

**DATED**

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**Terms and conditions for the supply of GOODS & SERVICES**



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## Terms & Conditions of Supply of Goods & Services by DTS Trading Inc Ltd (The Supplier) to the Customer.

### 1. Interpretation

#### 1.1 Definitions:

**Business Day:** a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

**Business Hours:** the period from [9.00 am to 5.00 pm] on any Business Day.

**Conditions:** the terms and conditions set out in this document as amended from time to time in accordance with clause 12.4.

**Contract:** the contract between the Supplier and the Customer for the sale and purchase of the Goods in accordance with these Conditions.

**Customer:** the person or firm who purchases the Goods from the Supplier.

**Delivery Location:** has the meaning given in clause 4.2.

**Force Majeure Event:** an event, circumstance or cause beyond a party's reasonable control.

**Goods:** the goods (or any part of them) set out in the Order.

**Order:** the Customer's order for the Goods, as set out [in the Customer's purchase order form **OR** overleaf **OR** in the Customer's written acceptance of the Supplier's quotation **OR** in the Customer's purchase order form, the Customer's written acceptance of the Supplier's quotation, or overleaf, as the case may be].

**Specification:** any specification for the Goods, including any related plans and drawings, that is agreed [in writing] by the Customer and the Supplier.

**Supplier:** [NAME OF SUPPLIER] (registered in England and Wales with company number [NUMBER]).

**[Warranty Period:** has the meaning given in clause 5.1.]

#### 1.2 Interpretation:

- (a) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- (b) A reference to a party includes its [personal representatives,] successors and permitted assigns.

- (c) A reference to legislation or a legislative provision is a reference to it as amended or re-enacted. A reference to legislation or a legislative provision includes all subordinate legislation made under that legislation or legislative provision.
- (d) Any words following the terms **including, include, in particular, for example** or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms.
- (e) A reference to **writing** or **written** excludes fax [and email **OR** but not email].

## **2. Basis of contract**

- 2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.
- 2.2 The Order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order and any applicable Specification submitted by the Customer are complete and accurate.
- 2.3 The Order shall only be deemed to be accepted when the Supplier issues a written acceptance of the Order in the form of a 'Sales Order', at which point the Contract shall come into existence.
- 2.4 The Customer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Customer that is inconsistent with these Conditions.
- 2.5 Any samples, drawings, descriptive matter or advertising produced by the Supplier and any [descriptions or] illustrations contained in the Supplier's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods referred to in them. They shall not form part of the Contract nor have any contractual force.
- 2.6 A quotation for the Goods given by the Supplier shall not constitute an offer. A quotation shall only be valid for a period of 20 Business Days from its date of issue (or as otherwise stated on the quotation sheet).

## **3. Goods**

- 3.1 The Goods are described in the Supplier's catalogue as modified by any applicable Specification.

- 3.2 To the extent that the Goods are to be manufactured in accordance with a Specification supplied by the Supplier, the Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other [reasonable] professional costs and expenses) suffered or incurred by the Supplier in connection with any claim made against the Supplier for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Supplier's use of the Specification. This clause 3.2 shall survive termination of the Contract.
- 3.3 The Supplier reserves the right to amend the Specification if required by any applicable statutory or regulatory requirement, and the Supplier shall notify the Customer in any such event.

#### **4. Delivery**

- 4.1 The Supplier shall ensure that:
- (a) each delivery of the Goods is accompanied by a delivery note that shows the date of the Order, the contract number **OR** all relevant Customer and Supplier reference numbers, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and
  - (b) if the Supplier requires the Customer to return any packaging materials to the Supplier, that fact is clearly stated on the delivery note. The Customer shall make any such packaging materials available for collection at such times as the Supplier shall reasonably request. Returns of packaging materials shall be at the Supplier's expense.
- 4.2 The Supplier shall deliver the Goods to the location set out in the Order or such other location as the parties may agree at any time after the Supplier notifies the Customer that the Goods are ready.

#### **OR**

The Customer shall collect the Goods from the Supplier's premises as documented on the Sales Order provided by the Supplier, or such other location as may be advised by the Supplier prior to delivery within three Business Days of the Supplier notifying the Customer that the Goods are ready.

- 4.3 Delivery is completed on the completion of unloading of the Goods at the Delivery Location or loading of the Goods from the Supplier's premises or agreed loading location.

- 4.4 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Goods. Goods will be delivered to the client at the earliest possible opportunity. However, the delivery date cannot be guaranteed. DTS Trading Inc. will notify the Customer if there are any delays to the requested delivery date within 72 hours of the knowledge of this delay, in order to allow the Customer to adjust their arrangements. Any notification will not form grounds for order cancellation. If there is no requested delivery date, the Supplier will deliver the goods to the client at its earliest opportunity. No liability will be borne by the Supplier for delays to deliveries.
- 4.5 If the Supplier fails to deliver the Goods, its liability shall be limited to 10% of the Purchase Order value to cover expenses incurred by the Customer in procuring replacement goods of similar description and quality from another source. The Supplier shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with any instructions that are relevant to the supply of the Goods, which include but are not restricted to: product specifications (where required), delivery instructions, proof of payment (where required).
- 4.6 If the Customer fails to accept delivery of the Goods within 3 Business Days of the Supplier notifying the Customer that the Goods are ready, then, except where such failure or delay is caused by a Force Majeure Event or the Supplier's failure to comply with its obligations under the Contract in respect of the Goods:
- (a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day after the day on which the Supplier notified the Customer that the Goods were ready]; and
  - (b) the Supplier shall store the Goods until actual delivery takes place and charge the Customer for all related costs and expenses (including insurance).
- 4.7 If ten Business Days after the day on which the Supplier notified the Customer that the Goods were ready for delivery the Customer has not [taken **OR** accepted] actual delivery of them, the Supplier may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.
- 4.8 If the Supplier delivers up to and including 5% more or less than the quantity of Goods ordered the Customer may not reject them, but on receipt of notice from the Customer that the wrong quantity of Goods was delivered, the Supplier shall make a pro rata adjustment to the invoice for the Goods.

4.9 The Supplier may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

## 5. Quality

5.1 The Supplier warrants that on delivery, and until the date of expiry as documented by the manufacturer of the goods on the packaging, or for a minimum of ten years where no expiry date is documented by the manufacturer, (**Warranty Period**),] the Goods shall:

- (a) conform in all material respects with their description and any applicable Specification, and
- (b) be free from material defects in design, material and workmanship; and
- (c) [be of satisfactory quality (within the meaning of the Sale of Goods Act 1979), and
- (d) be fit for any purpose held out by the Supplier.

5.2 Subject to clause 5.3, if:

- (a) the Customer gives notice in writing to the Supplier during the Warranty Period within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 5.1;
- (b) the Supplier is given a reasonable opportunity of examining such Goods; and
- (c) the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Customer's cost,

the Supplier shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.

5.3 The Supplier shall not be liable for the Goods' failure to comply with the warranty set out in clause 5.1 if:

- (a) the Customer makes any further use of such Goods after giving notice in accordance with clause 5.2;
- (b) the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, use and onward delivery of the Goods or (if there are none) good trade practice regarding the same;
- (c) the defect arises as a result of the Supplier following any drawing, design or specification supplied by the Customer;

- (d) the Customer alters or repairs such Goods without the written consent of the Supplier;
- (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
- (f) the Goods differ from their description and any applicable Specification] as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

5.4 The Customer must raise any queries/challenges in relation to the quantity, warranty or condition of goods delivered within 72 hours of delivery of the goods to the supplier. They must present a Delivery Note that outlines 'Signed, Unchecked', alongside visual evidence of the issue being raised. Any queries raised outside of this 72 hour window will not be valid.

5.5 Except as provided in this clause 5, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.1.

5.6 Where an expiry date is applied by the manufacturer to the Goods, the Supplier guarantees that the Goods will be delivered to the Customer with no less than three months expiry until the documented expiry date. The documented expiry date can be found either on the product packaging, or a letter of extension from the manufacturer where the expiry date has been extended beyond the date documented on the Goods' packaging. Any letter of extension applicable to the expiry date will comply with all appropriate regulatory requirements.

5.7 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.

5.8 These Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.

## **6. Tail Solutions**

6.1 The provision of the service Tail Solutions, is where the customer supplies a Good or service on behalf of the customer, as instructed by the Customer. The same Terms & Conditions of trade apply to the provision of the services of Tail Solutions, as it does the supply of Goods from the Supplier's product portfolio.

6.2 The Supplier bears no liability for the quality or accuracy of products or services supplied via the Tail Solution service, where the Supplier has specifically been instructed to procure said Goods or Service by the Customer, from a specific manufacturer/distributor/service provider.

## 7. Title and risk

7.1 The risk in the Goods shall pass to the Customer on completion of delivery.

7.2 Title to the Goods shall not pass to the Customer until [the earlier of]:

- (a) the Supplier receives payment in full (in cash or cleared funds) for the Goods [and any other goods that the Supplier has supplied to the Customer] [in respect of which payment has become due]], [in which case title to the Goods shall pass at the time of payment [of all such sums]]]; and]
- (b) [the Customer resells the Goods, in which case title to the Goods shall pass to the Customer at the time specified in clause 7.4].
- (c) Where the Supplier has unpaid Invoices owed from the Customer to the Supplier, regardless of whether these unpaid invoices are within the terms of any credit agreement in place between the Supplier and Customer or are Overdue invoices from the Customer to the Supplier, the Supplier Retains Title on all Goods in the Customer's Premises supplied by the Supplier, regardless of which Sales Order these Goods were delivered as part of, up to the value of all unpaid invoices owed from the Customer to the Supplier.

7.3 Until title to the Goods has passed to the Customer, the Customer shall:

- (a) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
- (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- (c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
- (d) notify the Supplier immediately if it becomes subject to any of the events listed in clause 10.1(b) to clause 10.1(d); and
- (e) give the Supplier such information as the Supplier may reasonably require from time to time relating to:
  - (i) the Goods; and
  - (ii) the ongoing financial position of the Customer.

7.4 The Customer may resell or use the Goods in the ordinary course of its business (but not otherwise) before the Supplier receives payment for the Goods. However, if the Customer resells the Goods before that time:

- (a) it does so as principal and not as the Supplier's agent; and
- (b) title to the Goods shall pass from the Supplier to the Customer immediately before the time at which resale by the Customer occurs.

7.5 At any time before title to the Goods passes to the Customer, the Supplier may:

- (a) by notice in writing, terminate the Customer's right under clause 7.4 to resell the Goods or use them in the ordinary course of its business; and
- (b) require the Customer to deliver up all Goods in its possession that have not been resold, or irrevocably incorporated into another product and if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

7.6 The specifications requested by the Customer to the Supplier as part of the Order have no bearing whatsoever on the above Clauses relating to Title of the Goods.

## **8. Price and payment**

8.1 The price of the Goods shall be the price set out in the Order, or, if no price is quoted, the price set out in the Supplier's published price list in force as at the date of delivery.

8.2 The Supplier may, by giving notice to the Customer at any time [up to [10] Business Days] before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:

- (a) any factor beyond the Supplier's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
- (b) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Specification; or
- (c) any delay caused by any instructions of the Customer or failure of the Customer to give the Supplier adequate or accurate information or instructions.

8.3 The price of the Goods:

- (a) excludes amounts in respect of value added tax (**VAT**), which the Customer shall additionally be liable to pay to the Supplier at the prevailing rate, subject to the receipt of a valid VAT invoice; and
- (b) excludes the costs and charges of packaging, insurance and transport of the Goods, which shall be invoiced to the Customer, unless explicitly omitted from the Order

- 8.4 The Supplier may invoice the Customer for the Goods on or at any time after the completion of delivery.
- 8.5 The Customer shall pay each invoice submitted by the Supplier:
- (a) within 30 days of the date of the invoice [or in accordance with any credit terms agreed by the Supplier and confirmed in writing to the Customer;] and
  - (b) in full and in cleared funds to a bank account nominated in writing by the Supplier, and

time for payment shall be of the essence of the Contract.

- 8.6 If the Customer fails to make a payment due to the Supplier under the Contract by the due date, then, without limiting the Supplier's remedies under clause 10, the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 8.6 will accrue each day at 9% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.
- 8.7 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

## **9. Limitation of liability**

- 9.1 The Supplier has obtained insurance cover in respect of certain aspect of its own legal liability for individual claims not exceeding £5,000,000 per claim for product liability insurance. The Supplier has been unable to obtain insurance in respect of certain types of liability at a commercially viable price. The limits and exclusions in this clause reflect the insurance cover the Supplier has been able to arrange and the Customer is responsible for making its own arrangements for the insurance of any excess liability.
- 9.2 References to liability in this clause 9 include every kind of liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 9.3 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:
- (a) death or personal injury caused by negligence;
  - (b) fraud or fraudulent misrepresentation;

- (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979;  
or
  - (d) defective products under the Consumer Protection Act 1987.
- 9.4 Subject to clause 9.3, the Supplier's total liability to the Customer shall not exceed £5,000,000.
- 9.5 Subject to clause 9.3, the following types of loss are wholly excluded:
  - (a) loss of profits;
  - (b) loss of sales or business;
  - (c) loss of agreements or contracts;
  - (d) loss of anticipated savings;
  - (e) loss of use or corruption of software, data or information;
  - (f) loss of or damage to goodwill; and
  - (g) indirect or consequential loss.
- 9.6 This clause 9 shall survive termination of the Contract.

## **10. Termination**

- 10.1 Without limiting its other rights or remedies, the Supplier may terminate this Contract with immediate effect by giving written notice to the Customer if:
  - (a) the Customer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 7 working days of that party being notified in writing to do so;
  - (b) the Customer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), obtaining a moratorium, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business [or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction];
  - (c) the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or
  - (d) the Customer's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy.

- 10.2 Without limiting its other rights or remedies, the Supplier may suspend provision of the Goods under the Contract or any other contract between the Customer and the Supplier if the Customer becomes subject to any of the events listed in clause 10.1(b) to clause 10.1(d), or the Supplier reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.
- 10.3 Without limiting its other rights or remedies, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment.
- 10.4 On termination of the Contract for any reason the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices relating to all Orders provided by the Supplier to the Customer, any applicable interest and, in respect of Goods supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt.
- 10.5 If the Customer cancels the Contract for a reason(s) that fall outside of the events stated in Clauses 9.1(b) – (d), the Customer will be liable for full payment of full value of the Contract to the Supplier, which will become due within 7 days of the formal date of cancellation by the Customer, to the Supplier.
- 10.6 Termination [or expiry] of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination [or expiry], including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination [or expiry].
- 10.7 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination [or expiry] of the Contract shall remain in full force and effect.

## **11. Force majeure**

Neither party shall be in breach of the Contract or otherwise liable for any failure or delay in the performance of its obligations if such delay or failure results from a Force Majeure Event. The time for performance of such obligations shall be extended accordingly. If the period of delay or non-performance continues for [6] months], the party not affected may terminate the Contract by giving [NUMBER] [days'] written notice to the affected party.

## **12. General**

### **12.1 Assignment and other dealings.**

- (a) The Supplier may at any time assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract.
- (b) The Customer may not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of the Supplier.

### **12.2 Confidentiality.**

- (a) Each party undertakes that it shall not [at any time **OR** at any time during the Contract and for a period of [two] years after termination [or expiry] of the Contract,] disclose to any person any confidential information concerning the business, assets, affairs, customers, clients or suppliers of the other party, except as permitted by clause 12.2(b).
- (b) Each party may disclose the other party's confidential information:
  - (i) to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under the Contract. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 12.2; and
  - (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- (c) Neither party shall use the other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.]

### **12.3 Entire agreement.**

- (a) The Contract constitutes the entire agreement between the parties.
- (b) Each party acknowledges that in entering into the Contract it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation [or negligent misstatement] based on any statement in the Contract.

**12.4 Variation.** No variation of this Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

**12.5 Waiver.**

- (a) [Except as set out in clause 2.4, a **OR A**] waiver of any right or remedy is only effective if given in writing [and shall not be deemed a waiver of any subsequent right or remedy].
- (b) A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.

**12.6 Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract. If any provision of the Contract is deemed deleted under this clause 12.6 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

**12.7 Notices.**

- (a) Any notice given to a party under or in connection with the Contract shall be in writing and shall be:
  - (i) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
  - (ii) [sent by email to the following addresses (or an address substituted in writing by the party to be served):  
Supplier: [henry@dtstrading.com].  
Customer: The same email address to which the Sales Order has been sent as acknowledgement of the Order and formation of the legally binding contract.
- (b) Any notice shall be deemed to have been received:
  - (i) if delivered by hand, at the time the notice is left at the proper address;
  - (ii) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting[; or]
  - (iii) if sent by email, at the time of transmission, or, if this time falls outside Business Hours in the place of receipt, when Business Hours resume.

- (c) This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

**12.8 Third party rights.**

- (a) The Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- (b) [The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.]

**12.9 Governing law.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the law of England and Wales.

**12.10 Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.

**13. Non-Circumvention**

**By entering into this agreement, both parties agree to a Non-Disclosure and Non-Circumvention Principle, preventing either party from seeking to engage with the manufacturer (in the case of the supplier) and the end client (in the case of the buyer). Any breach of the Seller's rights will result in legal action.**