

**DIRECT ENGINEERING & SITE SERVICES LTD  
TERMS AND CONDITIONS OF SALE**

The following terms and conditions (the **Conditions**) are the terms on which Direct Engineering & Site Services Ltd, company number 04983141 (the **Company**) sells to other businesses. These supersede all other terms and conditions previously used by the Company relating to the sale of Goods.

**1. DEFINITIONS AND INTERPRETATION**

1.1 In these Conditions, the following definitions apply:

**Buyer:** the company, firm or person who purchases the Goods from the Company.

**Buyer Materials:** any material or property provided free of charge to the Company for use in relation to the Contract but in respect of which ownership is retained by the Buyer.

**Contract:** the contract between the Company and the Buyer for the sale and purchase of the Goods in accordance with these Conditions comprising the Quotation and any document or Specification referred to in it, the Order and the Buyer's written acceptance of the Order.

**Goods:** the goods (or any part of them) set out in the Order.

**Order:** the order for the Goods, as set out in the Buyer's purchase order form or the Buyer's written acceptance of the Company's Quotation, as the case may be.

**Price:** the Company's quoted price for the Goods as set out in the Quotation or the Company's price list in force as at the date of delivery.

**Quotation:** the quotation provided by the Company to the Buyer detailing the description and quantity of the Goods to be sold and, where appropriate, referencing any relevant Specification.

**Specification:** any specification for the Goods, including any related designs, drawings or plans, that is agreed in writing by the Buyer and the Company.

1.2 In these Conditions, a reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted and a reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.

1.3 Any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

1.4 The headings in these Conditions are for ease of reference only and shall not affect their interpretation.

1.5 **The Buyer's attention is drawn to Condition 9 (Limitation of Liability) below.**

**2. BASIS OF THE 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 and any applicable Specification submitted by the Buyer are complete and accurate in all respects.

2.3 The Contract shall only come into existence when the Company confirms acceptance of an Order in writing.

2.4 Any samples, drawings, descriptive matter, or advertising produced by the Company and any descriptions or illustrations contained in the Company's catalogues, brochures or on the Company's website are produced for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract or have any contractual force.

2.5 A Quotation for the Goods given by the Company shall not constitute an offer which can be accepted by the Buyer. A Contract will only come into existence if the Company confirms its acceptance of an Order from the Buyer in writing. A Quotation shall only be valid for a period of 20 days from its date of issue.

### **3. CANCELLATIONS**

3.1 Any cancellation of an Order by the Buyer must be in writing and agreed in writing as cancelled by the Company.

3.2 If a Buyer cancels an Order within 24 hours of it being placed, the Company may agree to release the Buyer from its obligations under the Contract, subject to payment of an administration charge of 10% of the Price, subject to a minimum of £20.00.

3.3 If the Buyer wishes to cancel an Order more than 24 hours from the time the Order is accepted by the Company, the Buyer will remain responsible for the payment of the Price plus VAT, including the cost of any materials ordered, manufacture costs, administrative costs and delivery costs involved. This amount will be advised to the Buyer at the point of cancellation and is subject to a maximum cost of the total order value.

### **4. PRICE AND PAYMENT**

4.1 The Price is exclusive of VAT and the costs and charges of packaging, insurance and transport of the Goods, which shall be invoiced to the Buyer. The Buyer shall, on receipt of a valid VAT invoice from the Company, pay to the Company such additional amounts in respect of VAT as are chargeable on the supply of the Goods.

4.2 The Company may, by giving notice to the Buyer at any time up to 3 days before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:

(a) any factor beyond the Company's control (such as increased costs in labour, materials or other manufacturing costs, increases in taxes and duties or fluctuations in exchange rates);

(b) any request by the Buyer to change the delivery date(s), quantities or types of Goods ordered or the Specification; or

(c) any delay caused by any instructions of the Buyer or failure of the Buyer to give the Company adequate or accurate information or instructions.

4.3 The Company may invoice the Buyer for the Goods on or at any time after the completion of delivery. Payment is due within 30 days from the end of the month of the date of the invoice. Payment must be made in cleared funds to the bank account specified by the Company in the invoice. The Company reserves the right, in certain cases to ask for payment in advance of supplying the Goods. In this case, the Buyer will be advised at the time of the Quotation whether this applies to their Order.

4.4 If the Buyer fails to make any payment due to the Company under the Contract by the due date for payment, then the Buyer shall pay interest on the overdue amount at the rate of 4% per annum above Natwest Bank plc's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Buyer shall pay the interest together with the overdue amount.

4.5 The Buyer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). The Company may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Buyer against any amount payable by the Company to the Buyer.

### **5. GOODS AND QUALITY**

- 5.1 The Goods supplied to the Buyer will be:
- (a) in accordance with the Quotation and, where appropriate, any relevant Specification referred to in the Quotation;
  - (b) be free from material defects in design, material and workmanship;
  - (c) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and be fit for any purpose held out by the Company; and
  - (d) in acceptance with generally accepted standards and procedures, including tolerances generally accepted for Goods for the type supplied.
- 5.2 Where Goods are supplied or manufactured to meet Buyer requirements, or where the Specification has been approved by the Buyer, the Company accepts no responsibility for any defects (including incorrect measurements) or failure in performance resulting from specific Buyer requirements.
- 5.3 Where Buyer Materials are supplied by or on behalf of the Buyer to the Company to be used in the performance of the Contract then:
- (a) the Buyer Materials shall at all times be at the Buyer's risk (including when stored and used by the Company) and the Buyer shall at all times be responsible for insuring such Buyer Materials;
  - (b) the Company shall not be liable for any errors or failure of the Goods to comply with any Specification where such the Goods have been produced by the Company using Buyer Materials.
- 5.4 To the extent that the Goods are to be manufactured in accordance with a Specification supplied by the Buyer, the Buyer shall indemnify the Company against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by the Company in connection with any claim made against the Company for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Company's use of the Specification. This Condition 5.4 shall survive termination of the Contract.
- 5.5 The Company will try to supply Goods to the quality of samples provided to the Buyer or quoted for the Contract but the Contract is not a contract for sale by sample.
- 5.6 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.
- 5.7 The Company reserves the right to amend the Goods, if required by any applicable statutory or regulatory requirements. Any testing required to be undertaken to meet regulated standards will be carried out by or on behalf of the Company, at the Buyer's cost.
- 6. DELIVERY**
- 6.1 The Company shall deliver the Goods to an address within UK stated by the Buyer in the Order or such other location as the parties may agree. Any dates quoted for delivery are approximate only; time shall not be of the essence for delivery. If the Buyer asks the Company to change the delivery requirements, the Company may charge the Buyer for any additional cost.
- 6.2 The Buyer shall make all necessary arrangements to take delivery of the Goods within 3 working days from despatch.
- 6.3 Delivery of the Goods shall be completed on off-loading of the Goods at the delivery location.

- 6.4 The Buyer shall be under a duty to inspect the Goods on delivery. If the Buyer gives notice to the Company within 3 working days that some or all of the Goods do not comply with the Contract, the Company shall at its option, rectify the defect, replace the defective Goods or agree a discount to the Price. Where Goods are replaced these Conditions also apply to any replacement Goods.
- 6.5 Upon delivery if the consignment of Goods is damaged in any way the Buyer must refuse to accept delivery and contact the Company as soon as possible and, in any event, within 3 working days. Failure to do so will invalidate any claim for replacement Goods. If a delivery note or carriers note shows that the Goods were not inspected or examined, that will be taken as evidence that the Buyer has accepted the Goods. The Buyer shall not be entitled to reject Goods in whole or in part after 3 working days.
- 6.6 The Company shall ensure that each delivery of the Goods is accompanied by a delivery note which shows the shipping date, Buyer's details and order number, the Company reference number, and the type and quantity of the Goods.
- 6.7 The Company shall not be liable for any delay in delivery of the Goods that is caused by an event beyond its reasonable control as referred to in Condition 10 or the Buyer's failure to provide the Company with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 6.8 If the Buyer fails to accept delivery of the Goods within 3 working days of the Company notifying the Buyer that the Goods are ready, then, except where such failure or delay is caused by an event beyond the Company's reasonable control as referred to in Condition 10 or the Company's failure to comply with its obligations under the Contract:
- (a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the third working day after the day on which the Company notified the Buyer that the Goods were ready; and
  - (b) the Company shall store the Goods until delivery takes place, and charge the Buyer for all related costs and expenses (including insurance).
- 6.9 The Company may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate Contract. Any delay in delivery or defect in an instalment shall not entitle the Buyer to cancel any other instalment.

## **7. TITLE AND RISK**

- 7.1 The Goods shall be at the risk of the Buyer on completion of delivery.
- 7.2 Title to the Goods shall not pass to the Buyer until the Company has received payment in full (in cash or cleared funds) for the Goods.
- 7.3 Until title to the Goods has passed to the Buyer, the Buyer shall:
- (a) hold the Goods on a fiduciary basis as the Company's bailee;
  - (b) store the Goods separately from all other goods held by the Buyer so that they remain readily identifiable as the Company's property;
  - (c) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
  - (d) keep the Goods in satisfactory condition and insured against all risks for their full price from the date of delivery;
  - (e) notify the Company immediately if it becomes subject to any of the events listed in Condition 8.2; and
  - (f) give the Company such information relating to the Goods as the Company may require from time to time,

but the Buyer may resell or use the Goods in the ordinary course of its business.

7.4 If before title to the Goods passes to the Buyer, the Buyer becomes subject to any of the events listed in Condition 7.3, or the Company reasonably believes that any such event is about to happen and notifies the Buyer accordingly, then, provided that the Goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy the Company may have, the Company may at any time require the Buyer to deliver up the Goods 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.

## **8. BUYER'S INSOLVENCY OR INCAPACITY**

8.1 If the Buyer becomes subject to any of the events listed in Condition 7.3, or the Company reasonably believes that the Buyer is about to become subject to any of them and notifies the Buyer accordingly, then, without limiting any other right or remedy available to the Company, the Company may cancel or suspend all further deliveries under the Contract or under any other contract between the Buyer and the Company without incurring any liability to the Buyer, and all outstanding sums in respect of Goods delivered to the Buyer shall become immediately due.

8.2 For the purposes of Condition 0, the relevant events are:

- (a) the Buyer suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply;
- (b) the Buyer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where the Buyer is a company) where these events take place for the sole purpose of a scheme for a solvent amalgamation of the Buyer with one or more other companies or the solvent reconstruction of the Buyer;
- (c) (being a company) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Buyer, other than for the sole purpose of a scheme for a solvent amalgamation of the Buyer with one or more other companies or the solvent reconstruction of the Buyer;
- (d) (being an individual) the Buyer is the subject of a bankruptcy petition or order;
- (e) a creditor or encumbrancer of the Buyer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- (f) (being a company) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Buyer;
- (g) (being a company) the holder of a qualifying charge over the Buyer's assets has become entitled to appoint or has appointed an administrative receiver;
- (h) a person becomes entitled to appoint a receiver over the Buyer's assets or a receiver is appointed over the Buyer's assets;
- (i) any event occurs, or proceeding is taken, with respect to the Buyer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in Condition 8.2 (a) to Condition 8.2 (h) (inclusive);
- (j) the Buyer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business;

- (k) the Buyer's financial position deteriorates to such an extent that in the Company's opinion the Company's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; and
- (l) (being an individual) the Buyer dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.

8.3 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination. Any Condition which expressly or by implication is intended to survive termination of the Contract shall continue in full force and effect.

## **9. LIMITATION OF LIABILITY**

9.1 Nothing in these Conditions shall limit or exclude the Company's liability for:

- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
- (b) fraud or fraudulent misrepresentation;
- (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
- (d) any matter in respect of which it would be unlawful for the Company to exclude or restrict liability.

9.2 Subject to Condition 9.1, the Company shall under no circumstances whatever be liable to the Buyer whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any pure economic loss, loss of profit, loss of business, damage to goodwill or any indirect or consequential loss arising under or in connection with the Contract.

9.3 Subject to Conditions 9.1 and 9.2, the Company'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 the Price.

## **10. FORCE MAJEURE**

10.1 The performance of the Contract is subject to variation, delay or cancellation by the Company owing to events beyond its reasonable control including but not limited to power failure, internet service provider failure, industrial action, civil unrest, fire, flood, storms, earthquakes, acts of terrorism, act of war, government action or any other event that is beyond the control of the Company.

10.2 The Company shall have no liability for any failure to deliver or late delivery for the reasons referred to in Condition 10.1.

## **11. CONFIDENTIALITY**

11.1 The Buyer will regard as confidential the Contract and all information obtained by the Buyer relating to the business, products or intellectual property rights of the Company, including the Specification and will not use or disclose to any third party such information without the Company's prior written consent.

11.2 Condition 11.1 shall not apply to:

- (a) any information relating to the Company, its business, products or intellectual property rights which is in the public domain other than by reason of the Buyer's breach of Condition 11.1;
- (b) any information which the Buyer is required to disclose as a matter of law, regulation or by a court of competent jurisdiction.

- 11.3 The Buyer will not use, authorise or permit any other person to use any the Company's name, trademark or logo in any manner, except with the prior written consent of the Company.
- 11.4 The Buyer will use all reasonable endeavours to ensure compliance with this Condition 11 by its employees, sub-contractors and agents.
- 11.5 The provisions of this Condition 11 shall survive the termination of the Contract.

## **12. ASSIGNMENT AND SUB-CONTRACTING**

- 12.1 The Company may at any time assign, transfer, mortgage, charge or deal in any other manner with all or any of its rights or obligations under the Contract.
- 12.2 The Company, may without the consent of the Buyer sub-contract any part of its responsibilities under the Contract, but the Company shall remain responsible to the Buyer for the performance of the Contract notwithstanding such sub-contracting.
- 12.2 The Buyer may not assign, transfer, charge or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of the Company.

## **13. NOTICES**

- 13.1 Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party 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 e-mail. Any communication given by email should be confirmed by post.
- 13.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in Condition 13.1; if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second working day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by or e-mail, on the next working day after transmission (unless it was bounced back or undelivered).
- 13.3 The provisions of this Condition shall not apply to the service of any proceedings or other documents in any legal action.

## **14. GENERAL**

- 14.1 The Contract constitutes the entire agreement between the parties and replaces and supersedes all other agreement of any kind (written or oral) relating to the Goods. The Buyer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Company which is not set out in the Contract. If, however, the Buyer did rely on any untrue representation made by the Company in entering into the Contact, the Buyer's only remedy in respect of the shall be for breach of contract.
- 14.2 If any term or 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 term or provision shall be deemed deleted. Any modification to or deletion of a term or provision under this Condition shall not affect the validity and enforceability of the rest of the Contract.
- 14.3 A waiver of any right or remedy under the Contract or law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. 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 Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is in writing and signed by the Company.

14.5 A person who is not a party to the Contract has no right to enforce its terms.

14.6 The Contract shall be governed by the laws of England and Wales and each party hereby irrevocably agrees to submit to the exclusive jurisdiction of the courts of England and Wales.

Revisions date: 23.2.2017