the terms and conditions on which DAABON UK LTD will do business with the Buyer.  
Please read them carefully, particularly clause 11 (which limits the Company's liability).

## INTERPRETATION

In these conditions:-

"Buyer" means the person so described in the Contract;

"Company" means DAABON UK LTD and its successors and assigns;

"Conditions" means the standard terms and conditions of sale set out in this document and (unless the context requires otherwise) includes any special terms and conditions agreed in writing and signed by both the Company and the Buyer;

"Contract" means the contract for sale and purchase of the Goods incorporating the Conditions;

"Goods" means the goods (or any instalment of the goods or any part of them) described in the Contract;

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

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

## APPLICATION OF CONDITIONS OF SALE

2.1 The Company shall sell and the Buyer shall buy the Goods in accordance with the Contract.

2.2 Subject to any variation agreed in writing and signed by both the Company and the Buyer the Contract shall be on these conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Buyer purports to apply under any purchase order, confirmation of order, specification or other document).

2.3 No terms or conditions endorsed on, delivered with or contained in the Buyer's purchase order, confirmation of order, specification or other document shall form part of the Contract simply as a result of such document being referred to in the Contract.

2.4 Each order or acceptance of a quotation for Goods by the Buyer from the Company shall be deemed to be an offer by the Buyer to buy Goods subject to the Contract.

2.5 No order placed by the Buyer shall be deemed to be accepted by the Company until a written acceptance of that order is issued by the Company or (if earlier) the Company delivers the Goods to the Buyer.

2.6 The Buyer shall ensure that the terms of its order and any applicable specification are complete and accurate.

2.7 Any quotation is given on the basis that no Contract shall come into existence until the Company issues an acceptance of an order to the Buyer. Any quotation is indicative only and shall be subject to confirmation by the Company at the time an order is placed.

2.8 The Buyer accepts and agrees that the Company may at any time during the continuance of the Contract:

- (a) require the Buyer to complete a credit application form;
- (b) take up any references given by the Buyer on such credit application form;
- (c) at its sole discretion, set a credit limit for the Buyer based on the information provided on the credit application form and/or provided by such referees;
- (d) use a bona fide credit reference agency to assess or revise any credit limited applicable to the Buyer

and the Company reserves the right to refuse any order placed by the Buyer if the Company, in its absolute discretion, is not satisfied with the creditworthiness of the Buyer.

## PRICE

3.1 The price shall be the Company's quoted price or, where different, the price stated in the Company's acceptance of the Buyer's order.

3.2 The Company reserves the right to increase the price to reflect any increase in the cost to the Company which is due to any factor beyond the control of the Company such as, without limitation, foreign exchange fluctuations, currency regulation, alteration of duties, freight rates, supply shortages, insurance, label materials or other costs of manufacture, etc.

3.3 The price for the Goods shall be exclusive of any value added tax and unless otherwise agreed all costs or charges in relation to packaging, loading, unloading, carriage and insurance, all of which amounts the Buyer shall pay in addition when it is due to pay for the Goods.

## PAYMENT

4.1 Subject to any special terms agreed in writing, the Company shall be entitled to invoice the Buyer for the price of the Goods on or at any time after delivery or deemed delivery provided always that time for payment shall be of the essence. Payment shall be due within 28 days from the date of delivery and if the Customer fails to make any payment on the due date then all issued invoices whether dated before or after the due date of the invoice in respect of which there has been default in payment shall become immediately due and payable in full.

4.2 No payment shall be deemed to have been received until the Company has received cleared funds and all payments payable to the Company under the Contract shall become due immediately on termination of the Contract (by either party and regardless of the reason for termination and despite any other provision of these Conditions).

4.3 The Buyer shall make all payments due under the Contract in full without any deduction whether by way of set off, counterclaim, discount, abatement or otherwise unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Buyer.

4.4 Without prejudice to any other right or remedy available to the Company, if the Buyer fails to pay the Company any sum when it falls due for payment, the Company shall in any event be entitled to:-

Cancel the Contract or suspend any further deliveries to the Buyer;

Appropriate any payment made by the Buyer to such goods supplied under any other contract between the Buyer and the Company as the Company may think fit; and

Charge the Buyer interest (both before and after any judgment) on the amount unpaid, at the rate of 2% per annum above the base rate of The Royal Bank of Scotland from time to time, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest). The Company reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.

## DELIVERY

5.1 Delivery of the Goods shall be made by the Company at such premises as are stated in the Contract or by the Buyer collecting the Goods or shall be deemed to take effect if the Company is unable to deliver the Goods due to any fault on the part of the Buyer or 14 days after the Company has notified the Buyer that the Goods are ready for collection. Where delivery takes place at the Buyer's premises or any other premises the Buyer shall provide at the delivery point (and at its own expense) appropriate equipment and manual labour for unloading the Goods.

5.2 Any dates quoted for delivery by the Company are approximate only. Time for delivery shall not be made of the essence of the Contract by notice.

5.3 The Company shall not be liable for any non-delivery of Goods (even if caused by the Company's negligence) unless the Buyer gives written notice to the Company of the non-delivery within 5 days of the date when the Goods would in the ordinary course of events have been received. Any liability of the Company for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods.

5.4 Without prejudice to any other right or remedy available to the Company, if the Buyer fails to take delivery of the Goods the Company may (at its sole discretion):

- (a) collect and store the Goods until delivery to the Buyer and charge the Buyer for the reasonable costs arising from such transport and storage (including insurance of storage); or
- (b) sell the Goods at the best price readily obtainable and (after deducting all reasonable transport, storage and selling expenses) account to the Buyer for any excess over the price under the Contract or charge the Buyer for any shortfall below the price under the Contract; or
- (c) transport the Goods to and invoice the Buyer for the costs of doing so; or
- (d) destroy the Goods after two months following the Buyer's failure to take delivery and the Buyer shall indemnify the Company in respect of the costs of transport, storage and destruction.

## PASSING OF RISK

Unless otherwise specified in the Contract, risk in the Goods passes to the Buyer at point of delivery to the Buyer.

## TIME OF DELIVERY & WEIGHT

7.1 The quantity of any consignment of Goods as recorded on dispatch

7.2 from the Company's place of business shall be conclusive evidence of the quantity received by the Buyer on delivery unless the Buyer can provide conclusive evidence to the contrary.

7.3 Where the delivery of the Goods is to be made in bulk, the Company reserves the right to deliver up to 10% more or 10% less than the quantity ordered without any adjustment in the price, and the quantity so delivered shall be deemed to be the quantity ordered. Claims by the Customer for weight differences will only be considered if made in writing within seven working days of delivery or collection.

## SALE AGAINST SAMPLE

If the Goods are sold against a sample then the specification of the sample is an indication only and the Goods supplied under the Contract may vary slightly in specification from the sample.

## REPRESENTATIONS

These terms and conditions apply to all the Company's sales and any variation to these Conditions and any representations about the Goods shall have no effect unless expressly agreed in writing and signed by a director of the Company. The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in the Contract. Nothing in this condition shall exclude or limit the Company's liability for fraudulent misrepresentation.

## QUALITY

10.1 The Company warrants that (subject to the other provisions of these clauses) on delivery the Goods shall:

- (a) be of satisfactory quality within the meaning of the Sales of Goods Act 1979; and

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(b) where the Contract includes a specification, be in accordance with that specification.

10.2 The Company shall not be in breach of any of the warranties in condition 10.1 unless:

(a) the Buyer give written notice of the defect to the Company within 7 days of delivery of the Goods; and

(b) the Company is given a reasonable opportunity after receiving the notice of examining the Goods.

10.3 The Company shall not be liable for a breach of any of the warranties in clause 10.1 if:

(a) the Buyer makes any further use of such Goods after giving such notice; or

(b) the defect arises because the Buyer failed to follow the Company's oral or written instructions as to the storage or use of the Goods or (if there are none) good trade practice.

10.4 Subject to clause 10.2 and clause 10.3, if any of the Goods do not conform with any of the warranties in clause 10.1 the Company shall at its option replace such Goods (or the defective part) or refund to the Buyer the price paid for such Goods (or that part of the price applicable to the defective part) provided that, if the Company so requests, the Buyer shall, at its own expense, return the Goods or the part of such Goods which is defective to such premises as the Company has notified.

10.5 If the Company complies with clause 10.4 it shall have no further liability for a breach of any of the warranties in clause 10.1 in respect of such Goods.

## LIMITATION OF LIABILITY

11.1 Subject as expressly provided in these conditions the following provisions set out the entire liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of:

(a) any breach of this agreement;

(b) any representation, statement or tortious act or omission including negligence arising under or in connection with the agreement;

(c) any use made or resale by the Buyer of any Goods, or of any product incorporating any of the Goods;

(d) any product recall of any of the Goods by any supplier to the Company.

11.2 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979 (as amended)) are, to the fullest extent permitted by law, excluded from this agreement.

11.3 Nothing in these conditions excludes or limits the liability of the Company:

(a) for death or personal injury caused by the Company's negligence; or

(b) for any matter which it would be illegal for the Company to exclude or attempt to exclude its liability; or

(c) for any liability in respect of section 2(3) of the Consumer Protection Act 1987; or

(d) for fraud or fraudulent misrepresentation.

11.4 Where there has been a product recall involving any of the Goods supplied by the Company to the Buyer, the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with such product recall shall be limited to the amount set out in clause 11.5 less any sum received by the Buyer from an insurer or any other person compensating for that loss.

11.5 Subject to the above:

(a) the Company's total liability in contract, tort (including negligence or breach of statutory duty),

misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the contract shall be limited to the invoice price plus damages limited to 50% of the same amount for any additional costs directly, reasonably and necessarily incurred by the Buyer in obtaining alternative products and/or services;

(b) the Company shall not be liable to the Buyer for any pure economic loss, loss of profit, loss of business, depletion of goodwill or otherwise, in each case whether direct, indirect or consequential or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with this agreement.

## RETENTION OF TITLE

12.1 Ownership of the Goods shall not pass to the Buyer until the Company has received in full (in cash or cleared funds) all sums due to it in respect of:

(a) the Goods; and

(b) all other sums which are or which become due to the Company from the Buyer on any account.

12.2 Until ownership of the Goods has passed to the Buyer, the Buyer shall:

(a) hold the Goods on a fiduciary basis as the Company's bailee;

(b) store the Goods (at no cost to the Company) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as the Company's property;

(c) not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and

(d) maintain the Goods in satisfactory condition and keep them insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company. On request the Buyer shall produce the policy of insurance to the Company.

12.3 The Buyer may resell the Goods before ownership has passed to it solely on the following conditions:

(a) any sale shall be effected in the ordinary course of the Buyer's business at full market value; and

(b) any such sale shall be a sale of the Company's property on the Buyer's own behalf and the Buyer shall deal as principal when making such a sale.

12.4 The Buyer's right to possession of the Goods shall terminate immediately if:

(a) the Buyer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Buyer or notice of intention to appoint an administrator is given by the Buyer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up of the Buyer or for the granting of an administration order in respect of the Buyer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer; or

(b) the Buyer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe or perform any of his/its obligations under the Contract or any other contract between the Company and the Buyer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Buyer ceases to trade; or

(c) the Buyer encumbers or in any way charges any of the Goods.

12.5 The Company shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Company.

12.6 The Buyer grants the Company, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Buyer's right to possession has terminated, to recover them.

12.7 Where the Company is unable to determine whether any Goods are the goods in respect of which the Buyer's right to possession has terminated, the Buyer shall be deemed to have sold all goods of the kind sold by the Company to the Buyer in the order in which they were invoiced to the Buyer.

12.8 On termination of the Contract, howsoever caused, the Company's (but not the Buyer's) rights contained in this condition 12 shall remain in effect.

## FORCE MAJEURE

If the processing, transport or delivery of the Goods is prevented, interrupted or delayed by war, civil war, shipwreck, or other breakdown or accident at sea, in the air or on land, fire, flood, Government order or control of any form, strikes, lock-outs, shortages outside the Company's control or circumstances beyond the reasonable control of the Company or usually described as "force majeure", or if all or part of the Goods assigned by the Company for the fulfilment of the Contract are destroyed or rendered unmerchantable, then the Company shall have the option of cancelling any or all of the deliveries under the Contract. Deliveries not cancelled will be delayed until the circumstances causing the delay cease.

## PACKING MATERIALS

Containers, pallets, packing cases, casks, drums, carboys and wrappers or packing materials of any description must be returned in good and clean condition unless otherwise stated by the Company in advance, the Customer being liable for any damage thereto, and if not returned to the Company within ninety days from the date of delivery then the Customer shall be liable to pay to the Company the replacement cost of such materials.

## GENERAL

15.1 The Contract is personal to the Buyer and the Buyer shall not assign or transfer or purport to assign or transfer to any other person any of its rights or sub-contract any of its obligations under the Contract.

15.2 Except where such rights are expressly set out in the Contract, the parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

15.3 Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to that other party at its registered office or principal 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.

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

15.5 If any provision of the Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the provisions of the Conditions and the remainder of the provision in question shall not be affected thereby.

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