

Conditions of Sale

1 INTRODUCTION

1.1 In these Conditions the following words shall have the following meanings:

- (a) Contract means a binding agreement between the Customer and the Company for the sale and purchase of the Equipment in accordance with these Conditions
- (b) Company means Dynamic Europe Limited, a company registered in England and Wales under company number 2385287 and whose registered office address is at Unit 7 Finepoint Way, Kidderminster, DY11 7FB;;
- (c) Customer means the purchaser of Equipment from the Company;
- (d) Equipment means the equipment, products and/or services purchased by the Customer from the Company;
- (e) Instructions means the detailed instructions defined in either the product specification document or in the application manuals.
- (f) "Order" means the Customer's order for Equipment in accordance with condition 1.2(b) below;
- (g) Sales Quote means the product price, warranty period and quotation period offered by the Company to the Customer.

1.2 Unless the Company and the Customer otherwise agree in writing:

- (a) these Conditions shall apply to all sales of Equipment and each Contract and no other conditions shall apply, including any which the Customer seeks to impose or incorporate, or which are implied by trade, practice or custom or course of dealing;
- (b) an Order constitutes an offer by the Customer to purchase the Equipment in accordance with these Conditions. The Customer shall be deemed to have placed an Order upon signing and returning the Sales Quote, or otherwise confirming the order in writing and paying the deposit (if any) referred to in the Sales Quote;
- (c) the Order shall only be deemed to be accepted when the Company issues a written acceptance of the Order at which point the Contract shall come into existence;
- (d) all Sales Quotes are for the supply of Equipment or materials in accordance with the Company's specification for the Equipment current at time of dispatch;
- (e) the Contract constitutes the entire agreement between the parties and the Customer acknowledges that it has not relied on any statement, promise or representation (including any samples, drawings, descriptive matter or advertising) made or given by or on behalf of the Company which is not set out in the Contract.

2 PRICE

- 2.1 The prices for the Equipment are those advised in the Sales Quote.
- 2.2 The Sales Quote is valid for a period of 30 days unless otherwise stated.
- 2.3 Unless otherwise agreed in the Sales Quote, all charges for packing, handling, freight, insurance, administration, duties and taxes (including VAT or other applicable sales taxes) are additional and payable by the Customer and any such costs handled by the Company will incur a 10% handling fee. Any customs duties, if included, are based on the rates prevailing at the date of quotation.
- 2.4 Prices are quoted in pounds Sterling currency and exclusive of VAT and other sales taxes unless otherwise stated.
- 2.5 The Company reserves the right to increase any price if material costs or wages increase after acceptance of an order and before delivery unless otherwise agreed in the Sales Quote. In such event, the Company will notify the Customer of the increase in price and the Customer shall have the right to cancel the order providing the Company is notified of such cancellation within seven days from the date of the Company's advice of any price increase.
- 2.6 The Customer is responsible for obtaining, at its own cost, such import licences and other consents in relation to the Equipment as are required from time to time and, if required by the Company, the Customer shall make those licences and consents available to the Company prior to shipment of the Equipment.

3 PAYMENT TERMS

- 3.1 Payment shall be made by the Customer for all Equipment and for any additional charges as specified in clause 2.3, in accordance with the terms of the Contract but in the event that the Contract does not stipulate terms of payment, then no later than 30 days following the date of invoice.
- 3.2 The invoice date shall be the date that the equipment is shipped from the Company's premises or the date that the services are first provided to the Customer and this date shall be used as recognition of the sale in the Company's books.

3.3 The Customer shall at the Company's discretion pay interest to the Company on any amount that is not paid on the due date at the default interest rate of 5 per cent per annum above the current base lending rate set from time to time by the Bank of England. Interest shall be payable on a daily basis from the date when the payment is due until the date when payment is actually made and the Purchaser shall be liable to pay all expenses and costs (including legal costs) in relation to the Company obtaining or attempting to obtain a remedy for the failure to pay. The charging of interest shall in no way imply the granting of an extension of credit by the Company to the Customer. The Customer shall make all payments to the Company under this clause 3.3 upon demand.

3.4 Time for payment shall be of the essence and, without prejudice to any other rights of the Company, if the Customer fails to pay any sum payable pursuant to any Contract when due the Company may treat the Contract as repudiated by the Customer or may, until payment in full is made, suspend delivery of Equipment which is the subject of the Contract or any other contract with the Company without incurring any liability whatsoever to the Customer in respect thereof.

3.5 Notwithstanding any rights of lien to which the Company may otherwise be entitled, the Company shall have a specific lien (including a right of sale) over the Equipment the subject of the Contract until payment for the Equipment has been made in full.

3.6 The Customer shall not be entitled to make any deduction from the price of the Equipment in respect of any set-off or counterclaim.

3.7 Subject to cancellation pursuant to clause 2.5 or clause 5.3, any deposit paid by the Customer shall be non-refundable.

4 DEFAULT

4.1 If,

(a) any amount payable by the Customer to the Company is overdue, or the Customer fails to meet any other obligation to the Company; or

(b) the Customer becomes subject to any of the events set out in condition 4.2 below, or the Company reasonably believes that the Customer is about to become subject to any of them;

then

(c) the Company shall be entitled to cancel all or any part of any Contract or Contracts with the Customer which remain unperformed; and the Company may require the Customer to deliver up the Equipment, and if the Customer fails to do so promptly, the Customer irrevocably gives the Company and its representatives, licence to enter any premises or property occupied by the Customer or any property on which the Equipment is stored or held without notice, in order to inspect, search for and remove the Equipment supplied and the Company shall not be liable to the Customer or any third party for any damage of any kind which may result from the exercise of its rights under this clause; and

(e) all amounts outstanding under this Contract or any other contract shall, whether or not due for payment, immediately become due and payable; and

(f) the Company may require the Customer to deliver up the Equipment, and if the Customer fails to do so promptly, the Customer irrevocably gives the Company and its representatives, licence to enter any premises or property occupied by the Customer or any property on which the Equipment is stored or held without notice, in order to inspect search for and remove the Equipment supplied and the Company shall not be liable to the Customer or any third party for any damage of any kind which may result from the exercise of its rights under this clause; and

4.2 For the purposes of condition 4.1(b), the relevant events are:

- (a) the Customer 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) 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; or
- (b) the Customer 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 Customer is a company) these events take place for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer; or
- (c) (being an individual) the Customer is the subject of a bankruptcy petition or order; or
- (d) a creditor or encumbrancer of the Customer 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; or

<p>(e) (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 Customer; or</p> <p>(f) (being a company) a floating charge holder over the assets of the Customer has become entitled to appoint or has appointed an administrative receiver; or</p> <p>(g) a person becomes entitled to appoint a receiver over the assets of the Customer or a receiver is appointed over the assets of the Customer; or</p> <p>(h) any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in conditions 4.2(a) to condition 4.2(g) (inclusive); or</p> <p>(i) the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or substantially the whole of its business; or</p> <p>(j) (being an individual) the Customer 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.</p>	<p>6.5</p> <p>6.6</p> <p>7</p> <p>7.1</p> <p>(a)</p> <p>(b)</p> <p>(c)</p>	<p>The Company shall not be liable where any unauthorised repair or alteration to the Equipment has been performed by the Customer.</p> <p>Where Equipment is deemed not to be covered by the warranty provided under this clause 6, any repair charges incurred by the Company (as determined by its local service centre) in respect of the Equipment shall apply.</p> <p>EXCLUSION OF WARRANTIES AND LIABILITY</p> <p>To the full extent permitted by law, but subject to clause 6 and 7.4:</p> <p>while the Company will take reasonable care, the Company gives no representation or warranty as to the Equipments suitability or fitness for purpose and the description of the Equipment in any contract or other document shall not import any such condition or warranty on the part of the Company;</p> <p>all conditions, warranties and other terms implied by statute or common law are, to the extent permitted by law, excluded; and</p> <p>while the Company will take reasonable care, it is the responsibility of the Customer to satisfy itself as to the condition, quality, suitability and fitness of the Equipment for its purpose.</p>
<p>5 DELIVERY</p> <p>5.1</p> <p>5.2</p> <p>5.3</p> <p>5.4</p>	<p>7.2</p> <p>7.3</p> <p>7.4</p> <p>(a)</p> <p>(b)</p>	<p>Where the Company undertakes the installation of the Equipment or materials supplied in the Customer's premises, the Company shall not be responsible for any indirect, consequential loss or damage occurring as a result thereof nor for third party claims in connection therewith.</p> <p>The Company shall, except to the extent expressly provided in clause 6, be under no liability to the Customer (whether in contract, tort or otherwise) for any indirect, special or consequential loss or for loss of profits (whether direct or indirect) of any kind whatever arising out of the supply of or failure to supply Equipment hereunder.</p> <p>If, notwithstanding clause 7.3, the Company is found to be liable to the Customer in any circumstances then, notwithstanding clause 6, the maximum combined amount the Company will be liable for to the Customer under any Contract or Contracts is an amount equal to the lesser of:</p> <p>the purchase price of the Equipment to which the Contract relates; or</p> <p>the cost of replacement or repair of the Equipment</p>
<p>6 WARRANTY</p> <p>6.1</p> <p>6.2</p> <p>(a)</p> <p>(b)</p> <p>(c)</p> <p>(d)</p> <p>(e)</p> <p>(f)</p> <p>(g)</p> <p>6.3</p> <p>6.4</p>	<p>7.5</p> <p>(a)</p> <p>(b)</p> <p>(c)</p> <p>8 INDEMNITY</p> <p>8.1</p> <p>9 CANCELLATION</p> <p>9.1</p> <p>10 INTELLECTUAL PROPERTY</p> <p>10.1</p> <p>10.2</p>	<p>Nothing in these Conditions shall limit or exclude the Supplier's liability for:</p> <p>death or personal injury caused by its negligence or the negligence of its employees, agents or subcontractors;</p> <p>fraud or fraudulent misrepresentation; or</p> <p>breach of the terms implied by section 12 of the Sale of Goods Act 1979</p> <p>The Customer shall comply with all Instructions of the Company in relation to the Equipment and, notwithstanding such compliance, the Customer shall keep the Company indemnified against all costs, claims, demands, expenses and liabilities of whatsoever nature, including without prejudice to the generality of the foregoing, claims for death, personal injury, damage to property and consequential loss, (including loss of profits) which may be made against the Company or which the Company may sustain, pay or incur as a result of or in connection with the Customer failing to comply with the Company's Instructions or by the Customer's sale, export, import or use of the Equipment</p> <p>Except in accordance with Clause 2.5, orders accepted by the Company cannot be cancelled by the Customer except with the Company's consent and then only upon terms that would indemnify the Company against loss.</p> <p>Where the Equipment is manufactured to the Customer's specification, the Customer warrants that the manufacture and supply of such Equipment by the Company will not infringe an intellectual property right, a patent, registered design, trademark, copyright or other proprietary right (Intellectual Property Right) of any person and the Customer indemnifies the Company against any liability to or action by a third party for infringement or alleged infringement of any Intellectual Property Right.</p> <p>Copyright in all software, drawings, specifications and other technical information provided by the Company in connection with the contract is vested in the Company. The Customer undertakes not to disseminate, reproduce, store or transmit any such material without first obtaining the written consent of the Company.</p>

11 HEALTH AND SAFETY

11.1 The Customer shall be responsible to ensure that all applicable health and safety regulations are observed and other appropriate steps taken in relation to the Equipment and the health and safety of the Company's staff working on the Customer's premises.

12 DISPUTE RESOLUTION

12.1 Subject as may be provided elsewhere in these Conditions, the parties shall attempt in good faith to resolve all disputes, differences or questions arising in relation to a Contract within one calendar month. If the matter has not been resolved within one calendar month, then either party may refer the dispute to an appropriate court or tribunal, or may (at its discretion) opt for mediation.

12.2 Any reference to mediation shall be made in accordance with the procedures of the Centre for Effective Dispute Resolution (CEDR). The mediation shall be conducted by a single mediator appointed by the parties or, if the parties are unable to agree on the identity of the mediator within fourteen (14) days after the date of the request that the dispute be resolved by mediation, or if the person appointed is unable or unwilling to act, the mediator shall be appointed by CEDR on the application of either party. The mediation shall be conducted in English at the offices of CEDR in London. Mediation is without prejudice to the rights of the parties to the injunctive relief or to the rights of the parties in any future proceedings.

13 MISCELLANEOUS

13.1 Inspection: Where inspection by the Customer or other persons is required, this must be arranged by the Customer with the Company and shall be at the Customer's cost.

13.2 Notices: Any notice to be given to the Customer shall be deemed to be given forty eight hours after it being posted by ordinary post or immediately if sent by e-mail, facsimile or telegram to the physical address, e-mail address or appropriate facsimile number of the Customer set out in the Contract or to the Customer's registered office (if the Customer is a Company in the UK) or to the Customer's last known address as notified to the Company.

13.3 Severance: If any Condition or part of any Condition is held to be invalid or unenforceable the invalidity or unenforceability shall be deemed eliminated or modified to the minimum possible extent necessary to make the remainder of the Conditions enforceable.

13.4 No Waiver: Failure by the Company to insist upon strict performance by the Customer of any of the Conditions shall not be a waiver of any rights of the Company on any subsequent occasion.

13.5 Variation: These Conditions and the Contract may only be varied by the parties by agreement in writing.

13.6 Assignment: The Company may, at any time, at law or equity, assign all or any part of its rights, title, benefits and interest in the Equipment and its rights in or under this Contract, without the consent of the Customer. The Customer may not assign or transfer or purport to assign or transfer any of its rights or obligations under or in connection with the Contract to any other person whatsoever.

13.7 Sub-Contracting: The Company reserves the right to sub-contract the performance of the Contract or any part thereof to any other party or person it may determine.

13.8 Third party rights: a person who is not a party to the Contract shall not have any rights under or in connection with it.

13.9 Governing Law: All Contracts made between the Company and the Customer, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of England and Wales and (subject to clause 12.1) the Customer agrees to submit to the exclusive jurisdiction of the English Courts for all purposes or in connection with such Contracts.

13.10 Administration Charges: The Company reserves the right to charge an administration fee of £15.00 per hour to cover all costs incurred by the company in providing information or effecting changes to any Contract which are requested by the Customer over and above reasonable business practice.

13.11 Obsolete Equipment: In the event of any equipment or products becoming obsolete and/or being withdrawn from the market, the Company will endeavour to provide at least twelve months notice in writing to the Customer of any such product withdrawals.

13.12 Customer understands that the Equipment may be subject to regulation by agencies of the United States government (U.S.), including U.S. export controls that prohibit export or diversion of certain products to certain unauthorized countries or for certain unauthorized uses. Customer warrants that it will comply in all respects with the export control laws and regulations promulgated and administered by the U.S. or the government of any other country with jurisdiction over Customer or its transactions, including the obligation not to export, re-export or otherwise disclose, directly or indirectly, products or technical data to any person or destination when such export, re-export or disclosure is in violation of U.S. or other applicable laws.