

Donaldsons Conditions of Sale

The conditions set out below govern all sales and supplies of goods by Donaldsons. Read them carefully to ensure the conditions are acceptable. The conditions are not intended to affect or restrict any rights under law which are given to consumers. The attention of all Buyers who are not consumers is drawn to the provisions of conditions 4.4, 10.4 and 15.

1. DEFINITIONS USED IN THESE CONDITIONS

- Buyer:** the person, firm or company who purchases the Goods from Donaldsons (also referred to as “the “Customer” in the Credit Account Application Form).
- Contract:** any contract between Donaldsons and the Buyer for the sale and purchase of the Goods, incorporating these conditions, the Quotation and the Manufacturing Design.
- Donaldsons:** James Donaldson & Sons Limited (Registered Number: SC010528), James Donaldson Timber Limited (Registered Number: SC183915) Donaldsons Timber Engineering Limited (Registered Number: SC099182), all registered in Scotland, with their Registered Office at Suite A, Haig Business Centre, Haig House, Balgonie Road, Markinch, Fife KY7 6AQ.
- Goods:** any goods agreed in the Contract to be supplied, whether by sale or otherwise, to the Buyer by Donaldsons (including any part or parts of them).
- Manufacturing Design:** the detailed design of the goods to be manufactured by Donaldsons, based on the drawings, designs, specifications and measurements provided by the Buyer.
- Quotation:** The quotation for the manufacture of the goods to be produced by Donaldsons.

2. APPLICATION OF THESE CONDITIONS

- 2.1 Subject to any variation under condition 2.3 the Contract shall be on these conditions to the exclusion of all other terms and conditions (whether communicated by post, delivery or electronically) including any terms or conditions which the Buyer purports to apply under any purchase order, confirmation of order, specification or other document.
- 2.2 For administrative convenience the Buyer may use its own pre-printed forms but Donaldsons and the Buyer agree that no terms or conditions endorsed on, delivered with or contained in the Buyer’s purchase order, confirmation of order, specification or any other document shall form part of the Contract except to the extent any such terms and conditions are consistent with these conditions.
- 2.3 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 Donaldsons. The Buyer acknowledges that it has not relied on any statement, promise or representation made by or on behalf of Donaldsons which is not set out in the Contract.
- 2.4 Each order or acceptance of a quotation for Goods or other document issued by or on behalf of the Buyer shall be deemed to be an offer by the Buyer to buy Goods subject to these conditions.

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

3. DESCRIPTION / SPECIFICATION / MEASUREMENT

- 3.1 The quantity and description of the Goods shall be as set out in the Quotation and / or Manufacturing Design. Where a price is set out in both the price set out in the Manufacturing Design will prevail.
- 3.2 Donaldsons does not accept responsibility for designing the overall roof structure or for taking site measurements. Donaldsons shall be responsible solely for the manufacture of the Goods in accordance with the drawings, designs, specifications and measurements provided by the Buyer and then set out in the Manufacturing Design.
- 3.3 It is the Buyer's responsibility to ensure that the information set out in the Manufacturing Design is accurate. Any inaccuracy should be notified to Donaldsons immediately and in any event prior to Donaldsons starting to manufacture the Goods.
- 3.4 Any design and advisory services (including the preparation of specification, contract particulars, drawings and the like) are provided with reasonable care and skill, but no other representation or undertaking is made or is to be applied in connection with any such services, nor shall Donaldsons be under any liability whatsoever in respect of these services if the erection is carried out before the necessary approvals are obtained.
- 3.5 All descriptions or illustrations contained in catalogues or brochures are issued or published for the sole purpose of giving an approximate description of the Goods. They shall not form part of the Contract and this is not a sale by sample.

4. DELIVERY

Goods collected by Buyer

- 4.1 For Goods sold on a collect by Buyer basis, delivery to the Buyer takes place when the Goods are collected by the Buyer or its carriers. The Buyer shall take delivery of the Goods on the agreed date. In the event that the Buyer is unable to take delivery on that date or Donaldsons refuses to release the Goods in terms of Conditions 4.2 the Buyer will incur a storage charge at Donaldsons' current rate until such time as the Goods are uplifted.
- 4.2 The Buyer shall be solely responsible for the size, weight and positioning of the Goods onto the vehicle, and shall fully indemnify Donaldsons against any and all claims or actions arising from the loading on and transport of the Goods. If Donaldsons consider the vehicle to be unsuitable they may, at their sole discretion, refuse to allow the Goods to be loaded on.

Goods delivered by Donaldsons

- 4.3 For Goods to be delivered by Donaldsons, its carriers or suppliers, delivery to the Buyer occurs when the Goods are unloaded at the address stated on the Quotation. Donaldsons, its carriers or suppliers (whomever is actually delivering the Goods), shall be the sole judge as to the suitability of the access roads leading to the delivery address and to the location of the nearest point of vehicular access.

- 4.4 Any dates specified by Donaldsons for delivery of the Goods are estimates only and time of delivery shall not be of the essence of the Contract or made of the essence by notice. If no dates are so specified, or a specified date is missed, delivery shall be within a reasonable time. Whilst Donaldsons will endeavour to deliver within a given time slot on the agreed delivery date, any time slot specified is also only an estimate only.
- 4.5 The Buyer shall be responsible for (including all costs associated with) the prompt unloading of the Goods and the provision of suitable labour and equipment. It is the Buyer's responsibility to ensure that they comply with all appropriate HSE guidelines. If, in the sole discretion of Donaldsons, its carriers or suppliers (whomever is actually delivering the Goods), they consider the amount of labour or the equipment provided to be unsuitable or unsafe they may refuse to allow unloading to take place.
- 4.6 Donaldsons will use their reasonable endeavours to ensure, where necessary, the suitability of packaging before dispatch, but no claims will be accepted by Donaldsons for breakage or damage in transit, on the grounds of alleged unsuitability of packaging. Where damage has been caused in transit, Donaldsons will at their sole discretion repair or replace the damaged Goods.
- 4.7 Subject to the other provisions of these conditions Donaldsons shall not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods or any damage caused in transit (even if caused by Donaldsons negligence), nor shall any delay entitle the Buyer to terminate the Contract unless such delay exceeds 120 working days.
- 4.8 If for any reason the Buyer fails to accept delivery of any of the Goods at the time provided for by these conditions, or Donaldsons is unable to deliver the Goods on time because the Buyer has not provided appropriate instructions, documents, licences or authorisations:
- (a) risk in the Goods shall pass to the Buyer (including for loss or damage caused by Donaldsons negligence);
 - (b) the Goods shall be deemed to have been delivered; and
 - (c) Donaldsons may store the Goods until actual delivery, whereupon the Buyer shall be liable for all related costs and expenses (including, without limitation, the costs of storage and insurance).
- 4.9 Donaldsons may deliver the Goods by instalments. Each instalment shall be a separate Contract and no cancellation or termination of any one Contract relating to an instalment shall entitle the Buyer to cancel or terminate any other Contract or instalment. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the Contract.

5. NON-DELIVERY / CANCELLATION / LIQUIDATE DAMAGES

- 5.1 The quantity of any consignment of Goods as set out in the proof of dispatch note shall be conclusive evidence of the quantity received by the Buyer.

- 5.2 Donaldsons shall not be liable for any non-delivery of Goods (even if caused by Donaldsons negligence) unless the Buyer gives written notice to Donaldsons of the non-delivery within 3 working days of the date when the Goods would in the ordinary course of events have been received.
- 5.3 Any liability of Donaldsons 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 The Buyer and Donaldsons accept the following provisions as a fair and reasonable pre-estimate of the liquidate damages payable to Donaldsons in the event of the Buyer breaching the Contract by cancellation of any order, in whole or in part:
- (a) where manufacturing has started on the Goods, 100% of the price of the cancelled Goods; and
 - (b) where manufacturing has yet to start, 100% of the price of any bespoke items ordered at the Buyer's request.,

and the Buyer undertakes to pay the relevant amount of liquidate damages on demand by Donaldsons.

6. RISK / TITLE

- 6.1 The Goods are at the risk of the Buyer from the time of actual or deemed delivery.
- 6.2 Ownership of the Goods shall not pass to the Buyer until Donaldsons has received (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 Donaldsons from the Buyer on any account or contract with Donaldsons.
- 6.3 Until ownership of the Goods has passed to the Buyer, the Buyer shall:
- (a) subject to condition 6.4 (b), hold the Goods as Donaldsons agent;
 - (b) store the Goods (at no cost to Donaldsons) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as Donaldsons property; and
 - (c) not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods.
- 6.4 The Buyer may resell the Goods before ownership has passed to it but only 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 Donaldsons property on the Buyer's own behalf and the Buyer shall deal as principal when making such a sale.
- 6.5 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 creditor, 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 other proceedings are commenced relating to the insolvency or possible insolvency of the Buyer; or

- (b) the Buyer suffers or allows any diligence or enforcement action to be levied on its property or obtained against it, or fails to observe or perform any of its obligations under the Contract or any other contract between Donaldsons 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; or
- (d) Donaldsons exercises any of its rights under condition 8.2 or if condition 8.4 applies.

6.6 Donaldsons shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed to the Buyer.

6.7 The Buyer grants Donaldsons, 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.

6.8 Where Donaldsons 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 Donaldsons in the order in which they were invoiced to the Buyer.

6.9 On termination of the Contract, howsoever caused, Donaldsons (but not the Buyer's) rights contained in this condition 6 shall remain in effect.

7. PRICE

7.1 Unless otherwise agreed by Donaldsons in writing, the price for the Goods shall be the price as set out in the Manufacturing Design.

7.2 The price for the Goods shall be exclusive of, and the Buyer shall pay for,

- (a) any value added tax and all other taxes, duties or levies, whether local or national; and
- (b) unless otherwise agreed by Donaldsons in writing, all costs or charges in relation to loading, unloading, carriage and insurance.

7.3 The price per unit set out in the quotation shall be liable to upwards alteration in the event that the order ultimately placed is for a smaller quantity than that stated in the relevant quotation.

- 7.4 Unless otherwise agreed by Donaldsons in writing, Donaldsons reserves the right to revise or correct any price to take account of:
- (a) fluctuations in exchange rates or the costs of raw materials, freight, shipment, haulage, labour, fuel and insurance; and/or
 - (b) any clerical, administrative or arithmetical error in the Contract.

8. PAYMENT

- 8.1 If the Buyer does not have a credit account, then payment of the price for the Goods is due in pounds sterling upon issue of the invoice. For the avoidance of any doubt no Goods will be released to the Buyer until payment in full has been received by Donaldsons.
- 8.2 Subject to conditions 8.3 and 8.5, if the Buyer does have a credit account and unless otherwise agreed by Donaldsons in writing, payment of the price for the Goods is due in pounds sterling not later than the last working day of the month following the month in which the Goods are delivered or deemed to be delivered. This credit facility, if granted, can be withdrawn immediately on giving notice.
- 8.3 Time for payment shall be of the essence. Without limiting its other rights in any way, Donaldsons reserves the right to suspend deliveries, withdraw any credit facility and demand immediate payment for all Goods which have been ordered or delivered if:
- (a) any payment under any contract between the Buyer, or any person associated with the Buyer, and Donaldsons becomes overdue; or
 - (b) Donaldsons, in its sole discretion, believes the Buyer may be unable or unwilling to pay for the Goods in accordance with these conditions; or
 - (c) the Buyer is trading above any credit limit stipulated by Donaldsons.
- 8.4 No payment shall be deemed to have been received until Donaldsons has received cleared funds.
- 8.5 All monies prospectively payable to Donaldsons under the Contract shall become due immediately on its termination, or on the termination of any other contract between the Buyer, or any person associated with the Buyer, and Donaldsons.
- 8.6 The Buyer shall make all payments due under the Contract in full without any deduction whether by way of retention, 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 Donaldsons to the Buyer.
- 8.7 If the Buyer fails to pay Donaldsons any sum due under the Contract, the Buyer shall be liable to pay interest to Donaldsons on such sum from the due date for payment at the annual rate of 4% above the base lending rate from time to time of the Bank of Scotland, accruing on a daily basis until payment is made, whether before or after any judgment. Donaldsons reserves the alternative right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.

9. QUALITY

- 9.1 Donaldsons shall endeavour to transfer to the Buyer the benefit of any warranty or guarantee given to Donaldsons in relation to the Goods.

- 9.2 Subject to the other provisions in the Contract, Donaldsons warrants that on delivery, and for a period of 6 months from the date of delivery, the Goods shall:
- (a) be of satisfactory quality within the meaning of the Sale of Goods Act 1979;
 - (b) be reasonably fit for purpose; and
 - (c) be reasonably fit for any particular purpose provided that before the Contract is made (i) the Buyer has made known that purpose to Donaldsons in writing; and (ii) Donaldsons have confirmed in writing that using the Goods for that purpose is reasonable.
- 9.3 Donaldsons shall not be liable for a breach of any of the warranties in condition 9.2 unless:
- (a) the Buyer gives written notice of the defect to Donaldsons, and, if the defect is as a result of damage in transit, to the carrier, within 3 working days of the time when the Buyer discovers or ought to have discovered the defect; and
 - (b) Donaldsons is given a reasonable opportunity after receiving the notice of examining such Goods and the Buyer (if asked to do so by Donaldsons) returns such Goods to Donaldsons place of business for the examination to take place there.
- 9.4 Donaldsons shall not be liable for a breach of any of the warranties in condition 9.2 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 Donaldsons or Donaldsons supplier's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are no such instructions) good trade practice; or
 - (c) the Buyer alters or repairs such Goods without the prior written consent of Donaldsons.
- 9.5 Subject to conditions 9.3 and 9.4, if any of the Goods do not conform with any of the warranties in condition 9.2, Donaldsons shall at its option repair or replace such Goods (or the defective part) or refund the price of such Goods at the pro rata Contract rate provided that, if Donaldsons so requests, the Buyer shall return the Goods or the part of such Goods which is defective to Donaldsons.
- 9.6 If Donaldsons complies with condition 9.5, it shall have no further liability for a breach of any of the warranties in condition 9.2 in respect of such Goods.

10. LIMITATION OF LIABILITY

- 10.1 Subject to conditions 4, 5 and 9, the following provisions set out the entire financial liability of Donaldsons (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 these conditions;
 - (b) any use made or resale by the Buyer of any of the Goods, or of any product incorporating any of the Goods; and
 - (c) any representation, statement or delictual act or omission including negligence by Donaldsons or its agents arising under or in connection with the Contract.

- 10.2 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) are, to the fullest extent permitted by law, excluded from the Contract.
- 10.3 Nothing in these conditions excludes or limits the liability of Donaldsons for:
- (a) death or personal injury caused by the negligence of Donaldsons or its agents; or
 - (b) any matter in respect of which it would be illegal for Donaldsons to exclude or attempt to exclude its liability; or
 - (c) fraud or fraudulent misrepresentation.
- 10.4 Subject to condition 10.2 and condition 10.3 Donaldsons total liability in contract, delict (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract by Donaldsons or its agents or suppliers shall in no circumstances exceed in the aggregate the sum of £500,000 and (provided the aggregate of £500,000 is not exceeded) shall for individual incidents or series of incidents arising from the same event be limited to following sums (i) £200,000 for physical damage to or loss of tangible property cause by Donaldsons negligence; or (ii) the lower of £50,000 or the total of the sums paid by the Buyer hereunder at the time of the incident giving rise to the liability for all other incidents; provided however that Donaldsons shall have no liability under or in connection with this Contract, howsoever arising, for damages in respect of loss of profit, loss of business, or depletion of goodwill in each case whether special, direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

11. ASSIGNATION

- 11.1 Donaldsons may assign the Contract or any part of it to any person.
- 11.2 The Buyer shall not be entitled to assign the Contract or any part of it without the prior written consent of Donaldsons.

12. FORCE MAJEURE

Donaldsons reserves the right to suspend or defer the date of delivery or to cancel the Contract or reduce the volume of the Goods ordered by the Buyer (without liability to the Buyer) if it is prevented from or delayed in the carrying on of its business or the performance of the Contract due to circumstances beyond the reasonable control of Donaldsons or its agents and suppliers including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, or any increase in the price of the Goods to Donaldsons which exceeds 20% of the same price at the date the Contract was made, provided that, if the circumstances in question continue for a continuous period in excess of 120 working days, Donaldsons or the Buyer shall be entitled to terminate the Contract on notice.

13. GENERAL

- 13.1 Unless the context otherwise requires, in interpreting these conditions,
- (a) any reference to one gender shall include all other genders;
 - (b) any references to the singular shall include the plural and vice versa;
 - (c) any reference to a person shall include natural and legal persons; and
 - (d) any reference to a statute or statutory provision shall include any amendment or re-enactment thereof.
- 13.2 Each of Donaldsons rights or remedies under the Contract is cumulative and without prejudice to any other right or remedy of Donaldsons whether arising under the Contract or otherwise.
- 13.3 Any waiver by Donaldsons of any breach of, or any default under, any provision of the Contract by the Buyer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.
- 13.4 The Contract constitutes the whole agreement between the parties and supersedes all previous agreements between the parties relating to its subject matter. Each party acknowledges that, in entering into the Contract, it has not relied on, and shall have no right or remedy in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) other than as expressly set out in the Contract. Nothing in this condition shall limit or exclude any liability for fraud.
- 13.5 This Contract and any dispute or claim arising out of or in connection with it shall be governed by and construed in accordance with Scots law, and the parties submit to the exclusive jurisdiction of the Scots courts.

14. NOTICES

- 14.1 All notices under the Contract shall be in writing and may be served by delivery or sent by pre-paid first class post or sent by fax to:
- (a) Donaldsons at its registered office or such address as shall be notified to the Buyer by Donaldsons for this purpose; or
 - (b) the Buyer at the registered office of the Buyer (if it is a company or limited liability partnership) or (in any other case) at any address of the Buyer within the United Kingdom which is set out in any document which forms part of the Contract or such other address in the United Kingdom as shall be notified to Donaldsons by the Buyer for this purpose.
- 14.2 Notices shall be deemed to have been received:
- (a) if sent by pre-paid first class post, two days (excluding weekend and bank/public holidays) after posting (exclusive of the day of posting); or
 - (b) if sent by fax on a working day prior to 4.00 pm, at the time of transmission and otherwise on the next working day.

15. PERSONAL LIABILITY OF DIRECTORS ETC

- 15.1 If the Buyer is a limited company, a limited liability partnership, a trust or an unincorporated voluntary association, the directors / members / trustees / office bearers (as the case maybe) of the Buyer each personally, jointly and severally, unconditionally and irrevocably (until all sums due to Donaldsons by the Buyer have been paid):
- (a) guarantee the payment of all sums due to Donaldsons by the Buyer;
 - (b) indemnify and hold harmless Donaldsons in respect of any losses sustained by Donaldsons as a result of trading with the Buyer; and
 - (c) agree that the foregoing guarantee and indemnity shall not be discharged or affected by (i) anything that would not have discharged or affected them if they had been a principal debtor instead of a guarantor; (ii) any waiver, failure to enforce or giving of time by Donaldsons; or (iii) any increase in the credit limit extended to the Buyer.

16. USE OF INFORMATION

- 16.1 Information about the Buyer which the Buyer provides or is obtained by Donaldsons in its dealings with the Buyer or from any other person may be held on Donaldsons computer database and in any other way. This will be used for credit risk assessment and for market and product analysis to enable Donaldsons to review, develop and improve the services it offers.
- 16.2 In its sole and absolute discretion Donaldsons may, subject to satisfactory credit checks on the Buyer over such periods as Donaldsons deems appropriate, grant the Buyer credit facilities. Donaldsons reserves the right thereafter, in its sole and absolute discretion and without giving the Buyer any reason, to withdraw the credit facilities at any time.