

DIDSBURY ENGINEERING CO. LIMITED

TERMS AND CONDITIONS OF SALE

1 Formation

- a) All quotations and offers made and Orders are accepted subject to and shall be deemed to incorporate the Conditions and they shall apply to all Contracts to the exclusion of any other terms and conditions including without limit those which the Buyer purports to apply under any Order. Variations to the terms of any Contract will only be effective if agreed in writing and signed by a duly authorised officer of the Company.
- b) All Orders shall be deemed to be an offer and shall only be deemed accepted by the Company upon the earlier of the issue of an Acknowledgement of Order by the Company or delivery of work.
- c) The Company may modify the specification of Goods or Services without notice provided that such modification does not materially detrimentally affect the Services or the performance of the Goods. The description of the Goods or Services shall be as set out in the Company's website (for sales made through the Company's website) or written quotation (for other sales) and all other descriptive matter, specifications and advertising issued by the Company is solely aimed at giving an approximate idea of the Goods or Services described in them, they will not form part of the Contract.
- d) Any Order accepted by the Company may only be cancelled or varied by the Buyer with the prior written consent of the Company.

2 Delivery and Non-delivery

- a) Delivery times/dates named/accepted by the Company are given in good faith but are an estimate only. Time of delivery of Goods or provision of Services is not of the essence. Subject to condition 8.a), the Company shall not be liable for any loss (including loss of profit) costs, damages, charges or expenses caused directly or indirectly by failure (for any reason) to meet the delivery time/date stated/agreed (even if caused by the Company's own negligence) further, the Buyer shall have no right to cancel the Contract in the event of such a failure except as expressly stated in these Conditions.
- b) Work will be provided and Goods delivered as stated in the Company's quotation or if one is not issued as determined by the Company. Delivery shall be deemed to take place when the Goods arrive at the place stated in the Company's quotation or if one is not issued at such place as is agreed by the Company except that delivery to a carrier for the purpose of transmission to the Buyer shall be deemed to be delivery to the Buyer. Section 32(2) of the Sale of Goods Act 1979 shall not apply.
- c) Goods will be packed so as to adequately protect against damage in normal conditions of transit of usual duration. Unless otherwise agreed, the Company shall make such arrangements for carriage of the Goods and their insurance during carriage as it thinks appropriate and the Buyer shall indemnify the Company against all costs and/or expenses that the Company incurs in arranging for carriage and insurance of the Goods, such costs and/or expenses to be paid by the Buyer when it is due to pay for the work.
- d) The Company may deliver Goods in instalments and perform Services in sections in any sequence. Deliveries of further instalments and performance of further sections may be withheld until the Goods and/or Services comprised in earlier instalments and/or sections have been paid for in full. Default by the Company, howsoever caused, in respect of one or more instalments shall not entitle the Buyer to terminate the relevant Contract as a whole.
- e) If the Buyer fails or refuses to accept delivery of any Goods when they are ready for delivery in accordance with the relevant Order, or the Company agrees (at its sole discretion) to postpone delivery of the Goods at the request of the Buyer; or the Buyer fails to provide any instructions consents or authorisations required to enable the Goods to be delivered on the due date; the risk in the Goods shall pass to the Buyer, delivery of the Goods shall be deemed to have taken place and the Company may store or arrange for storage of such Goods and charge the Buyer for all related costs and expenses (including storage and insurance) and may sell such Goods after 28 days after such failure or refusal and apply the sale proceeds to any monies payable to the Company by the Buyer and account to the Buyer for any excess or charge the Buyer for any shortfall below the Contract price.

- f) If the Company agrees to permit the Buyer to Collect the Goods from the Company's place of business then delivery shall be deemed to take place when the Company notifies the Buyer that the goods are ready for collection and, unless otherwise agreed in writing by the Company, it is a condition of the Contract that the Buyer will collect the Goods within seven days of such notice.
- g) Upon delivery to the Buyer, all Goods should be examined. The Company shall not be liable for any shortages in, or non-delivery of, Goods unless the same is notified by the Buyer to the Company (together with all specific details) in writing within seven days of the actual or anticipated date of delivery (as relevant). Subject to such notice being provided, the Company shall, if it is satisfied that any Goods have not been delivered and the cause thereof being beyond the reasonable control of the Company, at its sole discretion, either arrange for delivery as soon as reasonably possible or give credit to the Buyer for such Goods. Shortages in, or non-delivery of some part of the Goods, shall not effect the Contract in respect of the other parts of the Goods.

3 Force Majeure

In the event that the Company is prevented or delayed in or from carrying out its obligations under the Contract as a result of any cause beyond its reasonable control such as but not limited to: acts of God; governmental intervention or restriction, import or export regulations; war; riots; strikes or trade disputes (including by and with the Company's own employees); power failure; inadequate performance of, failure of or incorrect processing by computer systems; fire; flood; default of suppliers or sub-contractors, or breakdown of plant, machinery or vehicles then the Company shall be relieved of its obligations and liabilities under the Contract for as long as such cause subsists.

4 Risk/Title

- a) Risk of damage to or loss of the Goods shall pass to the Buyer upon delivery or at the notified time for delivery if the Buyer fails for whatever reason to take delivery of the Goods at the notified time. Section 20(2) Sale of Goods Act 1979 shall not apply.
- b) Title to the Goods (both legal and equitable) shall remain with the Company until full payment with cleared funds of all monies due from the Buyer to the Company under the Contract and the Buyer has been made or title is properly vested in some other person by the operation of any statute.
- c) Until title to the Goods passes, the Buyer shall hold the Goods on a fiduciary basis as the Company's bailee and must store the Goods (at no cost to the Company) such that they are easily identifiable as the property of the Company and must not destroy or deface any identifying marks on the Goods or their packaging and must keep the Goods insured on the Company's behalf for the full price of the Goods against 'all risks' to the reasonable satisfaction of the Company and produce the policy of insurance to the Company upon request and must hold all proceeds of such insurance on trust for the Company and shall not mingle them with any other money nor pay the proceeds into an overdrawn bank account.
- d) Until title to the Goods passes, the Buyer shall still be entitled to re-sell, use or otherwise dispose of the Goods in the ordinary course of its business provided that the Buyer shall ensure that the entire proceeds arising by virtue of any such sale, use or disposal shall be held in trust for the Company and shall not be mixed with any other monies or paid into any other overdrawn bank account and shall at all times be identifiable as monies belonging to the Company.
- e) Once payment becomes due, the Company may while the owner of the Goods (without prejudice to its other rights) demand the immediate return of the Goods at any time and the Buyer must comply with (and bear the cost of) such demand immediately. If the Buyer fails to return such Goods, the Company or its successors in title, and their respective employees and agents, may enter any premises (with or without vehicles) during normal business hours to remove the Goods. The Buyer shall indemnify the Company against any loss, liability, damage, cost or expense incurred by the Company in the removal of the Goods.

5 Price

- a) Unless fixed prices have been agreed in writing by the Company, all prices are subject to alteration without notice and will be invoiced at the price ruling at the date of despatch of Goods or performance of Services.
- b) Unless otherwise agreed in writing by the Company, prices set out in any of the Company's price lists, quotations and Acknowledgement of Order are ex works and exclusive of any value added,

purchase or other taxes and any costs of carriage, package and insurance which shall be payable in addition to the price when the price is due.

6 Payment

- a) The Company may invoice the Buyer for the Work at any time after delivery of the Goods and/or performance of the Services and Goods delivered in instalments and Services performed in sections may be invoiced separately provided that if delivery of Goods and/or performance of services is postponed at the request or by the default of the Buyer then the Company may submit its invoice at any time after the Goods are ready for delivery and/or Services are ready for performance or would have been ready in the ordinary course but for the request or default on the part of the Buyer.
- b) The Buyer shall pay the Contract price within 30 days of the date of invoice.
- c) Payment shall only be deemed received by the Company from the Buyer upon receipt by the Company of cleared funds. Payment shall be made in full without any deduction, set off or abatement on any grounds. The Company may appropriate any payment made by the Buyer to any outstanding invoice. The Company may bring an action for the price of the Goods even though the property in them may not have passed to the Buyer.
- d) Time for payment of the Contract price (including, without limit, any costs or charges payable pursuant to Condition 2 c) shall be of the essence. The Buyer shall indemnify the Company against all expenses and legal costs incurred by the Company in recovering overdue amounts. Interest shall be payable by the Buyer on overdue amounts (before as well as after judgement) at the annual rate of 2 per cent above the base lending rate of Royal Bank of Scotland plc from time to time on the outstanding amount until the Contract price and/or such costs and/or charges are paid in full. The Company reserves the right to claim interest under the Late Payment of Commercial Debt (Interest) Act 1998.

7 Quality

- a) The Buyer is relying on its own skill and judgement in relation to the Work irrespective of any knowledge of the Company or its servants, agents or employees or as to the purpose for which the Work is supplied or its suitability.
- b) Subject to Conditions 7 a) & 7 c) the Company warrants that: (i) all Goods shall, upon delivery and, for a period of 12 months thereafter, comply with any specifications forming part of the Contract; and (ii) all Services shall be carried out with reasonable skill and care. All conditions, warranties or other terms whether express or implied, statutory or otherwise are hereby expressly excluded to the fullest extent permitted by law.
- c) The warranty given in Condition 7 b) will not apply:-
 - i. where the defect complained of arises from any drawing, design, specification or IPR supplied by the Buyer or arises from fair wear and tear, wilful damage, the Buyer's negligence, abnormal working conditions, or misuse or alteration or repair of the Goods without the Company's approval or arises from any failure to follow the Company's instructions (whether oral or in writing or whether relating without limit to the fabrication, operation, use or maintenance of the Goods) or misuse or alteration or repair of the Goods without the Company's approval.
 - ii. if the company or its agents is not given a reasonable opportunity to safely inspect the Work;
 - iii. if the total price for the Goods or Services has not been paid by the due date for payment;
 - iv. to any parts, materials or equipment not manufactured by the Company, in respect of which the Buyer shall only be entitled to the benefit of any warranty or guarantee as is given by the manufacturer to the Company.
- d) The obligations of the Company under the Contract are limited such that in the event of a breach by the Company of the warranty in Condition 7 b) or any defect in any Goods or Services the Company shall only be obliged (and shall have no further liability in contract, negligence or otherwise for any defect in quality of the Goods and/or Services or fitness for purposes of the Goods) at its option either to credit the price (if already paid) attributable to the faulty Goods or Services or repair, rectify or replace the faulty Goods or Services provided that such Goods are returned to the Company in their delivered state at the Buyer's expense if so requested by the Company within 12

months from the date of their delivery. Any replacement Goods will be guaranteed on the terms set out in this Condition 7 for the unexpired portion of the 12 month period.

8 Liability

- a) Nothing in these Conditions shall exclude or limit the liability of the Company for death or personal injury caused by the Company's negligence or fraudulent misrepresentation or any other matter liability for which may not be lawfully limited or excluded.
- b) The Company shall not be liable to the Buyer in contract, tort (including negligence or breach of statutory duty) or otherwise howsoever and whatever the cause thereof, (i) for loss of profit, business contracts, revenues or anticipated saving, or (ii) for damage to the Buyer's reputation or goodwill, or (iii) for any loss resulting from any claim made by any third party, or (iv) for any special, indirect or consequential loss or damage of any nature whatsoever.
- c) Without prejudice to Conditions 7 d) , 8 a) and 8 b) the Company's liability in contract, tort (including negligence or breach of statutory duty) or otherwise arising by reason of or in connection with the Contract shall be limited to the Contract price.
- d) The Buyer warrants that the use by the Company of any IPRs, designs, specifications, drawings or other materials or information of any nature provided to the Company by the Buyer pursuant to an Order shall not infringe any third party's IPRs. If any claim is brought or threatened against the Company in respect of such an infringement the Company shall be entitled to suspend carrying out further work to the Buyer and the Buyer shall indemnify the Company against all actions, claims, costs, demands, expenses and liabilities of whatsoever nature suffered or incurred by the Company as a result of any such claim or threatened claim brought against the Company.
- e) The Company gives no warranty that the design, manufacture, use or sale of the Goods or the provisions of the Services is not an infringement of any third party's IPRs.

9 Intellectual Property Rights and Confidentiality.

- a) The Buyer shall not under any circumstances acquire any right in or to any of the IPRs (including without limitation, copyright) subsisting in, resulting from or relating to Work or any information relating thereto either: (i) supplied by the Company to the Buyer in connection with Work, or (ii) resulting from Work, unless otherwise expressly agreed by the Company in writing.
- b) The Company shall have the right to apply any trade marks, trade names and/or service marks to the Goods. The Buyer acknowledges that no rights are granted to the Buyer by the use by the Buyer of such trade marks, trade names and/or service marks. The Buyer shall not deface, remove or obliterate any trade marks, trade names or logos applied by the Company on or in relation to the Goods.
- c) The Buyer shall keep confidential and not use without the prior written consent of the Company all or any information including, without limit, those (as referred to in Condition 9 a)) supplied by the Company to the Buyer or disclosed to or obtained by the Buyer pursuant to or as a result of the Contract and shall not divulge the same to any third party except to the extent that any such information is or becomes public through no fault of the Buyer or disclosure of the same as required by law or by any other governmental or other regulatory body.

10 Termination

- a) Without prejudice to any of its other rights, the Company may immediately terminate a Contract and demand payment of any amount due or accruing to the Company whether under the Contract or otherwise, re-sell the Goods and/or withhold or cancel any deliveries if any of the following occurs or is likely to occur:
 - i. the Buyer is in breach of any of its obligations under the Contract which, if capable of remedy, the Buyer has not remedied within 30 days of receiving written notice from the Company; or
 - ii. the Buyer is or becomes Insolvent or the Buyer suffers a distress or execution or other legal process to be levied or enforced or sued upon or against any part of the property, assets or revenue of the Buyer which is not discharged or stayed within 7 days or the Buyer ceases or threatens to cease to carry on business.

- b) If the Buyer is dealing as a "consumer" (as defined in the Consumer Protection (Distance Selling) Regulations 2000) (the "Regulations") and the Contract is a "distance contract" also as defined in the Regulations, the Buyer may have the right to cancel the Contract pursuant to the Regulations: (a) (for Goods) within 7 working days, beginning on the day after the Buyer received the Goods; and (b) (for Services) within 7 working days of the conclusion of the Contract (unless performance of the Services has commenced with the Buyer's agreement before that time). The Buyer will receive a full refund of the price paid for the Work for any Contract that is validly cancelled pursuant to the Regulations. To cancel a Contract, the Buyer must inform the Company in writing and the Buyer must also return any Goods which were ordered under the Contract to the Company in the same condition in which the Buyer received them. The Buyer has a legal obligation to take reasonable care of the Goods while they are in the Buyer's possession. If the Buyer fails to comply with this obligation, the Company may have a right of action against the Buyer for compensation.

11 General

- a) The failure to exercise or delay in exercising by the Company of a right or remedy provided by the Contract or by law does not constitute a waiver of the right or remedy or a waiver of other rights or remedies.
- b) The Buyer shall not be entitled to assign or sub-contract any of its rights or the obligations under the Contract without the prior written consent of the Company. The Company may assign, license or sub-contract all or any part of its rights or obligation under the Contract without the Buyer's consent.
- c) The Conditions contain the whole agreement between the Company and the Buyer. All other understandings, agreements, warranties, conditions, terms or representations, whether express or implied, statutory or otherwise, are excluded to the fullest extent permitted by law.
- d) The Contract shall be construed in accordance with and governed in all aspects by English Law and the Supplier submits to the exclusive jurisdiction of the English Courts (including, without limitation, with respect to non-contractual disputes and claims).
- e) The Buyer shall be responsible for complying with all relevant laws, bylaws, regulations, orders, directions, codes of practice or requirements of any statutory, public, local or other competent authority or court of competent jurisdiction applicable to the storage, sale, marketing, provision and use of the Work.

12 Export Sales

Notwithstanding any other Condition, where Goods are sold for export outside the United Kingdom:

- a) the Uniform Laws on International Sales Act 1967 shall not apply and the Company shall be under no obligation to give notice under Section 32 (3) of the Sales of Goods Act 1979;
- b) Section 26 (3) of the Unfair Contract Terms Act 1977 shall apply and notwithstanding Condition 8 a) all liabilities for injury or death arising directly from the use of the Goods are expressly excluded;
- c) unless otherwise agreed in writing by the Company, the currency will be pounds sterling and payment shall be by confirmed irrevocable letter of credit to be opened at a bank nominated by the Company at the Buyer's expense; and
- d) the Buyer shall be responsible for complying with any legislation or regulations governing the export of the Goods from the United Kingdom and governing the importation of the Goods into the country of destination and for the payment of any duties or taxes on them.

13 Interpretation

In these Conditions, unless the context requires otherwise, any reference to the singular shall include the plural and vice versa and:

'Acknowledgement of Order' means (for online made through the Company's website), an e-mail Order confirmation and (in any other case) a written acknowledgement of the relevant order issued by the Company.

'Buyer' means the person, firm or company that has requested any Work.

'Company' means Didsbury Engineering Co. Limited (a company registered in England and Wales (company number 00371191) whose registered office is at Lower Meadow Road, Brooke Park, Handforth, Wilmslow, Cheshire, SK9 3LP) and its successors and assigns.

'Conditions' means the standard terms and conditions of sale set out herein.

'Contract' means any contract for Work.

'Goods' means any goods supplied or to be supplied by the Company (as may be described in the Company's quote or Acknowledgement of Order).

'Insolvency' means in relation to the Supplier any of the following (as relevant) the appointment of any nominee, sequestrator, trustee, supervisor, administrator, administrative receiver, receiver or liquidator pursuant to the Insolvency Act 1986; or the entry into any compromise or arrangement with its creditors or if it commits any act of bankruptcy or if an order is made or effective resolution is passed for its winding up (except for the purposes of amalgamation or reconstruction of a solvent company) or the appointment of a manager or receiver to the Law of Property Act 1925 or the occurrence or sufferance of anything equivalent under any jurisdiction other than England or Wales and **'Insolvent'** shall be construed accordingly.

'IPRs' means any intellectual property rights of any nature including without limit, any and all inventions, patents, utility models, design rights, copyright know how, trade secrets, confidential information, trade marks, service marks, trade names and goodwill.

'Order' means an order placed by the Buyer with the Company for Work.

'Services' means any services supplied or to be supplied to the Buyer by the Company as may be described in the Company's quote or Acknowledgement of Order.

'Work' means Goods and/or Services.

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