

Draka Wire
(a business within Draka UK Limited)
Conditions of Sale and Quotation
Edition 01 January 2012

1. General

- (a) These Conditions shall apply to all tenders and quotations made and all orders and contracts for the sale of goods (“goods”) accepted by Draka. Special or additional terms of Purchaser contained in his order or otherwise shall be of no effect unless separately brought to Draka’s notice and accepted in its written acceptance.
- (b) Any variation or addition to any contract shall only be binding upon Draka if contained in writing and signed on Draka’s behalf by a director or other duly authorised person. Contracts may be cancelled only with Draka’s written consent and on terms which will indemnify Draka for all loss.
- (c) All orders (including orders placed pursuant to metal contracts) are subject to Draka’s written acceptance (“Draka’s acknowledgement”) signed by Draka’s duly authorised representative, and to Draka’s being able to obtain and use the necessary raw materials.
- (d) For the purposes of these Conditions, a “**Default**” occurs when the Purchaser either:
 - i) fails to make any payment due to Draka on or before the due date (whether or not such payment is due under the Contract; or
 - ii) commits any breach of the terms of the Contract; or
 - iii) Enters into any arrangement with any of its creditors; or
 - iv) has a receiver, receiver and manager, administrator, administrative receiver or liquidator appointed over all or any part of its undertaking or assets; or
 - v) has a petition for an administration order or for a winding-up order brought against it; or
 - vi) has proceedings similar or equivalent to iv) or v) above taken against it outside the UK; or
 - vii) suspends or ceases to carry on its business or becomes unable to pay its debts.
- (e) “**Draka**” means Draka UK Limited, having its registered office at Chickenhall Lane, Eastleigh, Hampshire, SO50 6YU (registered in England No. 939069);

2. Documents and Specifications

- (a) Unless otherwise stipulated in Draka’s acknowledgement, all catalogues, descriptions, illustrations, drawings, estimates of performance, dimensions or other specifications published or submitted with quotations by Draka are approximate only, are not warranted or guaranteed, and shall not form part of the Contract.
- (b) Draka reserves the right at any time to correct clerical or technical errors in the contract documents.
- (c) The Purchaser must (i) furnish Draka with all necessary specifications and information for the goods in good time and (ii) check that the said specifications and information and any drawings submitted by Draka are correct as set out in Draka’s acknowledgement of order. Failure by the Purchaser to do so will render Draka free of liability for any goods manufactured, priced or delivered and alleged by the Purchaser not to be compliant with the order.

3. Prices

- (a) All prices in Draka's quotations and acknowledgements are according to specified Incoterms exclusive of VAT. They are made up of the cost of raw material and basic conversion charges; in appropriate cases they include an additional charge for the cost of size, shape, special quality and other extras.
- (b) Draka reserves the right to increase the cost of the raw material element of goods, delivery of which has not been accepted by Purchaser for any reason within a period of 90 days from the originally agreed delivery date of the Purchaser's order, to the cost of such raw material on the London Metal Exchange on the date of the actual delivery.
- (c) Where the Purchaser does not take delivery in whole or in part Draka reserves the right to charge the Purchaser with a balancing charge. This charge is represented by the cost of raw material element of goods on the London Metal Exchange at the time of cancellation or 90 days from the original delivery date of the order, whichever is the earlier, compared to the cost of raw materials in the original order.
- (d) Purchaser shall pay the selling price as so increased or decreased in accordance with paragraphs (b) and (c) of this Condition.
- (e) The cost of packaging, carriage, insurance and freight will be charged extra where appropriate.

4. Terms of Payment

- (a) Payment is due in full by the date specified in Draka's acknowledgement or by the last day of the calendar month following the month in which the goods were despatched, or on the expiry of 30 days from the date on which Draka notifies the Purchaser that the goods are ready for despatch, whichever is the earliest.
- (b) Where the Contract is to be or may be fulfilled in separate deliveries or parts, payment for each such delivery or part shall be made as if the same constituted a separate contract.
- (c) Should Purchaser fail punctually to comply with the terms of payment, Draka shall be entitled to interest on any amount overdue at the rate of 2% above the Base Rate of Lloyds Bank plc from time to time in force.

5. Termination and Partial Deliveries

In the event of Purchaser for any reason whatsoever failing within one calendar month to effect any payment which may be due under the or any contract with Draka, or if he commits any breach of the Contract, or if he becomes insolvent or enters into a composition with or for the benefit of his creditors, or being a body corporate has a receiver or administrator appointed of its undertaking or assets or any part thereof, or save for the purposes of reconstruction or amalgamation, goes into liquidation, Draka shall thereupon be entitled, without prejudice to its other rights, forthwith to terminate the Contract or any unfulfilled part thereof, or at Draka's option to make partial deliveries.

6. Time for Despatch

- (a) Times for despatch and delivery expressed in the Contract are not of the essence. Draka shall be under no liability for any loss or damage to Purchaser or others arising directly or indirectly out of late despatch or delivery, whether due to Draka's fault or not, nor shall such late despatch or delivery be deemed to be a breach of contract, nor entitle Purchaser to cancel the Contract.
- (b) Draka shall be entitled, without liability on its part and without prejudice to its other rights, to terminate the Contract or any unfulfilled part thereof, or at Draka's option to suspend or make partial deliveries, if the completion of the manufacture of goods by Draka or by its sub-contractors or suppliers is prevented, hindered or delayed whether directly or indirectly, by reason of Purchaser failing to furnish necessary information or instructions, war, civil commotion,

governmental restrictions, transport difficulties, strikes, lock-outs, accidents or stoppages to works, shortages of labour, materials, equipment, fuel or power, machinery breakdown, force majeure or any other cause whatsoever beyond Draka's or its sub-contractors' or suppliers' reasonable control, whether such cause exists at the date of the order or not. Any such cause shall be deemed to prevent, hinder or delay Draka or its sub-contractors or suppliers if Draka or its sub-contractors or suppliers respectively are thereby prevented, hindered or delayed from fulfilling all aggregate obligations both under the Contract and under all other contracts, whether with Purchaser or with third parties, relating to the supply of the same or similar goods.

7. Delivery

- (a) When delivery is arranged by Draka, Purchaser shall be bound to accept delivery on arrival at his works, when risk shall pass to Purchaser. Purchaser must notify Draka and the carrier in writing (otherwise than upon the carrier's documents) of damage in transit, mis-delivery or quantity discrepancy immediately on arrival. Goods accepted without checking must be signed for as "not examined" otherwise no claim whatsoever will be accepted. Purchaser must notify Draka and the carrier in writing (otherwise than upon the carrier's documents) of non-delivery within 6 days where delivery is effected through the post or on Draka's own vehicles, 10 days where delivery is effected by road transport or rail, in all cases from the date of despatch advised to Purchaser.
- (b) Where delivery is arranged by Purchaser, risk shall pass to Purchaser on delivery to his carrier.
- (c) Without prejudice to Draka's other rights, should Purchaser, for any reason fail to collect or to take delivery of goods within 30 days of Draka's notification that they are ready for collection or despatch, Draka shall be entitled at Purchaser's risk and expense to store or effect storage of the goods elsewhere.
- (d) Purchaser warrants that any necessary unloading facilities will be available at the place of delivery.
- (e) Where goods are sold FOB Incoterms 2010 the risk in the goods shall pass to Purchaser immediately the goods are over the ship's rail, and Draka shall be under no obligation to give Purchaser the notice specified in Section 32(3) of the Sale of Goods Act 1979.

8. Faults and Defects and Exclusion of Liability

- (a) On arrival of goods Purchaser must immediately examine them and any visual faults or defects must be notified to Draka in writing within 3 days. Non-visual faults and defects must be notified within 90 days.
- (b) Upon Purchaser within the appropriate period provided by sub-clause (a) above notifying Draka of any fault or defect in the goods or within the appropriate period provided by clause 7(a) of damage in transit, mis-delivery or quantity discrepancy and in the case of allegedly defective or faulty goods upon their being returned to Draka within 30 days of such notification and upon the fault, defect or damage in transit, mis-delivery or quantity discrepancy being established to Draka's satisfaction, Draka shall replace such goods or make up any shortage. If goods delivered not in accordance with specification Draka shall accept the same for credit and replacement.
- (c) Draka shall not replace goods or make up shortages:-
 - (i) if faults or defects are not notified in accordance with this clause 8(a) or if damage in transit, mis-delivery or quantity discrepancy is not notified in accordance with clause 7(a);
 - (ii) in respect of which Purchaser or any third party has without Draka's previous written consent effected modifications or repairs;
 - (iii) if the fault or defects were caused by incorrect or negligent handling, disregard of operation instructions, overloading, unsuitable work, faulty erection or any other default by Purchaser or any third party;

- (iv) if the fault or defects were caused by fair wear and tear, accident or any other matter beyond Draka's reasonable control occurring after the date of arrival.
- (d) The terms of this Condition are in lieu of all conditions, warranties or other terms as to description, fitness for purpose, condition, satisfactory quality, quantity or otherwise in respect of the goods or packing, whether expressed in the Contract or implied by Common Law, custom or statute and notwithstanding that such purpose or condition may be, may become or may have been known to Draka. Apart from Draka's obligation to replace goods in accordance with the terms of this Condition, Draka accepts no liability either for faults or defects in goods or for any loss or damage to Purchaser or others arising directly or indirectly from any breach by Draka of the terms of the Contract or of the general law, and defects in quality or dimension shall not be a ground for the cancellation of the Contract or for the balance of the Contract by Purchaser.
- (e) Without prejudice to the generality of the foregoing:-
 - (i) Draka shall not be liable for any indirect or consequential loss or damage suffered by Purchaser, including but without limitations, delay, loss of production, loss of revenue, loss of contracts, loss of business, loss of anticipated savings, loss of profits or loss of or damage to other property or goods, nor shall Draka be liable for any loss or damage capable of being covered by insurance;
 - (ii) Draka shall not be liable for damages in excess of the total price stated in the Contract, even if Purchaser's loss or damage results from a fundamental breach or repudiation and even if further performance of the Contract is frustrated. Purchaser shall also indemnify Draka against all actions, claims or demands by third parties in tort or otherwise arising directly or indirectly in connection with fault or defects in the goods to the extent that the same exceeds the limitation of liability aforesaid.
- (f) In connection with faults or defects in the goods to the extent that the same exceeds the limitation of liability aforesaid the provisions of this Condition 8 shall apply, subject to any relevant limitations imposed by the Unfair Contract Terms Act 1977.
- (g) Draka reserves the right to deliver goods to within +10% or -5% of the quantity or weight specified in Purchaser's order, and payment shall be made for the actual quantity supplied pro rata.

9. Indemnity

Draka shall not be liable for, and Purchaser shall indemnify Draka against all claims by any person in tort or for infringement or alleged infringement of industrial property rights directly or indirectly connected with goods manufactured by Draka or with work done by Draka on goods in accordance with Purchaser's specifications or with the delivery to site or installation of goods.

10. Retention of Title

- (a) Title to the goods shall not pass to the Purchaser until Draka has received payment in full in cleared funds for:
 - (i) the goods; and
 - (ii) any other goods or services supplied by Draka to the Purchaser;
- (b) Until title to the goods has passed to the Purchaser, the Purchaser shall:
 - (i) hold the goods on a fiduciary basis as bailee for Draka;
 - (ii) store the goods separately from all other goods held by the Purchaser so that they are readily identifiable as Draka's property;
 - (iii) maintain the goods in satisfactory condition and keep them insured against

all risks for their full price from the date of delivery; and

- (iv) notify Draka immediately any Default occurs;

but the Purchaser may re-sell or use the goods in the ordinary course of its business.

- (c) If any Default occurs or Draka reasonably believes that any such event is about to happen and notifies the Purchaser accordingly, then:

- (i) any right of sale the Purchaser may have in respect of the goods shall cease automatically;

- (ii) provided that the goods have not been re-sold and without limiting any other right or remedy Draka may have, Draka may at any time require the Purchaser to deliver up the goods and if the Purchaser fails to do so promptly, enter any premises of the Purchaser or of any third party where the goods are stored in order to recover them.

- (d) Draka may at any time serve a written notice on the Purchaser stating that legal and beneficial ownership of all or part of the goods shall pass to the Purchaser. Ownership of such goods shall thereupon immediately pass to the Purchaser without prejudice to the Purchaser's obligation to pay for such goods.

11. Health and Safety at Work

The attention of Purchaser is drawn to the provisions of Section of the Health and Safety at Work etc., Act, 1974. Draka will make available on request, information on the design and construction of goods to ensure that, as far as is reasonably practicable, they are safe and without risk to health when properly used. It is the responsibility of Purchaser to take such steps as are necessary to ensure that appropriate information relevant to goods is made available to its employees and any person to whom Purchaser supplies them.

12. Legal Construction

The Contract and these Conditions shall in all respects be construed and operate in conformity with English law. If any of these Conditions or any part thereof is rendered void or unenforceable by any legislation to which it is subject, it shall be so void and unenforceable to that extent only.

13. Arbitration

All disputes differences and questions which may at any time arise between the parties hereto or their respective representatives or assigns touching or arising out of or in respect of these Conditions or the Contract or the subject matter thereof shall be referred to a single Arbitrator in accordance with the provisions of the Arbitration Act 1950 or any statutory modification or re-enactment thereof for the time being in force. In default of agreement, the Arbitrator shall be appointed by the President of the Law Society for the time being.
