

ALBA DEWATERING SERVICES LIMITED TERMS & CONDITIONS FOR THE SUPPLY OF GOODS AND SERVICES

1. (a) In these conditions "the Company" means Alba Dewatering Services Limited and "the Customer" means the individual, firm, company or other party with whom the company contracts.
(b) No order in pursuance of any quotation or otherwise shall be binding on the Company unless and until such order is accepted by the Company. Any contract made between the Company and the Customer (herein called "the Contract") shall be subject to these conditions and save as after mentioned no representative or agent of the Company has authority to make any representations inconsistent with them or to enter into any contract except on the basis of them; any such representation or contract will bind the Company only if in writing and signed by a director.
(c) Unless otherwise agreed in writing by the Company these conditions shall override any terms and conditions stipulated or referred to by the Customer in his order or pre-contract negotiations.
(d) Any description contained in the Company's catalogues, price lists or other advertising material is intended merely to present a general picture of the Company's products and shall not form a representation or be part of the Contract.
(e) In the event that the Company has not given a written acknowledgement of the Customer's order these conditions, provided the Customer shall have had prior notice of them, shall nonetheless apply to the Contract.
(f) The Company reserves the right to correct any clerical or typographical errors made by its employees at any time.
2. Where goods are made to the Customer's own specification or design, the Customer undertakes full responsibility for the suitability and fitness of the specification or design and undertakes to indemnify the Company against any infringement of any patent, registered design or copyright and any loss, damage or expense, which it may incur by reason of such infringement in any country.
3. (a) The Company's quotations are provisional insofar as they are subject to alteration by reference to any changes in the price of raw materials, rates of wages and any other costs of production taking place or to any drawings specifications or other information being given by the Customer between the date of quotation and the Company's acceptance of the Customer's order or in the event that the Customer orders part only of the quantity referred to in any quotation.
(b) The Company shall be entitled to increase its prices at any time to take account of any increase in the cost to the Company of purchasing any goods or materials or of manufacturing or supplying and such increased prices ruling at the date of despatch by the Company shall be substituted for the previous Contract price. All prices quoted are exclusive of VAT and the Customer shall pay any and all taxes duties and other government charges payable in respect of the goods.
4. (a) Unless otherwise agreed in writing (i) delivery shall be made at the Company's premises and collection by the Customer his servants or agents shall constitute delivery; (ii) if the Company agrees to deliver the goods elsewhere the Company shall be entitled to charge for the packaging and delivery of the goods to the contracted place of delivery by the means most convenient to the Company and the Customer shall be responsible for off-loading which will be at the Customer's risk and expense.
(b) In the case of goods to be sent by sea the Company shall be under no obligation to give the Customer the notice specified in section 32(3) of the Sale of Goods Act 1979.
(c) Where goods are sold F.O.B., C.I.F. or C+F the risk in the goods shall pass to the Customer on shipment. Subject thereto, and unless otherwise agreed in writing by the Company, the risk in the goods shall pass to the Customer on collection or despatch from the Company's premises as the case may be.
(d) Should the Company be delayed in or prevented from making delivery of the goods due to war, governmental or parliamentary restrictions, strike, lock-outs, fire floods, explosions, labour disturbances, trade disputes, damage to or destruction of the goods, breakdown of machinery, shortages of labour or of raw materials or Act of God or due to any other cause whatsoever beyond the reasonable control of the Company the Company shall be at liberty to cancel or suspend the order placed by the Customer without incurring any liability for any loss or damage arising there from.
(e) While the Company will endeavour to deliver the goods by any date agreed upon, the Company will not be liable for any failure to deliver by such a date. Moreover, the Company shall be entitled to defer delivery until such monies due from the Customer have been received.
5. Unless otherwise specified in writing by the Company payment for each delivery of the goods or services shall be made by the Customer net cash not later than 30 days following the day when the goods or services were collected or delivered, as the case may be, and time for payment shall be of the essence of the Contract. Without prejudice to any other rights of the Company interest will be payable on all overdue accounts at HSBC Bank Plc base rate plus 4% and for the purposes of paragraph 8 hereof the full purchase price of the goods shall include any interest payable hereunder.
6. (a) If the Customer shall fail to make any payment when it becomes due or shall enter into any composition or any arrangement with his creditors or if being an incorporated company shall have a receiver appointed or shall pass a resolution for winding up or a court shall make an order to that effect or if there shall be any breach by the Customer of any of the terms and conditions hereof the Company may defer or cancel any further deliveries and treat the Contract of which these conditions form part as determined but without prejudice to its right to any unpaid purchase price for goods delivered and damages for any loss suffered in consequence of such determination.
(b) Cancellation by the Customer will only be accepted at the discretion of the Company and in any case on condition that any costs or expenses incurred by the Company up to the date of cancellation and all loss or damage resulting to the Company by reason of such cancellation will be paid by the Customer to the Company forthwith. Acceptance of such cancellation will only be binding on the Company if in writing.
(c) A charge will be made for any costs incurred by the Company due to suspension or deferment of any order by the Customer.
7. (a) No claim for damage in transit, shortage of delivery or loss of goods will be entertained unless the Customer shall have given to the Company written notice of such damage shortage or loss with reasonable particulars thereof within three days of receipt of the goods or (in the case of total loss) of receipt of the invoice or other notification of despatch. The Company's liability, if any, shall be limited to replacing or (in its discretion) repairing such goods and it shall be a condition precedent to any such liability that the Customer shall if so required have returned damaged goods to the Company within 14 days of such request. The Customer shall not be entitled to make any claim against the Company for consequential loss arising out of such damage shortage or loss as aforesaid.
(b) The Company's liability in respect of any defect or failure of goods supplied or work done is limited to replacing or (in its discretion) repairing or paying for the repair or replacement of the goods which within 12 months of delivery to the Customer are found to be defective by reason of faulty or incorrect design workmanship parts or materials and in the event of any inaccuracy in any performance figure or any other description which has formed a representation or is part of a Contract (excluding sub-assemblies, parts or materials component to a contract that are supplied by and warranted by others). The Company's liability in respect of any such inaccuracy shall not exceed the price of the goods to which the description relates. Conditions precedent to the Company's liability hereunder shall be that as soon as reasonably practicable the Customer
(i) shall have given to the Company reasonable notice of the defect, failure or inaccuracy and shall not have carried out any work to rectify the same without the Company's prior written consent.
(ii) shall have either returned the goods to the Company or provided authority for the Company's servants or agents to inspect them, as the Company may request.
Save as otherwise provided in these conditions the Company shall have no other or further liability whether in contract tort or otherwise in respect of any direct, indirect or consequential loss or damage sustained by the Customer howsoever caused and whether or not arising from or in connection with any such defect failure or inaccuracy as aforesaid.
(c) Where the Company agrees to repair or replace goods in accordance with the foregoing provisions of this paragraph any time specified for delivery under the Contract shall be extended for such period as the Company may reasonably require.
(d) All goods sold by the Company are supplied with the benefit of the terms implied by Section 12 of the Sale of Goods Act 1979. Subject thereto all other conditions, warranties and other terms express or implied, statutory or otherwise, are expressly excluded, save insofar as contained herein or as otherwise expressly agreed by the Company in writing PROVIDED that if and insofar as any legislation or any order made thereunder shall make or have made it unlawful to exclude or purport to exclude from the Contract any term or shall have made unenforceable any attempt to exclude any such term, the foregoing provisions of this paragraph will not apply to any such term.
8. The following provisions shall apply to all goods which under the Contract the Company agrees to sell or supply to the Customer. No failure by the Company to enforce strict compliance by the Customer with such provisions shall constitute a waiver thereof and no termination of the Contract shall prejudice limit or extinguish the Company's rights under this paragraph.
(i) Upon delivery of the goods the Customer shall not hold the goods solely as bailee for the Company and the goods shall remain the property of the Company until such time as the Customer shall have paid to the Company the full purchase price thereof. Until such time the Customer if so required by the Company shall store the goods separately from the goods not being the property of the Company and in such a fashion as to be readily identifiable by the Company who shall be entitled to examine the goods upon reasonable notice, to require that the goods shall be delivered up to it and to recover the same and for the purposes of exercising such rights the Company its employees and agents with appropriate transport may enter upon the Customer's premises and any other location where the goods are situated.
(ii) The Customer is hereby granted a license by the Company to incorporate the goods in any other products subject to the express condition that, if the Company shall so require, all such products containing the goods or any of them shall be separately stored and so marked as to be identifiable as being made with the said goods.
(iii) The Customer is hereby licensed to sell on the goods and any products incorporating any of them but shall hold the whole of the proceeds of sale as trustee and agent for the Company and shall not mingle any of the proceeds of sale with his own monies or in any bank account with other monies but shall ensure that all such receipts of sale are kept separate and identifiable. Moreover, the Customer shall, immediately upon receipt of the proceeds of the sale, remit to the Company the full purchase price of the goods less any part thereof which has already been paid.
(iv) If the Customer does not receive the proceeds of any such sale on the due date he shall within 7 days notify the Company and, if called upon to do so, assign to the Company any claim of any nature whatsoever against the person or persons to whom he has supplied the goods or any of them.
(v) The Customer shall maintain all appropriate insurance in respect of the goods from the date on which the risk therein passes to him. In the event of any loss or damage occurring while the goods remain the property of the Company the Customer shall hold all insurance monies received in respect thereof as trustee for the Company and separate and identifiable from all other monies and shall forthwith remit to the Company the full purchase price of the goods less any part thereof which has already been paid.
9. The proper law of all contracts with the Company shall be Scottish law which shall govern in all respects the construction and effect of such contracts and of these conditions. The Customer agrees that in the event of any dispute arising out of the Contract or the performance thereof he will submit to the jurisdiction of the Scottish Courts.