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## CONDITIONS OF SALE

### 1. GENERAL

(a) In these conditions the following terms shall have the following meanings:

- (i) "The Company" shall mean **KIRKPACE LTD** trading as **DMS technologies** (registered in England, number 1553793).
- (ii) "The Customer" shall mean the person, persons or corporate body contracting with the Company whose order is accepted by the Company.
- (iii) "The Goods" shall mean the goods and/or services that are the subject of this contract as specified on the Company's order acknowledgement.
- (iv) "Working Day" shall mean any day excluding Saturdays, Sundays, public holidays and the days falling between 24th December and 31st December each year.
- (v) A "Consumer Buyer" is a person who is buying items for personal use and not in the course of their trade, profession, vocation or sport.

(b) Delivery terms (such as Ex-works, FOB, CIF) shall be interpreted in accordance with INCOTERMS 2010 Edn.

### 2. VARIATIONS

Any variation of these conditions in any document of the Customer shall be inapplicable unless accepted in writing by the Company.

### 3. DELIVERY

(a) Delivery shall be made Ex-works unless specified otherwise on the Company's order acknowledgement.

(b) Time of delivery of the Goods is not to be of the essence of any Contract. Any date for delivery given by the Company is the best estimate that can be made and the Company shall not be liable for any loss or damage (whether direct or consequential) caused by delivery being after any quoted date.

(c) Delivery of any Goods may be totally or partially suspended by the Company during any period in which it is prevented or hindered from such delivery by reason of any circumstances beyond its control (including but not limited to the default of any person, firm or company engaged by the Customer) and such suspension shall not give rise to any claim by the Customer against the Company nor shall it give the Customer the right to terminate any agreement with the Company.

(d) All Goods supplied by the Company shall be at the Customer's risk with effect from delivery by or on behalf of the Company.

(e) Unless otherwise agreed partial deliveries are allowed. Where Goods contracted for are deliverable by instalments each delivery shall be deemed to be the subject of a separate enforceable contract.

(f) If the Customer refuses or fails to take delivery of the Goods tendered in accordance with the Contract the Company shall be entitled to immediate payment in full for the Goods so tendered and to store the same at the risk of the Customer. The Customer in addition to the purchase price shall pay all costs of such storage and any additional costs incurred as a result of such refusal or failure. The Company shall be entitled after the expiration of three months from the date upon which the price became payable to dispose of the Goods in such manner as the Company may determine.

(g) The Company shall be under no obligation to give to the Customer the notice specified in Section 32(3) of the Sale of Goods Act 1979. The Customer will be responsible for demurrage.

### 4. EXCLUSIONS AND LIMITATIONS OF LIABILITY

(a) The Customer acknowledges that it has examined the Goods and satisfied itself from that examination that:

- (i) The Goods are of merchantable quality and
- (ii) The Goods are fit for the purpose intended by the Customer in reliance on the Customer's own skill and judgement and that the Customer has not relied for this purpose upon the skill and judgement of the Company.

(b) The Company shall not be liable to the Customer:

- (i) For shortage in quantity delivered or (where the Goods are carried by the Company's own transport or by carrier on behalf of the Company) damage to or loss of the Goods or such part thereof in transit unless such shortage, damage or loss is noted on the Company's copy of the delivery note and full details of such shortage, damage or loss are provided to the Company in writing within three working days of delivery or (if the delivery note is marked "unexamined") a claim is made within seven working days.
- (ii) For other defects in the Goods unless notified to the Company within one month of receipt of the Goods by the Customer or (where a defect would not be apparent on reasonable inspection) within twelve months of delivery.

(c) The employees of the Company are not authorised to make oral representations as to the description, quality or fitness for any particular purpose of any Goods. If a representation is made or an opinion expressed orally which materially affects the Customer's decision to place an order for delivery and or installation the Customer should ensure that such details be confirmed in writing by a duly authorised officer or employee of the Company so as to form part of the Contract. No liability can otherwise be accepted.

(d) The Company reserve the right to change the specification of the Goods without prior notice to the Customer.

(e) The Company shall have no liability whatsoever (howsoever arising) in relation to any loss suffered by the Customer or any third party arising from the supply and or installation of Goods (howsoever caused) and in particular the Company shall not be liable for any loss of profit or any other consequential loss by the Customer howsoever arising.

(f) No condition is made or to be implied or any warranty given or to be implied as to the accuracy of any description, illustrations, dimensions or pre-contract statements or the like in respect of the Goods.

(g) The Customer shall indemnify the Company against any or all claims in respect of or consequent to pollution or to release of substances capable of causing harm to living organisms or ecological systems arising from the goods whether or not resulting from the negligence of any person.

(h) If the Customer is not the end user and ultimate owner of the goods then the Customer shall ensure by its contract with its customer that the Company is given the benefit of the exclusions and limitations of liability set out in this clause and shall indemnify the Company against claims of any kind.

## 5. PRICE AND TERMS OF PAYMENT

(a) All prices quoted by the Company are exclusive of Value Added Tax .

(b) The Company's costs (including storage charges if any) due to the Customer's neglect or default or lack of instruction shall be paid by the Customer in addition to the Contract price.

(c) The Company reserves the right to vary any Contract price at any time to take account of:

- (i) Any increase in the cost price of the Goods or the raw materials used in the manufacture of the Goods.
- (ii) Any alteration made in the specification upon which the Contract is based.
- (iii) Any costs for waiting time or other expenses incurred by the Company as a result of matters beyond its control.
- (iv) Special deliveries or part deliveries or any other variation of the original order made at the request of the Customer.
- (v) Any additional work which is required by any aspect of the state or condition of the place of delivery unless the Company was aware of such aspect when its quotation was given.
- (vi) Any extra cost born by the Company as a result of any legislative or regulatory change or the effects of fluctuation in exchange currency rates.

(d) In the absence of any concession to the contrary by the Company from time to time accounts are due and payable in full on receipt of the invoice in respect thereof and time for payment shall be of the essence.

(e) If the Customer fails to pay to the Company any amount on the due date:

- (i) The Company shall have the right to cancel any Contract made with the Customer and or to suspend or continue delivery of Goods and materials at the Company's option without prejudice to the Company's right to recover damage for any loss sustained by it.
- (ii) Outstanding sums shall carry interest at the rate of 3 percent per month by way of liquidated damages.
- (iii) The whole of the balance of the price then outstanding shall become due and payable forthwith.
- (iv) The Company reserves the right to make a storage charge at its rates current from time to time in addition to all other rights which it may have in respect of the defaulting payment.
- (v) The Company may repossess any Goods in respect of which payment is overdue and thereafter resell the same and for this purpose the Customer hereby grants an irrevocable right and licence to the Company and its servants and agents to enter upon all or any part of its premises with or without vehicles during normal business hours. This right shall continue to subsist notwithstanding the termination of the Contract for any reasons and is without prejudice to any other rights of the Company.
- (vi) The Company may without prejudice to any of its other rights stop any Goods in transit.
- (vii) The Company shall have a general lien on all Goods and property belonging to the Customer and such lien shall be exercisable in respect of all sums lawfully due from the Customer to the Company. The Company shall be entitled on the expiration of fourteen days' notice to dispose of such Goods or property in such manner and at such price as it thinks fit and to apply the proceeds towards such debt.

(f) Any monies paid to the Company for whatever reason by the Customer shall be applied to the Customer's account in the following order:

- (i) to settle any overdue payments;
- (ii) to pay any currently outstanding account balance;
- (iii) to pay for goods requested on any Customer orders not yet invoiced by the Company.

## 6. RETENTION OF TITLE

- (a) The Company reserves the right to dispose of the Goods until such time as the Customer has paid for them in full.
- (b) It is a condition of the Contract that the property in all the Goods to be delivered by the Company to the Customer shall remain vested in the Company until such time as payment is made in full. Further should the Customer alter the Goods by subjecting them to any manufacturing process or incorporating them into another product or mixing them in any way then the resulting product ("the Altered Goods") will pass into the ownership of the Company until the payment has been made in full.
- (c) Until payment in full has been made the Customer shall hold the Goods as bailee in a fiduciary capacity for the Company and it shall be the responsibility of the Customer to keep the Goods in good repair and condition at its own expense. The Goods shall be held separately from any other assets and clearly marked as the property of the Company.
- (d) Until payment be made in full:
- (i) In the event of the sale or hire of the Goods or Altered Goods by the Customer the Customer shall hold the proceeds of sale or hire on trust for the Company in a separate bank account opened by the Customer for this purpose.
  - (ii) The Company shall be entitled to all such proceeds of sale or hire charges received by the Customer through any bank or other account maintained by the Company.
  - (iii) In the Event of hire or sale of the Goods or the Altered Goods by the Customer in the ordinary course of its business the Customer shall assign its right to recover the selling price or hire charges from the third party concerned to the Company if required to do so in writing by the Company.
- (e) In the event that the payment of the Goods is not made by or on the date due under the terms of this Contract the Company may without prejudice to any of its other rights enter upon the Customer's premises and retake possession of the Goods and in order so to do may sever them from anything to which they are attached and shall not be liable for any damage caused in so doing.

## 7. CANCELLATION AND TERMINATION

- (a) Orders accepted by the Company can be cancelled only with the written consent of the Company such consent to be in the Company's absolute discretion and then only upon payment of a reasonable cancellation charge which shall include expenses already incurred in the amount of commitments made by the Company.
- (b) In the event of:
- (i) Entry by the Customer into a Deed of Arrangement.
  - (ii) Failure by the Customer to comply with any statutory demands served under the Insolvency Act 1986.
  - (iii) The making of a voluntary arrangement between the Customer and its creditors under the Insolvency Act 1986.
  - (iv) The obtaining of any judgement against the Customer or the ledgering of distress or execution on any premises owned or occupied by the Customer.
  - (v) The appointment of a receiver (whether by the Court or out of Court) of the whole of any part of the Customer's property.
  - (vi) The presentation of a petition for a winding up of the Customer or for the appointment of an Administrator.
  - (vii) The commission by the Customer of any breach of any Contract with the Company for the supply of any Goods.

Then in any of such events the Company may forthwith by written notice sent to the last known address of the Customer determine and end this agreement and thereupon the Customer shall no longer be in possession of the Goods with the Company's consent.

## 8. WARRANTY

- (a) The Company undertakes that Goods supplied shall, under proper storage and use, be free from defects in design, material and workmanship. "Proper storage and use" means installation, commissioning, operation and maintenance in accordance with the advice of the Company.
- (b) The Company's obligation under this undertaking shall be limited to making good by repair or replacement at the Company's option any defect which appears before the expiry of a period ending 12 months after the date of invoice of the Goods to the Customer. The Company's obligation is subject to the Customer informing the company of the defect within 7 days of its appearance and reasonable opportunity to investigate the defect.
- (c) The Company's obligation shall not extend to failure caused by fair wear and tear, accidents, misuse, neglect, repairs or modifications made to the Goods which have been made without the Company's approval.
- (d) The undertaking and obligation of the Company under this clause are in place of and exclude all other warranties of any form express or implied. Implied warranties or conditions of fitness and merchantability shall not apply. No consequential liability shall be accepted by the Company.

## 9. FORCE MAJEURE

- (a) The Company shall not be liable to the Customer for any loss or damage which may be suffered by the Customer as a direct or indirect result of the supply of the Goods being prevented, hindered, delayed or rendered uneconomic by reason of circumstances beyond the Company's reasonable control.
- (b) After the cessation of any such occurrence as is mentioned above subject to the rights of the Company referred to below the Company shall not be called upon to extend deliveries in one lot but the Company shall recommence delivery upon restored conditions subject to a variation in the Contract price to cover any increase in costs arising from any such occurrence as is mentioned above and the Contract period shall be extended accordingly.

(c) In the event of an occurrence as is mentioned above the Company shall have the option in its absolute discretion of cancelling all or any deliveries under the Contract and there shall be no liability whatsoever on the Company as a result of such cancellation.

(d) If any of the events specified above should occur and cause delays in delivery and in the event that the aggregate of such delays exceeds three calendar months then save as accepted below either party may cancel this Contract in respect of any undelivered Goods except in respect of Goods already delivered or in respect of Goods not delivered but which have either been made or are in the course of being made or have been appropriated by the Company to break Contract with the Customer.

(e) Any cancellation shall not entitle either party to claim damages by reason of such cancellation.

#### **10. INTERNET SALES SPECIAL CONDITIONS**

(a) Prices may be expressed as inclusive or exclusive of VAT. This inclusion or exclusion will be clearly stated at point of ordering.

(b) Orders accepted via the Internet shall be considered only offers to purchase and shall not be accepted or binding upon the Company until confirmed or acknowledged in writing by the Company. This may be via an invoice confirming acceptance of your order or by despatch of goods to you. Any order acknowledgement sent by the Company subsequent to the order and payment shall not amount to confirmation or acceptance of an order.

(c) The Company reserve the right to refuse any offer to purchase prior to written confirmation or despatch, where goods ordered become unavailable, the price of goods varies or an error is made by the Company in the price, description or for some other reason. In these circumstances, a full refund of any payment will be made to you, usually in the method by which you made payment to the Company.

(d) Descriptions and information about products given via the Internet are indicative only and any specifications, weights, measurements and technical data (whether relating to performance or otherwise) are for guidance only.

(e) No goods will be supplied on a trial basis.

(f) The Company reserves the right to amend technical or clerical errors in any order without notice. The buyer shall ensure that all details contained within the order are correct prior to submission to the Company. Subsequent to delivery, the Company shall accept no liability for any error or inaccuracy in the order unless notified of such error within seven days of delivery/receipt of any document containing the said error.

(g) Sub-clauses (i), (ii) (iii) and (iv) below shall only apply to a person who purchases goods as a Consumer Buyer and is resident within the European Union where rights, which accrue by virtue of the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013, apply.

(i) A Consumer Buyer shall have the right to cancel any contract for goods made by means of distance communication within fourteen working days of delivery of the goods. Cancellation of the contract can be effected by service of a written notice signed by the Consumer Buyer which details clearly the Company's Invoice Number, the name and address of the Consumer Buyer and delivered either by fax or by post to the Company's registered office. Goods provided to special order requirements shall not be returnable under the terms of this clause.

(ii) If a written notice of cancellation is received by the Company in accordance with sub-clause (i) the Consumer Buyer shall return the goods to the Company forthwith, to such address as directed by the Company in their original packaging and condition (and without having been installed or used and with all relevant seals and enclosures intact) and at the Consumer Buyer's sole expense.

(iii) If the Consumer Buyer fails to return the goods in accordance with sub-clause (ii) within 14 days of the cancellation of the contract then the right to return the goods shall lapse and the contract will be deemed reinstated and fulfilled.

(iv) After return of the goods in accordance with sub-clause (ii) within the limit of time in clause (iii), the Company shall refund any monies owing to the Consumer Buyer in respect of the goods within 30 days from the date of cancellation or receipt of goods by the Company.

#### **11. ENFORCEMENT**

Any failure by the Company to enforce any or all of these conditions shall not be construed as a waiver of any of the Company's rights.

#### **12. JURISDICTION**

The Contract and these conditions shall be governed by English Law and any dispute arising out of or in connection with it shall be determinable only in the Courts of England and Wales.

#### **13. ODR**

On-line dispute management : <https://webgate.ec.europa.eu/odr>