

General Terms and Conditions (2016) – Dumper Depot Ltd

These General Terms and Conditions apply to all purchase contracts between Dumper Depot Ltd 'DD' and the buyer of our products ("Buyer").

1. ORDERS, PRICES AND PAYMENTS ETC.

- a) Any information on weight, measurement, capacity etc. regarding DD's products ("Products") are not binding unless explicitly referred to in an offer or written agreement. All technical data is provided subject to design modifications.
- b) Price lists are subject to alteration at any time with thirty (30) days' notice.
- c) All prices are exclusive of VAT and other taxes or official duties.
- d) An offering shall be binding for DD for thirty (30) days from the date of the offer, unless otherwise stated in writing. No representations outside the offer or order confirmation shall be binding upon DD unless confirmed in writing. Regardless of the foregoing, DD may adjust the offered or agreed price to reflect any change in cost to DD due to any factor beyond DD's control such as foreign exchange fluctuations and alterations in duties or taxes.
- e) Unless otherwise agreed in writing the Buyer shall make payment net cash in EUR in advance prior to DD's shipment. When invoice credit is agreed, any payment not made when due shall accrue interest from the due date until the date payment is made at a per annum rate of twenty (20) percent. Any overdue payment exceeding two (2) weeks entitles DD to cancel the contract. In case of such cancellation the buyer is obliged to return the Products immediately at its own cost and on its own risk.
- f) DD is entitled to request adequate security for any outstanding part of the purchase price until the purchase price has been fully paid. DD is entitled to cancel the purchase if adequate security, in the opinion of DD's, is not presented immediately upon such request.

2. DELIVERY

- a) Unless otherwise agreed in writing, all Products are sold Ex Works DD's warehouse. DD is entitled to make delivery by instalments.
- b) If the Buyer fails to take delivery of any shipped Products ("Shipment"), DD may at its option sell the Shipment for the account of the Buyer and the Buyer shall be liable for all costs and expenses incurred by DD and the difference between the proceeds of sales and the Buyer's purchase price.
- c) The Buyer shall inspect the Shipment immediately upon delivery and shall within seven (7) working days from receipt of the Shipment in the Buyer's warehouse notify DD of any matter or thing by reason of which the Shipment is not in accordance with the contract. If the Buyer shall fail to give such notice within said period, it shall conclusively be deemed that the Shipment with regard to quantity, number, weight and volume is in accordance with the contract and that the Buyer shall have no right to reject the Shipment.
- d) All delivery costs quoted are exclusive of insurance, goods are shipped CF (cost + freight) if insurance is required it must be stated by the client prior to booking with carrier. Goods are transported solely at the risk of the client. Responsibility for goods in transit lies with the receiver unless insurance is requested and payment for same applied.

3. TRANSPORTATION AND PACKAGING

- a) All quotations are Ex Works unless otherwise has been agreed. DD will handle packing and delivery of Products to the customer. Transportation, handling fees and insurance will be charged in accordance with DD's rates prevailing at the time of delivery.
- b) Any delivery date specified by DD is an estimate only and is not of the essence of the agreement and DD accepts no responsibility for delay howsoever caused.

4. GUARANTEE

- a) DD guarantees that new Products will be free of faults and shortcomings in construction, material and manufacture for a period of six (6) months from putting the Product into operation but maximum twelve (12) months Ex Works delivery.
- b) The guarantee is subject to the following conditions: (i) the Buyer has complied with its obligations in this agreement and in particular has made payment in full for the Products. (ii) the Buyer has not carried out any repair, alteration, process, operation or treatment to the Products without DD's written consent, and (iii) the Buyer notifies DD in writing of such fault or shortcoming no later than fourteen (14) days after the day the Buyer discovered or reasonably ought to have discovered the fault or shortcoming.
- c) After the receipt of a claim in accordance with the foregoing, and approved by DD, DD will, at DD's option, accept the return of the faulty Product and reimburse the customer an amount equal to the purchase price, or repair or replace the faulty Product.
- d) DD's responsibility for faults or shortcomings of delivered Products is limited to the above. The Buyer is not entitled to any other remedies, than those set out above, in relation to faults or shortcomings.
- e) DD sells used parts 'as is, where is'. Used parts are by nature pre-used and not new, such parts will be inspected, tested where necessary and hours of use noted to the client. Used parts carry no warranty at all. DD offers 30x days money back on all used parts sold where a customer is unhappy with the unit supplied.
- f) Components sold by DD must be fitted in accordance with OEM Fitting + maintenance procedures at all times. Failure to do so will invalidate warranty claims. Components must also be correctly fitted to the relevant vehicle for the unit specification and approved loads not exceeded. Also relevant vehicle must be operated in accordance to manufacturers specifications.
- g) Warranty cover is for unit rectification only, remove + refit costs are not covered by warranty. No contribution will be accepted for import, export or any third party costs

5. LIMITATION OF LIABILITY, INDEMNIFICATION

- a) DD shall not be liable in damages of any form or nature, whether direct or indirect, consequential or incidental, for defective Products or any other failure to fulfil its obligations under this agreement, except in case of gross negligence, willful misconduct, death or personal injury. The Buyer acknowledges and agrees that, with the exceptions in the preceding sentence, its rights under the guarantee provisions in Article 4 above comprise the Buyer's exclusive remedy.

- b) In the event any third party, who has purchased Products from the Buyer, is awarded damages from DD under any product liability law, the Buyer shall fully indemnify DD for such damages and for DD's reasonable costs in relation thereto, unless the damage in question was due to DD's gross negligence. DD will give the Buyer prompt notice of such claim and invite the Buyer to participate in DD's defense and any negotiation for a settlement with such third party.

6. INTELLECTUAL PROPERTY RIGHTS AND INFORMATION

- a) DD may without notice make any change to the specification of the Products. If Products are manufactured or any process is applied to the production at the request of the Buyer, the Buyer shall fully reimburse DD for any and all costs and damages that might occur as a result of the specification or application of process infringing third party intellectual property rights.
- b) The property of all documents and tooling prepared, manufactured or supplied by DD and all intellectual property rights therein shall vest in and remain with DD.
- c) The Buyer shall immediately notify DD of any claim of a third party alleging that Products delivered by DD infringe intellectual property rights. The Buyer shall upon DD's request give DD the sole authority to defend or settle the case, provided always that DD undertakes to do so at its own expense.
- d) If it is held that Products delivered under this agreement have infringed third party intellectual property rights, DD shall, at his own expense, and at DD's option, obtain for the Buyer the right to continue using the Product, replace or modify it so as to become non-infringing or, in exchange for the return of the Product, reimburse the price of the Product.
- e) The Buyer is not entitled to any other remedies, than those set out above, in relation to DD's Products infringing third party intellectual property rights.

7. BUYER'S OBLIGATIONS

- a) The Buyer shall obtain all necessary permits and certificates from any public authority or other regulated body to enable DD to comply with all statutory requirements and regulations.
- b) The Buyer shall maintain strict confidentiality in respect of the business affairs, documents, and intellectual property rights of DD's and shall not disclose or use the same except as necessary for the performance of the contract.

8. RETENTION OF TITLE

Products delivered shall remain the property of DD's until the Products have been paid in full.

9. FORCE MAJEURE

- a) If either party is prevented from performing its obligations under this agreement due to force majeure, the other party may not introduce any sanctions by reason thereof. However, if the hindrance regards the Buyer's possibility to carry out payment, DD is entitled to withhold delivery of any Shipment until payment has been effected. If the hindrance to effect payment lasts for more than four (4) weeks DD is entitled to cancel the purchase.
- b) The term "force majeure" means in this agreement that the performance under the purchase contract is prevented, aggravated or delayed due to war, rebellion or riot, mobilization or unexpected call for military service of similar dimensions, requisition, seizure, exchange restrictions, export- or import restrictions, general scarcity of merchandise, shortage of transportation, labour conflict, restrictions on fuel and power, fire, faulty or delayed deliveries from sub-contractors due to above causes, as well as any other circumstance beyond the control of the party.

10. GOVERNING LAW AND DISPUTES

- a) This agreement and any disputes hereunder shall be governed by Irish law.
- b) Any legal action relating to this agreement and all legal relationships associated with it shall be decided by District Court of Westmeath, Ireland as exclusive jurisdiction of first instance. However, DD is always entitled to bring a claim for overdue payment to the local court or enforcement service where the customer has its legal domicile.

11. MISCELLANEOUS

Either party's failure to enforce breach of this agreement or to exercise its rights due to such breach shall not be deemed a waiver of such rights to enforce any future breach of agreement.