

MyDek Terms & Conditions

The Buyer's attention is drawn in particular to the provisions of clause 6.3 (Seller has no liability for delay in delivering the Goods) and clause 13 (limit of liability))

1 Definitions and Interpretation

1.1 Definitions:

- 1.1.1 **Business Day:** a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.
- 1.1.2 **Buyer:** the person or firm who purchases the Goods from Seller.
- 1.1.3 **Conditions:** the terms and conditions set out in this document as amended from time to time in accordance with clause 14.2.
- 1.1.4 **Contract:** the contract between Seller and the Buyer for the sale and purchase of the Goods in accordance with these Conditions.
- 1.1.5 **Force Majeure Event:** circumstances beyond the reasonable control of the Seller including acts of God, governmental actions, war or national emergency, riot, civil commotion, fire, explosion, floods, epidemic, radioactivity, lock-outs, strikes or other labour disputes.
- 1.1.6 **Goods:** the goods (or any part of them) set out in the Order.
- 1.1.7 **Order:** the Buyer's order for the Goods, as set out in the Buyer's purchase order or the Buyer's written acceptance of the Seller's quotation.
- 1.1.8 **Product Warranty:** see clause 8.1 and Schedule 1
- 1.1.9 **Seller:** MyDek Limited (registered in England and Wales with company number 10347247)

1.2 Interpretation:

- 1.2.1 A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted and includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.
- 1.2.2 Any phrase introduced by the term **including, such as** or any similar expression shall not limit the sense of the words preceding those terms.
- 1.2.3 A reference to **writing** or **written** includes emails.

2 Basis of contract

- 2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Buyer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.2 The Order constitutes an offer by the Buyer to purchase the Goods in accordance with these Conditions. The Buyer is responsible for ensuring that the terms of the Order are complete and accurate.
- 2.3 The Order shall only be deemed to be accepted when the Seller issues a written order acknowledgement, at which point the Contract shall come into existence.
- 2.4 The Buyer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Buyer that is inconsistent with these Conditions.
- 2.5 Any quotation for the Goods given by Seller shall only be valid for a period of 60 Business Days from its date of issue.

3 Goods

- 3.1 The Goods are described in the Seller's quotation and/or written order acknowledgement.
- 3.2 Any figures, statements, descriptions, specifications, illustrations, photographs, drawings, weights or any other matters contained in the Seller's website, catalogues, pamphlets, advertising literature or price lists, any samples provided and all representations made by the Seller's sales team are not guaranteed to be accurate and are intended merely to represent a general idea of the Seller's products and shall not form part of the Contract nor be regarded as an offer, warranty or representation relating to the Goods.
- 3.3 The Seller reserves the right, at any time without notice to the Buyer, to change or modify the particulars of any specifications of any goods or materials used in their manufacture.

4 Designs, Buyer's Property and Intellectual Property

- 4.1 No right of ownership or interest in the Seller's patents, registered designs, trademarks, copyrights or any other intellectual property owned by the Seller shall pass in any way to the Buyer in relation to the Goods provided under these Conditions, including where Goods are made or supplied to the Buyer's own specification, pattern or design.
- 4.2 Where Goods are made or supplied to the Buyer's own specification, pattern or design or where standard goods of the Seller are altered in accordance to the Buyer's instructions the Buyer warrants and undertakes full responsibility not only for the suitability and fitness of the specification, pattern or design but also that such specification, pattern or design does not infringe any patent, trademark, registered design, copyright or any other proprietary right of any third party. The Buyer shall indemnify and keep the Seller indemnified in full against any loss, damage or expense whatsoever (including costs) which the Seller may incur in or arising from the performance of the Contract by reason of any infringement of any such patent, trade mark, registered design, copyright or any other proprietary right and the Buyer acknowledges that the Seller shall be under no liability of any description to the Buyer if the Goods prove to be unsuitable for whatever reason for application or use.

5 Price and payment

- 5.1 The price of the Goods shall be the price set out in the Order.
- 5.2 Unless otherwise stated, the price of the Goods shall be exclusive of:
 - 5.2.1 any value added tax (VAT), which the Buyer shall additionally be liable to pay to the Seller at the prevailing rate, subject to the receipt of a valid VAT invoice; and
 - 5.2.2 insurance, packaging, cost of carriage to the contracted place of delivery, cost of offloading and installation of the Goods, which shall be invoiced to the Buyer as applicable.
- 5.3 The Seller reserves the right to increase the price of the Goods, by giving notice to the Buyer at any time before delivery, to reflect any increase in the cost of the Goods to the Seller that is due to any factor beyond the control of the Seller, including price fluctuations of aluminium on the London Metal Exchange and foreign exchange fluctuations.
- 5.4 Unless otherwise stated in the Order, the Buyer shall pay the price in full and in cleared funds upon placing the Order. Payment shall be made to the bank account nominated in writing by the Seller. Time for payment is of the essence.
- 5.5 The Buyer shall not be entitled to withhold payment of any amount due to the Seller by reason of any disputed claim by the Buyer in connection with the Contract nor shall the Buyer be entitled to set off against any amount payable under the Contract to the Seller any amount which is not then due and payable by the Seller or for which the Seller disputes liability.
- 5.6 If the Buyer fails to pay the Seller any sum due pursuant to the Contract, the Buyer will be liable to pay interest to the Seller on such sum from the due date for payment at the monthly rate of 6% above the base lending rate of Lloyds Bank Plc accruing on a daily basis until payment is made, whether before or after any judgment.

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6 Delivery

- 6.1 Following receipt of payment in accordance with clause 5, the Seller shall deliver the Goods to the location set out in the Order or such other location (at the Buyer's cost) as the parties may agree (Delivery Location).
- 6.2 Subject to clause 6.2, delivery of Goods shall be deemed to be effected when delivered by the Seller to the Delivery Location or to the nearest accessible road point to such premises.
- 6.3 Any dates quoted by the Seller for delivery are approximate only, and the time of delivery is not of the essence. The Seller shall not be liable for any direct loss or any indirect or consequential loss or damage of any kind suffered due to a delay in delivery of the Goods save to the extent such delay is due to any negligence, omission or default on the part of the Supplier. For the purposes of this clause, any negligence, omission or default of the Supplier's sub-contractors or suppliers of any tier shall not be deemed to be the negligence, omission or default of the Supplier.
- 6.4 Where the Buyer wishes to defer delivery, this will only be accepted at the sole discretion of the Seller. In such case, the Buyer shall on demand pay the Seller the additional costs to the Seller of transporting, handling and storing of the relevant Goods. The Seller shall not be required to deliver the Goods until such additional costs have been paid in full.
- 6.5 If the Seller fails to deliver the Goods, its liability shall be limited to refunding any amounts paid by the Supplier in respect of the Goods.
- 6.6 Where Goods are delivered in instalments, each instalment shall be deemed to be provided under a separate Contract and the party in default in respect of any instalment shall be liable accordingly, but no default in respect of any one instalment shall affect due performance of the Contract as regards other instalments.
- 6.7 If the Buyer does not accept delivery of the Goods within 5 Business Days of the Supplier notifying the Buyer that the Goods are ready for delivery, then
- 6.7.1 delivery of the Goods shall be deemed to have been effected on the fifth Business Day after the day on which the Supplier notified that Buyer that the Goods were ready; and
- 6.7.2 the Supplier shall store the Goods until delivery takes place and the Buyer shall on demand pay to the Seller the additional costs of transporting, handling and storing of the Goods.
- 6.8 If 10 Business Days after the day on which the Supplier notified the Buyer that the Goods were ready for delivery the Buyer has not accepted delivery of them, the Supplier may resell or otherwise dispose of all or part of the Goods. Where title in the Goods has passed to the Buyer, the Seller shall account to Buyer for the sale proceeds less its costs (including transport, storage, handling and selling). The Seller shall not be required to account to the Buyer for any excess over the price of the Goods. Where title in the Goods has not passed to the Buyer then, without limiting any other rights the Seller has or any other liabilities of the Buyer, the Buyer shall be liable for any shortfall below the price of the Goods.

7 Installation

- 7.1 The Seller shall not be responsible for installation of the Goods.

8 Quality

- 8.1 The Goods have the benefit of the product warranty set out in Schedule 1 to these Conditions (**Product Warranty**).
- 8.2 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract and the Buyer agrees that its only rights, and the Seller's only obligations and liabilities in respect of the quality of the Goods, are those contained in the Product Warranty. The reference to the quality of the Goods in this clause and in the Product Warranty include compliance with any specification or description, defects in design, materials and workmanship and compliance with statutory requirements.
- 8.3 The Buyer acknowledges and agrees that only it can rely on the Product Warranty and that it cannot be transferred nor relied on in any way by any third party.

9 Title and risk

- 9.1 The risk in the Goods shall pass to the Buyer on delivery.
- 9.2 Title to the Goods shall not pass to the Buyer until the Seller receives payment in full (in cash or cleared funds) for the Goods and any other goods that the Seller has supplied to the Buyer in respect of which payment has become due.
- 9.3 Until title to the Goods has passed to the Buyer, the Buyer shall:
- 9.3.1 store the Goods separately from all other goods held by the Buyer so that they remain readily identifiable as the Seller's property;
- 9.3.2 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- 9.3.3 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
- 9.3.4 notify the Seller immediately if it becomes subject to any of the events listed in clause 11.1; and
- 9.3.5 give the Seller such information relating to the Goods as the Seller may require from time to time.
- 9.4 If before title to the Goods passes to the Buyer the Buyer becomes subject to any of the events listed in clause 11.1, then, without limiting any other right or remedy the Seller may have:
- 9.4.1 the Buyer's right to resell the Goods or use them in the ordinary course of its business ceases immediately; and
- 9.4.2 the Seller may at any time, require the Buyer to deliver up all Goods in its possession that have not been resold, or irrevocably incorporated into another product and, if the Buyer fails to do so promptly, enter any premises of the Buyer or of any third party where the Goods are stored in order to recover them.

10 Cancellation and Returns

- 10.1 Subject to clause 10.2, if the Buyer requires cancellation of the Contract, reduction in the quantity of Goods ordered, or wishes to return any of the Goods, this will only be accepted at the sole discretion of the Seller.
- 10.2 Cancellation or returns of customised or altered Goods will not be accepted by the Seller.
- 10.3 Unless otherwise agreed in writing, any cancellation or returns under this clause will be subject to the following conditions:
- 10.3.1 the Buyer shall reimburse the Seller for any costs, charges or expenses (both direct and consequential) incurred by the Seller up to the date of cancellation or return and the value of all loss or damage (both direct and consequential) incurred by the Seller by reason of such cancellation or return;
- 10.3.2 a restocking fee of 30% plus transport costs (transport to be arranged by the Seller) shall be payable by the Buyer to the Seller;
- 10.3.3 any returned Goods must be returned in an undamaged state and in their original packaging.
- 10.4 The Buyer shall be entitled to set-off the amounts referred to in clause 10.3 against any refund due to the Seller in respect of cancelled or returned Goods or otherwise recover the same as a debt from the Buyer
- 10.5 The provisions of clause 10 are without prejudice to any other rights and remedies of the Seller.

11 Termination

- 11.1 Without limiting its other rights or remedies, the Seller may terminate this Contract with immediate effect by giving written notice to the Buyer if:

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- 11.1.1 the Buyer fails to pay any amount due under the Contract on the due date for payment;
 - 11.1.2 the Buyer commits a material breach of any term of the Contract;
 - 11.1.3 the Buyer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business;
 - 11.1.4 the Buyer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or
 - 11.1.5 the Seller is prevented from or delayed in the carrying on of its business due to a Force Majeure Event that continues for a continuous period of 60 days.
- 11.2 Subject to clause 12.1, on termination of the Contract for any reason the Buyer shall immediately pay to Seller all of Seller's outstanding unpaid invoices and interest.
- 11.3 Termination of the Contract shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of this Contract that existed at or before the date of termination.
- 11.4 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.
- 12 Force Majeure**
- 12.1 The Seller reserves the right to 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, other than to refund the Buyer for any shortfall in the volume of Goods paid for by the Buyer) if it is prevented from or delayed in the carrying on of its business due to a Force Majeure Event, provided that, if the event in question continues for a continuous period in excess of 60 days, the Buyer shall be entitled to give notice in writing to the Seller to terminate the Contract.
- 13 Limitation of liability**
- 13.1 Nothing in these Conditions shall limit or exclude the Seller's liability for:
- 13.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
 - 13.1.2 fraud or fraudulent misrepresentation;
 - 13.1.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979;
 - 13.1.4 defective products under the Consumer Protection Act 1987; or
 - 13.1.5 any matter in respect of which it would be unlawful for the Seller to exclude or restrict liability.
- 13.2 Subject to clause 13.1:
- 13.2.1 The Seller shall under no circumstances whatsoever be liable to the Buyer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
 - 13.2.2 The Seller's total liability to the Buyer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed 30% of the price of the Goods.
- 14 General**
- 14.1 **Entire agreement.** This Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 14.2 **Variation and discretion.** No variation of this Contract shall be effective unless it is in writing and signed by Seller's Financial Director and an authorised representative of the Buyer. Any discretion exercisable by the Seller under this Contract shall only be effective where exercised in writing by the Seller's Financial Director.
- 14.3 **Waiver.** Except where otherwise stated in the Conditions, no failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 14.4 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
- 14.5 **Notices.** Any notice or other communication given to the Seller under or in connection with the Contract shall be in writing and shall be sent by email to the following email address: sales@mydek.com. Any notice or other communication given to the Buyer under or in connection with the Contract shall be in writing and shall be addressed to the Buyer at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as the Buyer may have specified to the Seller in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service, commercial courier or email.
- 14.6 **Third party rights.** No one other than a party to this Contract shall have any right to enforce any of its terms.
- 14.7 **Assignment.** The Seller may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights and obligations under the Contract. The Buyer may not assign, transfer, mortgage, charge, subcontract declare a trust over or deal in any other manner with any of its rights or obligations under the Contract including the rights it has under the Product Warranty.
- 14.8 **Governing law.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the law of England and Wales.

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Schedule 1 to these Conditions:

Product Warranty

(See clause 8.1)

1. Subject to the provisions of this warranty, MyDek Limited (registered in England and Wales with company number 10347247) ("MyDek") warrants to the original Buyer ("Buyer") that, for thirty (30) years from the date of purchase ("Warranty Period"), MyDek products shall be free from material defects in design, workmanship and materials. Any terms implied by sections 13 to 15 of the Sales of Goods Act 1979 are to the fullest extent permitted by law excluded.
2. If a material defect occurs within the Warranty Period, MyDek's sole responsibility shall be, at its sole discretion, to either repair the product, provide a replacement product or refund the portion of the purchase price paid by the Buyer for such defective product in accordance with paragraph 3.
3. Where MyDek opts to refund a proportion of the purchase price he refunds shall be calculated pro-rata for the length of time since purchase up to a maximum of 30 years as follows;

Time since purchase	Proportional refund of purchase price
During first year	100%
Up to: 2 years	97%
3 years	94%
5 years	87%
10 years	70%
20 years	37%
25 years	20%
29 years	7%
30 years	4%

4. MyDek shall not be responsible for any other costs and expenses, including those incurred with respect to the removal of defective MyDek products or the installation of replacement materials, such as labour and freight. To the fullest extent permitted under the law, under no circumstances will MyDek be liable for any direct, incidental or consequential damages, whether such damages are sought in contract, in tort (including but not limited to negligence and breach of statutory duty) or otherwise, and MyDek's liability for non-personal injury claims with respect to defective products shall in no event exceed the repair or replacement of such products or refund of the purchase price, as described above.
5. To make a claim under this warranty, the Buyer shall send to MyDek, within the Warranty Period a description and proof of the claimed defect and proof of purchase, to the current MyDek address as detailed on www.mydek.com.
6. MyDek shall only be liable under this warranty where written notice is received as soon as practicable after the alleged defect is detected and, in any event, within 14 days of the date on which the Buyer ought reasonably to have become aware of the alleged defect. To avoid doubt, the requirement to give notice under this clause 6 within the timescales stated is a condition precedent to MyDek's liability and MyDek shall not be liable to the Buyer where notice is not given as required by clause 6. The Buyer shall, if required by MyDek, provide MyDek a reasonable opportunity to examine the defect in person.

Exclusions to the warranty

7. MyDek does not warrant against and is not responsible for any condition attributable to:
 - 7.1. improper installation of MyDek products and/or failure to abide by MyDek's installation guidelines;
 - 7.2. use of MyDek products beyond normal use and service conditions, or in an application or environment not recommended by MyDek's guidelines and local building codes;
 - 7.3. movement, distortion, collapse or settling of the ground or the supporting structure on which MyDek products are installed;
 - 7.4. any act of God (such as flooding, hurricane, earthquake, lightning, etc.), environmental condition (such as air pollution, mould, mildew, etc.), staining, peeling or any other change to the surface finish from foreign substances (such as dirt, grease, oil, etc.), or normal weathering (defined as exposure to sunlight, weather and atmosphere which will cause any coloured surface to gradually fade, chalk, or accumulate dirt or stains);
 - 7.5. variations or changes in the colour of MyDek products;
 - 7.6. improper handling, storage, abuse or neglect of MyDek products by Buyer or any other person;
 - 7.7. ordinary wear and tear;
 - 7.8. any alterations or repairs made to the product;
 - 7.9. any defects which do not affect the ordinary use of the product; or
 - 7.10. any defects which arise because the product has not been maintained in accordance with MyDek O&M guidelines or industry guidelines.
8. No person or entity is authorised by MyDek to make and MyDek shall not be bound by any statement or representation as to the quality or performance of MyDek products other than as contained in this warranty. This warranty may not be altered, amended or assigned except in a written instrument signed by MyDek's Financial Director and the Buyer.
9. If any part of this warranty is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification or deletion shall not affect the validity and enforceability of the rest of the warranty.
10. This warranty is for the benefit of the Buyer. Except as provided for in clause 8, it cannot be assigned nor relied on in any way by any third party.
11. This warranty shall apply to any repaired or replacement products by MyDek.

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