

## **CONDITIONS OF SALE**

### **1. Definitions**

In these conditions:-

(A) DC Engineering means DC Engineering East Anglia Limited of 51 Turbine Way, Ecotech Business Park, Swaffham, Norfolk, PE37 7XD.

(B) The Buyer means the person, firm or company who places an order with DC Engineering for the manufacture and/or supply of any goods.

(C) The Goods mean the products manufactured and/or supplied by DC Engineering which are the subject of an order placed by the Buyer with DC Engineering.

### **2. Contractual Terms**

(A) These conditions shall apply to all contracts for the sale of Goods entered into by DC Engineering to the exclusion (unless otherwise agreed in writing signed by an authorised representative of DC Engineering) of all other conditions express or implied. In particular (but without limitation) no condition contained or referred to in any order, correspondence or other document submitted or written by the Buyer shall be of any effect unless expressly accepted in writing signed by an authorised representative of DC Engineering.

(B) No variation, cancellation or waiver of these conditions shall be of any effect unless made in writing signed by an authorised representative of DC Engineering.

### **3. Creation of Contractual Relations**

DC Engineering offers estimates and quotations, which are invitations to treat only. The submitting of an order by the Buyer to DC Engineering shall not itself create a contract, but a contract shall be deemed to be created when DC Engineering acknowledges the order and dispatches goods and/or commences the work (which ever happens first). All quotations are given on the basis that the whole of the quantity quoted for is ordered, and the work required is expected, this may be subject to revision if a smaller quantity is ordered.

### **4. Oral Orders**

Any oral orders taken by DC Engineering are accepted in good faith on the basis that the Buyer will confirm them in writing within three working days. In default of such confirmation DC Engineering will not accept responsibility for any alleged errors in the order and the buyer shall be liable to pay for the order as detailed in DC Engineering records.

### **5. Cancellation**

Once a contract has been created no purported cancellation or variation by the Buyer shall be effective unless accepted in writing by an authorised representative of DC Engineering. DC Engineering reserves the right to refuse to accept such cancellation or variation or to accept it only subject to such conditions as DC Engineering may determine, Acceptance by DC Engineering shall be subject to payment by the Buyer of such reasonable cancellation or variation charged as DC Engineering shall require. Such charges shall take into account expenses incurred and commitments made by DC Engineering and all other losses due to such cancellation or variation.

### **6. Delivery**

Time of delivery shall not be of the essence of the contract and the period (if any) quoted delivery is an estimate only. Whilst DC Engineering will use all reasonable endeavours to deliver the goods by the date (if any) quoted or requested it shall not be liable for any delay in delivery however caused, nor shall such delay entitle the Buyer to reject the goods or terminate the contract or render DC Engineering liable for damages in any way.

### **7. Price**

Unless otherwise agreed in writing signed by an authorised representative of DC Engineering the agreed price for the goods does not include

(A) The cost of delivery of the goods to the Buyers premises or Value Added Tax or any similar tax or duty, which will be added at the rate prevailing at the appropriate time.

### **8. Payment**

In cases where DC Engineering has agreed to treat the Buyer as a credit account customer payment for the goods shall be made no later than 30 days from date of Invoice.

In other cases payment for the goods shall be made in such manner as DC Engineering may require, which may include (without limitation) cash with order, cash on delivery or cash against proforma Invoice.

In all cases time of payment shall be of the essence and amounts received will be deemed to be in settlement of the oldest debt due,

In default of payment on the due date DC Engineering may (without prejudice to any other of its rights) charge the Buyer interest on a daily basis at 10%. DC Engineering also at its discretion (without prejudice to its rights to terminate the contract and claim damages) suspend deliveries of any outstanding orders and suspend or withdraw credit facilities (for orders already accepted and also orders previously delivered but for which payment would not have been due under normal credit terms has the suspension or cancellation of those credit facilities not occurred) and therefore all outstanding monies shall be deemed immediately due. Payment shall become immediately due, notwithstanding any previous agreement or agreement to the contrary in the event that a receiver is appointed over the business of the buyer or a resolution is passed (other than for the purposes of amalgamation or reconstruction) or a petition presented for the liquidation of the Buyer or if the Buyer commits an act of bankruptcy.

### **9. Passing of Risk**

(A) The risk in the goods shall pass to the Buyer on delivery to the Buyer or (if applicable) to the Buyers carrier.

### **10. Passing of Ownership**

(a) Except as envisaged by sub-paragraphs (C) and (D) below DC Engineering shall remain legal and beneficial owner of the goods until the Buyer has paid to DC Engineering all sums due in respect of them provided that DC Engineering may at any time by notice in writing to the Buyer declare that legal ownership and property in the goods or any part of them has passed to the Buyer. If the

price is payable by instalments or part only of the price has been paid, DC Engineering may appropriate any payments made to any part of the goods which have been delivered and title to that part shall thereupon pass. Until such time as property passes the Buyer acknowledges that he is in possession of the goods solely as Bailee for DC Engineering. The Buyer shall if DC Engineering so requires at all times during which the legal title to the goods remains in DC Engineering in accordance with the sub-clause (A) Keep and store the goods so that they may readily be identified as the property of DC Engineering and during such time the goods shall be kept and maintained in the condition in which they were delivered to the Buyer and insured for their full value with a reputable insurance company.

(B) If a receiver is appointed over the business of the Buyer or a resolution is passed (other than for the purposes of amalgamation or reconstruction) or a petition presented for the liquidation of the Buyer or if the Buyer commits an act of bankruptcy then DC Engineering or its authorised agents or representatives shall have right of access to and egress from the premises of the Buyer in order to identify and recover therefrom any goods in the possession of the Buyer which the legal title remains in DC Engineering under this clause 10. Prior notice shall not be required but any such visit will only be made within normal business hours.

(C) If the goods are incorporated by the Buyer in other products before payment is made in such circumstances that the goods are no longer identifiable as such the rights of DC Engineering in sub-paragraph (B) above shall attach to the products in which the goods have been so incorporated.

(D) If the goods are resold by the Buyer (whether after such incorporation as is referred to in sub-clause (C) above or not) then until the Buyer has paid to DC Engineering all sums due in respect of them the Buyer shall keep the proceeds of such resale in a separate account and in any event DC Engineering shall be entitled to trace the proceeds according to the principles of *RE Hallett's Estate* (1880) 13 Ch..D.696.

#### **11. Loss or damage in transit and non-delivery of Goods**

No responsibility will be accepted by DC Engineering for any shortage or damage occurring in transit or for non-delivery unless the Buyer makes a claim in writing to DC Engineering, providing full particulars, within three working days of receipt of the goods or (in cases of non-delivery) receipt of DC Engineering's advice note.

#### **12. Bankruptcy etc. of the Buyer**

If the Buyer (being a person) commits an act of bankruptcy, or (being a company) enters into liquidation otherwise than for the purpose of amalgamation or reconstruction or (in either case) enters into an arrangement or composition with its creditors DC Engineering may treat the contract as cancelled and withhold any further deliveries, but such action by DC Engineering will be without prejudice to any rights which may have accrued to DC Engineering before the action was taken.

#### **13. Force majeure**

If the performance of this agreement by DC Engineering is in any way prevented or restricted by factors not within DC Engineering reasonable control (including, without limitation, prohibitive Governmental regulation, industrial action or disputes (including strike or lock-outs) shortage of materials, act of God, war, fire, flood, drought, accidents, breakdown, or instructions or lack of instructions from the Buyer) then DC Engineering will be excused from such performance while such cause of non-performance, and will continue performance as soon as any such cause is removed. If non-performance under this clause continues for a period in excess of 12 calendar months this agreement may be terminated by either party on the giving of 30 days' prior notice in writing.

#### **14. Warranty**

(A) Subject to sub-clause (b) below and to clause 4 above:-

(i) In cases where the goods are manufactured by DC Engineering to a standard specification published by DC Engineering, DC Engineering warrants that the goods will meet that specification, and

(ii) In cases where the goods are manufactured by DC Engineering to a particular specification required by the Buyer, DC Engineering warrants that the goods will meet that specification provided that the Buyer has given DC Engineering all necessary information and instructions by such time as DC Engineering may have specified.

(B) In the case of goods or components not manufactured by DC Engineering, DC Engineering gives to the Buyer a warranty equivalent to the warranty (if any) which DC Engineering may have received from its supplier, provided that this sub-paragraph (A) has the goods or components been manufactured by DC Engineering.

(C) DC Engineering makes no representations or warranties in relation to the goods other than those subject as expressly provided in sub-clauses 10(A) and (B) above, and except where the Buyer is a consumer (within the meaning of the Unfair Contract Terms Act 1977), all warranties, conditions or other terms express or implied by statute or common law in respect of their goods or their use are hereby excluded to the fullest extent permitted by law. In particular (but without limitation) if the goods are supplied to a specification required by the Buyer they are not warranted to be suitable for any particular application or purpose irrespective of whether or not their intended purpose is known to DC Engineering. Subject to sub-paragraphs (A) and (B) above and to the extent that is permitted by law DC Engineering hereby excludes its liability for any loss or damage, consequential or otherwise (other than death or personal injury resulting from the negligence of DC Engineering) suffered by the Buyer in connection with the goods or their use.

#### **15. Waiver**

No waiver by either party in respect of any breach by the other shall operate as a waiver in respect of any subsequent breach of the same or any other provision.

#### **16. Severability**

Any provision of these conditions which in any way now or subsequently contravenes the law shall be deemed severable and shall not affect any of the other provisions.

#### **17. Governing Law**

Any contract of which these conditions form part shall be deemed to have been made in England and shall be governed by the laws of England and subject to the exclusive jurisdiction of the English Courts.

#### **18. Notices**

Any notices required to be served hereunder shall be deemed to be properly served if sent by prepaid registered or recorded delivery post to the last known address of the party to be served and shall be deemed to be duly served the day following the date of posting.