

# Dane Architectural Systems Limited

## Standard Terms and Conditions of Sale



Established 1968

### 1. General

The Company's Contract with the Customer will be subject to the following conditions, which will prevail should they conflict with any others, and which can only be varied or waived by a director of the Company in writing.

### 2. Contract

The Company's quotation does not constitute an offer. An order from the Customer based on the Company's quotation shall constitute the offer. An acknowledgement of that order sent by the Company by normal post shall constitute the acceptance of that offer, or alternatively, the signing of a formal subcontract by both parties shall form a contract. All samples, leaflets, brochures, price lists, performance details or other details submitted by the Company do not form part of the contract unless expressly stated.

### 3. Price Fluctuation

The Company's quotation remains firm for thirty days from the date of issue, after which time the price may be altered without notice. If delivery/installation is later than three months from the date of the acceptance of the offer, the Company reserves the right to adjust its prices accordingly.

**Extras:** Where the Company's prices are based upon the particulars supplied by the Customer, any additional work or materials required, which were not apparent from those particulars, will be the subject of an extra charge.

### 4. Delivery, Unloading and Storage

Where the Company is required to deliver equipment to site, the Customer will arrange to bear sole responsibility for the cost of prompt UNLOADING and for stacking and storing the equipment. The Company's prices normally include delivery to site, but exclude the cost of unloading unless otherwise stated. Equipment on the site, fixed or unfixed, is at the Customer's sole risk and, in the event of any equipment being damaged, destroyed, lost or stolen, the Company shall be entitled to charge extra for any repairs or replacement parts.

### 5. Time For Delivery and Installation

(a) Any times stated by the Company for delivery, despatch or completion, either in its Quotation or by any other means, are not of the essence of any contract, either as to supply or as to installation. Such times are given by way of general information only and in the event that delivery, despatch or completion is not made for any reason whatsoever at the times stated, the Company shall not be liable for any loss or damage WHATSOEVER sustained by the Customer.

(b) The goods may be delivered by the Company in advance of the estimated delivery date upon giving reasonable notice to the Customer. In the event that the Customer does not take delivery of the goods forthwith upon being notified by the Company that manufacture has been completed, the Company shall be entitled to make reasonable extra charges to recover its storage costs.

(c) Where the contract provides for payment upon submission of a proforma invoice or other demand, the Company shall not be obliged to deliver and/or supply the said services until payment has been made.

### 6. Payments

(a) Unless otherwise stated in the Company's quotation, all prices are strictly Net and payment for the contract and all extras shall be made within 28 days of receipt of the Company's invoices without any discount or other reduction and without deferral on account of disputes or cross claims.

(b) At its sole discretion, the Company may require at any time by invoice that all, or part, of the price shall be paid in advance or on account and sums so invoiced shall be immediately payable, any balance remaining payable as otherwise provided herein.

(c) Should the Customer default in payment for whatever reason on the due date of any sum, without prejudice to any other right which the Company may have, the Company shall be entitled to be paid interest on such sum accruing from the due date at 1½% per month until actual date of payment.

(d) At its sole discretion, the Company may agree with the Customer in writing that stage payments shall be made on valuation dates to be agreed when the order is accepted and before work has commenced.

### 7. Warranty and Quality and Condition Of Goods

The Company warrants that goods, parts or materials manufactured by them shall be of good materials and workmanship and that good workmanship will be employed in assembling parts or materials not manufactured by them. This warranty is given by the Company subject to the following conditions:

(a) The Company shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence of the Customer, abnormal working conditions, failure to follow the Company's instructions (whether oral or in writing), misuse or alteration or repair of the Goods without the Company's approval.

(b) The Customer shall be responsible for ensuring the accuracy of the terms (including specification) of any order and the Company shall be under no liability in respect of any defect in the goods arising from any drawing, design, information or specification supplied by the Customer.

(c) Whilst every care is taken to ensure the operation of the equipment is satisfactory, no guarantee is given and any warranty is conditional on the equipment being properly installed, commissioned, serviced and maintained.

(d) The Company 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.

(e) The above warranty does not extend to parts, materials or equipment not manufactured by the Company, in respect of which the Customer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Company if the same is assignable.

### 8. Liability

(a) Any claim by the Customer which is based on any defect in the quality or condition of the goods, their failure to correspond with the specification or delivery shortages shall (whether or not delivery is refused by the Customer) be notified in writing to the Company within 7 days from the date of delivery. If delivery is not refused, and the Customer does not notify the Company accordingly, the Customer shall not be entitled to reject the goods and the Company shall have no liability for such defect or failure and the Customer shall be bound to pay the price as if the goods had been delivered in accordance with the Contract.

For any valid claims in respect of the goods which is notified to the Company in accordance with these Conditions, the Company shall be entitled to replace or repair the goods (or the part in question) free of charge, or at the Company's sole discretion refund to the Customer the price of the goods for a proportionate part of the price, but the Company shall have no further liability to the Customer.

(b) Except in respect of death or personal injury caused by the Company's negligence, the Company shall not be liable to the Customer by reason of any representation (unless fraudulent), or any implied warranty, condition or other terms, 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 Company, its employees or agents or otherwise) which arise out of or in connection with the supply of the goods or their use or resale by the Customer, and the entire liability of the Company under or in connection with the contract shall not exceed the price of the goods, except as expressly provided in these Conditions.

(c) 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), the Company accepts no liability whatsoever in regard to goods or materials whether manufactured by themselves or by any other person and all warranties, conditions or other terms implied by statute or common law (including fitness of the goods for their purpose) are excluded to the fullest extent permitted by law.

### 9. Compliance With Regulations

The Customer shall make all arrangements to comply with and satisfy himself that the use and performance of the installation and equipment will comply with every applicable Statute, Bye Law or other lawful requirement of the Government, Local Authority or other Competent Authority or Body, including the obtaining of all necessary licences, permits or other consents (including those required from any third party) which are or may be required in connection with the performance of the contract and the installation and use of the equipment, including ensuring that the building/structure is able to accept the weight of the equipment to be installed, unless otherwise stated.

### 10. Injury To Persons and Property and Indemnities

The Customer shall take all such steps as may be necessary to ensure the safety of any of the Company's representatives who visit any premises of the Customer, whether for the purposes of inspection or installation, maintenance or repair of the goods. The Customer shall indemnify the Company against any liability, loss, claim or proceedings which may be occasioned by the negligence or defective workmanship of the Customer or its servants and agents, or for any other cause whilst the Company or its representatives are in the process of delivering, installing, maintaining or repairing the goods at the Customer's premises. The Customer warrants also that all ladders, scaffolding, hoists, lifting tackle and any other equipment supplied for the Company's use are suitable for the purpose required and conform with every applicable current Statute, Bye Law or other lawful requirement of the Government, Local Authority or other Competent Authority or Body and in particular with the Building (Safety, Health and Welfare) Regulations in force at the time.

### 11. Cancellation

Equipment is manufactured to the design and specification of each order and unless cancellation instructions are received by the Company in writing prior to the date of acceptance of offer, the full contract value is payable. The Company may grant an allowance following the late receipt of the cancellation notice in exceptional circumstances at its sole discretion.

### 12. Subcontract

The Company reserves the right to subcontract all or any part of the contract, at its sole discretion.

### 13. Installation Work

The price for the work involving installation is based, unless otherwise stated, on the assumption that the work can be carried out in the course of one continuous visit to site and during normal weekday hours without interruption. The Company is entitled to full payment of costs incurred as the result of it being prevented for whatever reason from proceeding uninterrupted with the installation including (but not limited to) travelling costs and costs incurred for evening and weekday working.

### 14. Site Equipment

Unless otherwise agreed in writing, the Customer shall arrange at his expense, for the supply and erection of all the necessary ladders, scaffolding, hoists, lifting tackle, tarpaulins, dust and protective sheets, provision of 110v power supply for hand tools and any other equipment or services that the Company's engineers may reasonably request on site to enable them to do their work. Additionally, the Company has made no allowance and shall not be liable for preparing openings, supporting steelwork, heavy lifting tackle (cranes), etc. unless otherwise stated in the quotation.

### 15. Revocation

The Company's consent to the Customer's possession of the goods and any right the Customer may have to possession of the goods shall cease and the Company reserves the right to:

(a) Treat all sums due or to become due from the Customer to the Company on any other account whatsoever as immediately payable and

(b) Cancel any contract it has with the Customer or to cancel or suspend delivery of goods and materials execution of work and

(c) Repossess and resell any goods to which it has retained title if any of the following events occur:

i) any sum owed by the Customer to the Company (whether in respect of the goods or otherwise) is not paid to the Company by the date when it is due

ii) the Customer commits any breach of contract with the Company

iii) being a person, die, being certified mentally incapable, being insolvent, commit an act of Bankruptcy, or have a receiving order in Bankruptcy made out against the Customer, or

iv) being a company go into liquidation whether compulsory or voluntary, other than for the purpose of, and followed by amalgamation or reconstruction or have a Receiver appointed over any part of the Customer's business or assets, or an administration order is made on respect of the company

### 16. Title

(a) Notwithstanding delivery and the passing of risk, title in the goods shall not pass to the Customer and the goods shall remain the property of the Company until such time as the Customer shall have paid to the Company the purchase price (together with accrued interest) and all other amounts owed by the Customer in respect of any other contracts for the sale of goods. Until title of the goods has passed, the Customer shall hold the goods in a fiduciary capacity and shall

i) not part with possession of the goods otherwise in accordance with Clause 16(d)

ii) take proper care of the goods, keep them properly insured and take all reasonable steps to prevent any damage to or deterioration of them

iii) keep the goods free from any charge, lien or encumbrance and store the goods in such a way as to show clearly that they belong to the Company;

iv) give the Company such information relating to the goods as the Company may require

(b) The Customer hereby grants an irrevocable right and license to the Company and its agents to enter upon any of the Customer's premises, with or without vehicles and equipment, for the purpose of inspecting and/or repossessing goods to which it has retained title. This license shall continue to subsist notwithstanding the termination, for any reason, of any contract which is subject to these conditions and is without prejudice to any accrued rights of the Company under the contract, or otherwise.

(c) The Customer is licensed to process the goods to which the Company has retained title and/or to incorporate them in or with any other products, subject to the express condition that the new product/s or any other chattel whatsoever containing any other part of the goods shall become the property of the Company and shall be separately stored and marked by the Customer to show clearly that they belong to the Company.

The Company shall hold the new product/s as trustee for itself and the Customer and the Company's interest as beneficiary of the trust shall be equal to the total of all amounts owing by the Customer to the Company under any contract.

(d) Whilst the Customer is in possession of the goods, with the Company's consent (but not otherwise) the Customer may in the ordinary course of business sell the goods provided that:

i) as between the Customer and its sub-buyer, the Customer shall sell the goods as principal and the Customer shall not be empowered to commit the Company to any contractual relationship with the sub-buyer or any other person

ii) as between the Company and the Customer, the Customer shall sell the goods in a fiduciary capacity as agent for the Company

iii) notwithstanding any agreed period of credit for payment of the goods the Customer shall pay the proceeds of such sales to the Company forthwith on receipt

(e) The Customer acknowledges that as a consequence of its fiduciary relationship with the Company, it is under a common law duty to the Company to hold the proceeds of any such sales and/or any insurance proceeds on trust for the Company and not to mingle such proceeds with any other monies or pay them into an overdrawn bank account, such common law duty being unaffected by and wholly independent of the terms of these Conditions.

(f) The Customer agrees immediately upon being requested to do so by the Company to assign to the Company all rights and claims which the Customer may have against its sub-buyers arising from sales until payment in full as stated above.

(g) Notwithstanding the provisions of this clause, the Company shall be entitled to bring action for the price of the goods in the event of non payment by the due date, even though property in the goods has not passed to the Customer and/or shall have the right by notice to the Customer at any time after delivery to pass property in the goods to the Customer as from the date of such notice.

### 17. Copyright

The Company's quotation and all associated correspondence documents and plans containing information resulting from research and development carried out and practical application experience gained over many years. All material is confidential and is to be used for the purpose for which it is supplied. It shall not be disclosed, otherwise used or reproduced, either in whole or in part, without the written consent of the Company. The rights under any relevant patents, copyrights, designs and trademarks are strictly reserved and no general licence there under is to be inferred.

If goods are to be manufactured, or any process is to be applied to the goods, by the Company in accordance with a specification submitted by the Customer, the Customer shall indemnify the Company against all loss, damages, costs and expenses awarded against or incurred by the Company in connection, with or paid or agreed to be paid, by the Company in settlement of any claim for infringement of any intellectual property right of any other person which results from the Customer's specification. The Company reserves the right to make any changes in the specification which are required to conform with any applicable statutory or EC requirements, or which do not materially affect their quality or performance.

### 18. Law and Arbitration

These conditions on this Contract shall be construed and governed in all respects in accordance with English Law and the English Courts shall have exclusive jurisdiction over them. If any dispute or question cannot be settled by agreement it shall be referred for determination to a single referee pursuant to the provision of the Arbitration Act 1950, as amended by the Arbitration Acts 1975 and 1979, or any statutory modification or re-enactment thereof for the time being in force but should agreement not be reached on the appointment of the referee, he shall be appointed by the President of R.I.C.S. If any provision of these conditions is held by any competent authority to be invalid or unenforceable, in whole or in part, the validity and enforceability of the other provisions and the remainder of the provision in question shall not be affected and the parties shall use their best endeavours to achieve as similar a result to such invalid or unenforceable provision as lawfully possible.