

## DP ENGINEERING – CONDITIONS OF SALE

### 1. Definitions

In these conditions, unless the context requires otherwise:

- 1.1 'Buyer' means the person who buys or agrees to buy the goods from the seller;
- 1.2 'Conditions' means the terms and conditions of sale set out in this document and any special terms and conditions agreed in writing by the Seller;
- 1.3 'Delivery Date' means the date specified by the Seller when the goods are to be delivered;
- 1.4 'Goods' means the articles which the Buyer agrees to buy from the Seller;
- 1.5 'Price' means the price for the Goods excluding carriage, packing, insurance and VAT; and
- 1.6 'Seller' means David Paull (CNC) Engineering Limited of Jon Davey Drive, Treleigh Industrial Estate, Redruth, Cornwall, TR16 4AX

### 2. Conditions Applicable

- 2.1 These Conditions shall apply to all Contracts for the sale of Goods by the Seller to the Buyer to the exclusion of all other terms and conditions including any terms or conditions which the Buyer may purport to apply under any purchase order, confirmation of order or similar document.
- 2.2 All orders for Goods shall be deemed to be an offer by the Buyer to purchase Goods pursuant to these Conditions
- 2.3 Acceptance of delivery of the Goods shall be deemed conclusive evidence of the Buyer's acceptance of these Conditions
- 2.4 Any variation to these Conditions (including any special terms and conditions agreed between the parties) shall be inapplicable unless agreed in writing by the Seller

### 3. Price and Payment

- 3.1 The Price shall be the Seller's quoted Price which shall be binding upon the Seller provided that the Buyer shall accept the Seller's quotation within 30 days. The Seller may by giving notice to the Buyer at any time up to 7 days before delivery increase the Price of the Goods to reflect any increase in the cost to the Seller which is due to factors occurring after the making of the Contract of Sale (including, without limitation, taxes and duties and the cost of labour, materials and other manufacturing costs).

- 3.2.1 Buyers with credit accounts  
Payment of the Price and VAT shall be due within 30 days of the date of the Seller's invoice. Time for payment shall be of the essence. The Price is exclusive of VAT which shall be due at the rate ruling on the date of VAT invoice
- 3.2.2 Buyers without credit accounts  
The Seller shall not be bound to deliver the Goods until the Buyer has paid for them. Payment shall be due before the Delivery Date and time for payment shall be of the essence. The Price is exclusive of VAT which shall be due at the rate ruling on the date of VAT invoice
- 3.3 Interest on overdue invoices shall accrue from the date when payment becomes due from day to day until the date of payment at a rate of 1% per month and shall accrue at such a rate after as well as before any Judgement

#### **4. The Goods**

The quantity and description of the Goods shall be as set out in the Seller's quotation.

#### **5. Warranties and Liability**

- 5.1 The Seller warrants that the Goods supplied will at the time of delivery correspond to the description given by the Seller. Except where the Buyer is dealing as a consumer as defined in the unfair Contract Terms Act 1977 Section 12 and/or the Unfair Terms and Consumer Contracts Regulations 1999 Regulation 3(1) all other warranties, conditions or terms relating to fitness for purpose, quality or condition of the Goods, whether express or implied by statute or common law or otherwise are excluded to the fullest extent permitted by law.
- 5.2 The Seller shall be under no liability whatsoever to the Buyer for any loss and/or expense arising from the carrying out by the Seller of work on the Buyer's own materials or parts.

#### **6. Intellectual Property**

Where any designs or specifications have been supplied by the Buyer for manufacture by the Seller or to the order of the Buyer then the Buyer warrants that the use of those designs or specifications for the manufacture, processing, assembly or supply of the Goods shall not infringe the rights of any third party.

## **7. Delivery**

- 7.1 The Goods shall be delivered to the Buyer at the Seller's address. The risk in the Goods shall pass to the Buyer upon such delivery taking place.
- 7.2 Unless arranged by the Buyer the Seller shall arrange for carriage of the Goods to the Buyer's address. The costs of carriage and any insurance which the Buyer reasonably directs the Seller to incur shall be reimbursed by the Buyer without any set-off or other withholding whatsoever and shall be due on the date for payment of the Price. The carrier shall be deemed to be the Buyer's agent.
- 7.3 The Seller shall not be liable for any loss or damage due to failure by the Seller to deliver the Goods (or any of them) promptly or at all.
- 7.4 Notwithstanding that the Seller may have delayed or failed to deliver the Goods (or any of them) promptly the Buyer shall be bound to accept delivery and to pay for the Goods in full provided that delivery shall be tendered at any time within three months of the Delivery Date.
- 7.5 The Buyer must notify to the Seller and the carrier any loss or damage to the Goods within 48 hours of receipt and the Goods shall be held for inspection to enable a claim to be made on the carrier. The Buyer shall immediately notify the Seller and the carrier if the Goods are not received within 48 hours of the Delivery Date.

## **8. Acceptance of the Goods**

- 8.1 The Buyer shall be deemed to have accepted the Goods 48 hours after delivery to the Buyer.
- 8.2 After acceptance the Buyer shall not be entitled to reject Goods which are not in accordance with the Contract.
- 8.3 If the Buyer properly rejects any of the Goods which are not in accordance with the Contract the Buyer shall nonetheless pay the full price of such Goods unless the Buyer promptly gives notice of rejection to the Seller and at the Buyer's cost returns such Goods to the Seller before the date when payment of the Price is due.

## **9. Return of Goods**

- 9.1 No Goods delivered to the Buyer which are in accordance with the Contract will be accepted for return without the prior written approval of the Seller on terms to be determined at the absolute discretion of the Seller.
- 9.2 Such Goods must be returned by the Buyer carriage-paid to the Seller in the original shipping carton.
- 9.3 Goods returned without the prior written approval of the Seller may at the Seller's absolute discretion be returned to the Buyer or stored at the Buyer's cost without prejudice to any rights or remedies the Seller may have.

## 10. Remedies of Buyer

- 10.1 Where the Buyer rejects any Goods then the Buyer shall have no further rights whatever in respect of the supply to the Buyer of such Goods or the failure by the Seller to supply Goods which conform to the contract of sale.
- 10.2 Where the Buyer accepts or has been deemed to have accepted any Goods then the Seller shall have no liability whatever to the Buyer in respect of those Goods.
- 10.3 The Seller shall not be liable to the Buyer for late delivery or short delivery of the Goods.

## 11. Technical Advice

The Seller has no control over the operating conditions under which the Goods are used and cannot accept liability in the event of any particular application proving unsuitable.

## 12. Retention of Property

- 12.1 In spite of delivery having been made property in the Goods shall not pass from the Seller until:
  - 12.1.1 The Buyer shall have paid the Price plus VAT in full; and
  - 12.1.2 no other sums whatever shall be due from the Buyer to the Seller.
- 12.2 Until property in the Goods passes to the Buyer in accordance with clause 12.1 the Buyer shall hold the Goods and each of them on a fiduciary basis as bailee for the Seller. The Buyer shall store the Goods (at no cost to the Seller) separately from all other Goods in its possession and marked in such a way that they are clearly identified as the Seller's property.
- 12.3 Notwithstanding that the Goods (or any of them) remain the Property of the Seller the Buyer may sell or use the Goods in the ordinary course of the Buyer's business at full market value for the account of the Seller. Any such sale or dealing shall be a sale or use of the Seller's property by the Buyer on the Buyer's own behalf and the Buyer shall deal as principal when making such sales or dealings. Until property in the Goods passes from the Seller the entire proceeds of sale or otherwise of the Goods shall be held in trust for the Seller and shall not be mixed with other money or paid into any overdrawn Bank account and shall be at all material times identified as the Seller's money.
- 12.4 The Seller shall be entitled to recover the Price (plus VAT) notwithstanding that property in any of the Goods has not passed from the Seller.

- 12.5 Until such time as property in the Goods passes from the Seller the Buyer shall upon request deliver up such of the Goods as have not ceased to be in existence or resold to the Seller. If the Buyer fails to do so the Seller may enter upon any premises owned, occupied or controlled by the Buyer where the Goods are situated and repossess the Goods. On the making of such request the rights of the Buyer under 12.3 shall cease.
- 12.6 The Buyer shall not pledge or in any way charge by way of security for any indebtedness any of the Goods which are the property of the Seller. Without prejudice to the other rights of the Seller, if the Buyer does so all sums whatever owing by the Buyer to the Seller shall forthwith become due and payable.
- 12.7 The Buyer shall insure and keep insured the Goods to the full Price against 'all risks' to the reasonable satisfaction of the Seller until the date that property in the Goods passes from the Seller, and shall whenever requested by the Seller produce a copy of the policy of insurance. Without prejudice to the other rights of the Seller, if the Buyer fails to do so all sums whatever owing by the Buyer to the Seller shall forthwith become due and payable.
- 12.8 The Buyer shall promptly deliver the prescribed particulars of this Contract to the Registrar in accordance with the Companies Act 1985 Part XII as amended. Without prejudice to the other rights of the Seller, if the Buyer fails to do so all sums whatever owing by the Buyer to the Seller shall forthwith become due and payable.

### **13. Proper Law of Contract**

This Contract is subject to the law of England and Wales.