

GENERAL TERMS AND CONDITIONS OF SALE

1. DEFINITIONS

“Seller” means any legal entity from the DIC Group, supplying Goods to the Purchaser.

“DIC Group” means any legal entity, directly or indirectly, owned by, controlled by or under common control with DIC Group, having its registered address at 35-38 Sakashita 3-Chome, Itabashi-ku, Tokyo 174-8520, Japan, including its affiliates, subsidiaries, successors and assigns.

“Purchaser” means any person, firm, company or corporation placing an order with the Seller.

“Goods” means items and services supplied by the seller to the Purchaser.

“Contract” means any contract between the Seller and the Purchaser for the sale and purchase of the Goods, incorporating these conditions.

2. CONTRACT

- 2.1. The contractual relationship between the Seller and the Purchaser shall be subject to these General Terms Conditions of Sale (“Conditions”) and no addition or variation shall apply unless agreed in writing. These Conditions supersede any prior representation whether made in writing or orally and these Conditions override any other terms that the Purchaser may subsequently seek to impose on any purchase order, confirmation of order, specification or any other documents such as the delivery note.
- 2.2. No terms or conditions endorsed on, delivered with or contained in the Purchaser's purchase order, confirmation of order, specification or other document shall form part of the Contract simply as a result of such document being referred to in the Contract.
- 2.3. Each order or acceptance of a quotation for Goods by the Purchaser from the Seller shall be deemed to be an offer by the Purchaser to buy Goods subject to these conditions.
- 2.4. No order placed by the Purchaser shall be deemed to be accepted by the Seller until a written acknowledgement of order is issued by the Seller or (if earlier) the Seller delivers the Goods to the Purchaser.
- 2.5. The Purchaser shall ensure that the terms of its order and any applicable specification are complete and accurate.
- 2.6. Any quotation is given on the basis that no Contract shall come into existence until the Seller despatches an acknowledgement of order to the Purchaser. Unless previously withdrawn, quotations are open for acceptance within the period stated in them. Where no period is stated, the quotation shall be open for acceptance for 30 days from the date it is dated unless withdrawn by the Seller during that time.

- 2.7. Prices quoted are exclusive of Value Added Tax and are ex-works unless otherwise specified in writing.

3. ADVERTISING MATERIALS & REPRESENTATIONS

- 3.1. Catalogues, specifications, brochures, price lists, advertising material and verbal representations of the Seller's personnel are only an indication of the type of Goods offered and no such particulars shall be binding on the Seller. They shall not form part of the Contract and this is not a sale by sample.
- 3.2. All Goods are sold subject to availability of material. The Seller reserves the right without notice to substitute materials, components and units other than those mentioned in the Contract. All specifications and drawings, or particulars of weights and dimensions and all forwarding specifications issued by the Seller are approximate only and do not form part of any Contract.
- 3.3. The quantity and description of the Goods shall be as set out in the Seller's quotation or acknowledgement of order.

4. LIABILITY

- 4.1. Subject to the remaining sub-clauses of this clause, the Seller's liability in respect of any defective Goods manufactured or supplied by the Seller or for any loss or damage, consequential or otherwise, is limited to replacement of the Goods which the customer proves are defective and are defective or fail due to faulty material manufactured by the Seller or defective workmanship of the Seller and failed or are found to be defective within a period of two calendar months after the Goods were delivered to the Purchaser.
- 4.2. The Seller may, at its option, give the Purchaser a credit in respect of the Goods found to be defective of up to the full value of the price paid by the Purchaser.
- 4.3. The Goods are sold on the condition that they will be used only in the prescribed manner and for the purpose for which they were intended.
- 4.4. The Purchaser must satisfy itself that the intended use of the Goods is a use in the prescribed manner and in accordance with the technical data sheet (provided by the Seller) that refers to the prescribed use of the Goods and the purpose for which they were designed. In the event that the Purchaser is purchasing for onward sale, the Purchaser must make known to its customer the prescribed use of the Goods and the purpose for which they were designed.
- 4.5. The Seller shall not be liable for any damage, loss or injury resulting from any misuse of the Goods or any use which is not in accordance with the prescribed manner or the purpose for which they were designed.
- 4.6. Where the Purchaser provides a specification of the Goods to be manufactured by the Seller, the Seller shall not be liable for any defect in the Goods caused by compliance with that specification.

- 4.7. If the Purchaser packages or causes the Goods to be packaged in such a way so as to make the Goods defective then the Purchaser shall indemnify the Seller against all damage and loss caused by reason of the product being defective.
- 4.8. The Seller has available information and product literature concerning the conditions necessary to ensure that the Goods supplied by the Seller will be safe and without risk to health when properly used. If the Purchaser is not already in possession of such literature or requires any information or advice in connection with the safe use of the Goods, the Purchaser should immediately contact the Seller.
- 4.9. Nothing in these Conditions shall have the effect of excluding or limiting liability for loss arising from death or personal injury resulting from the negligence of the Seller.
- 4.10. All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.
- 4.11. Subject to condition 4.9 and condition 4.10:
 - (a) the Seller's total liability in Contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the Contract price; and
 - (b) the Seller shall not be liable to the Purchaser for any pure economic loss, loss of profit, loss of business, consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.
- 4.12. In the case of Goods supplied (including equipment), but not manufactured by the Seller, the liability of the Seller shall be limited to amounts recovered by the Seller under warranties given by the supplier to the Seller, provided that the Seller shall not be called upon to bear any liability or expense greater than the amount recovered from that supplier. Nothing herein shall impose any liability upon the Seller in respect of any loss, damage, consequential or otherwise, in relation to or arising out of Goods found to be defective or attributable directly or indirectly to the acts, omissions, negligence or default of the Purchaser or the Purchaser's servants or agents including (in particular but without prejudice to the generality of the foregoing) any failure by the Purchaser to comply with any recommendations of the Seller as to the storage, handling and use of the Goods.

5. DELIVERY

- 5.1. Any dates specified by the Seller for delivery of the Goods are intended to be an estimate and time for delivery shall not be made of the essence by notice. If no dates are so specified, delivery shall be within a reasonable time.

- 5.2. Subject to the other provisions of these Conditions, the Seller shall not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods (even if caused by the Seller's negligence), nor shall any delay entitle the Purchaser to terminate or rescind the Contract unless such delay exceeds [180] days.
- 5.3. The Seller shall be under no liability to the Purchaser in respect of any damaged Goods delivered unless at the time of delivery the damage is endorsed in writing on the delivery note or the delivery note is endorsed "not examined" and a separate written notice of the damaged Goods is sent to the Seller in writing within 14 days of delivery. The Purchaser must notify the Seller (and, if appropriate, the carrier) in writing of the non-receipt or shortage in delivery of any Goods by the Purchaser or his nominated carrier within 10 days of the invoice date relating to any delivery. The Seller shall not be liable for any non-delivery of Goods (even if caused by the Seller's negligence) unless the Purchaser gives written notice to the Seller of the non-delivery in accordance with this condition 5.3. For the avoidance of doubt any liability of the Seller for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods.
- 5.4. The Purchaser shall hold the Seller indemnified against any loss or damage arising by the failure to give the notification of receipt or damaged Goods within the time limit specified above.
- 5.5. The Purchaser shall accept deliveries which are within ten per cent either less or more than the quantity ordered. The Purchaser shall not be entitled to object to or reject the Goods or any of them by reason of the surplus or shortfall and will pay the unit invoiced price for the quantity of Goods delivered.
- 5.6. Any request by the Purchaser for proof of delivery from the Seller or the carrier must be made in writing no later than four months after the date of the invoice related to the delivery. In the absence of any such request in writing delivery of the Goods shall be deemed conclusively to have been made.
- 5.7. If the Purchaser fails to take delivery of the Goods or fails to give the Seller adequate delivery instructions documents, licences or authorisations then without prejudice to any other right or remedy available to the Seller risk in the Goods shall pass to the Purchaser (including for loss or damage caused by the Seller's negligence), the Goods shall be deemed to have been delivered and the Seller may elect to store the Goods until actual delivery whereupon the Purchaser shall be liable for all related costs and expenses (including, without limitation, storage and insurance) and the Seller may sell the Goods for a price readily obtainable and after deducting reasonable storage,

insurance and selling expenses, charge the customer for any shortfall.

5.8. If any order for Goods is to be delivered by instalments, each instalment shall be treated as a separate contract each of which shall be paid for in accordance with clause 9 hereof and the Seller shall be entitled to withhold delivery of future instalments pending payment.

5.9. The failure of the Seller to deliver the Goods or where the Seller makes short delivery shall not entitle the Purchaser to repudiate the Contract unless clause 10 applies to such failure.

5.10. Where Goods are delivered by instalments, any defect in any one instalment of Goods shall not be grounds for cancellation of the order for the remaining instalments by the Purchaser who shall be bound to accept delivery thereof.

6. RISK

6.1. Risk shall pass to the Purchaser on the Goods being tendered for delivery at the Purchaser's designated premises or on delivery to the carrier nominated by the Purchaser or (where the Goods are to be collected by the Purchaser from the Seller) on being loaded onto the vehicle of the Purchaser or his agent (whichever is the earlier). The Purchaser must insure the Goods for their full replacement value against all risks with the interest of the Seller being noted on the policy (from the time that risk passes).

6.2. Where Goods are stored by the Seller at the premises of the Purchaser in contemplation of ongoing sales (consignment), the Goods are at the risk of the Purchaser.

7. RESERVATION OF TITLE

7.1. Until payment in full (in cash or cleared funds) has been made by the Purchaser of all sums owing or due to the Seller, whether in respect of purchases of the Seller's Goods or otherwise, all legal and equitable title to the Goods shall remain with the Seller and the Purchaser shall:

- (a) hold the Goods on a fiduciary basis as the Seller's bailee;
- (b) store the Goods (at no cost to the Seller) separately from all other goods of the Purchaser or any third party in such a way that they remain readily identifiable as the Seller's property;
- (c) not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and
- (d) maintain the Goods in satisfactory condition and keep them insured on the Seller's behalf for their full price against all risks to the reasonable satisfaction of the Seller. On request the Purchaser shall produce the policy of insurance to the Seller.

7.2. The Purchaser may resell the Goods before ownership has passed to it solely on the following conditions:

- (a) any sale shall be effected in the ordinary course of the Purchaser's business at full market value; and

(b) any such sale shall be a sale of the Seller's property on the Purchaser's own behalf and the Purchaser shall deal as principal when making such a sale.

7.3. The Purchaser's right to possession of the Goods shall terminate immediately if:

- (a) any proceedings are commenced relating to the insolvency or possible insolvency of the Purchaser or the Seller has any reason to have doubt as to the Purchaser's solvency; or
- (b) the Purchaser suffers or allows any execution, whether legal or equitable, to be levied on its property or obtained against it, or fails to observe or perform any of its obligations under the Contract or any other Contract between the Seller and the Purchaser, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Purchaser ceases to trade; or
- (c) the Purchaser encumbers or in any way charges any of the Goods.

7.4. The Purchaser grants the Seller, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Purchaser's right to possession has terminated, to recover them.

7.5. On termination of the Contract, howsoever caused, the Seller's (but not the Purchaser's) rights contained in this condition 7 shall remain in effect.

8. PAYMENT AND INTEREST

8.1. Payment shall be made by the Purchaser within thirty (30) days of the date of the invoice' (the 30th day being the 'Payment Date'). Time for payment shall always be of the essence.

8.2. If any payment is not made when due then the Purchaser shall pay interest on all overdue sums at the rate of 2% above the LIBOR rate quoted on or about 11.00 (GMT) on the payment date (or if no rate is quoted for the payment date, the last previously quoted rate) by prime banks in London for [Euros/GBP/etc]' and interest shall accrue at such rate after as well as before any judgement.

8.3. In the event of any late payment of any invoice, the Seller reserves the right to defer delivery of any Goods on any contract between the parties.

8.4. Where any invoice is overdue for payment then all invoices issued by the Seller to the Purchaser shall become immediately due for payment.

8.5. No deduction from any payment due shall be made by the Purchaser in respect of any set-off or counterclaim howsoever arising unless the Purchaser has a valid court order requiring an amount equal to such deduction to be paid by the Seller to the Purchaser.

9. FORCE MAJEURE

9.1. The Seller shall not be liable for any loss or damage caused by the non-performance or any delay in performance of any of its obligations hereunder arising out of any matter beyond the Seller's control including but not limited to acts of God, war, riots or civil commotion, strikes, lockouts or other trade disputes (whether or not involving employees of the Seller), fire, breakdown of machinery, transport delays or interruptions, Government restrictions or

regulations, delay in delivery by the Seller's suppliers or obtaining suitable materials.

- 9.2. In such circumstances, except where Goods are in transport, either the Seller or the Purchaser may terminate the unperformed part of any contract by notice in writing delivered within 90 days of written notice being given by the Seller of the circumstances causing the non-performance or delay in performance provided always that the Purchaser's obligation to pay in relation to any part of the Contract which has been performed shall not be discharged.

10. BREACH

If the Purchaser fails to perform any of its obligations hereunder, fails to pay any payment on the due date or is the subject of a bankruptcy petition or has an administrator or administrative receiver appointed over its business or undertaking or seeks an arrangement with its creditors or enters into liquidation whether compulsory or voluntary (save for the purpose of amalgamation or reconstruction of a solvent limited company) or ceases to trade or threatens to cease to trade or if the Seller has reason to have serious doubt as to the Purchaser's solvency, the Seller shall be entitled, without prejudice to its other rights under the Contract, to suspend or cancel further performance of its contractual obligation hereunder.

11. CANCELLATION

When the Seller has accepted an order, no cancellation in whole or in part can be made by the Purchaser without the Seller's consent which will normally only be granted where the Seller can cancel relevant orders it has placed with its suppliers and on terms that a cancellation charge is paid by the Purchaser to cover all expenses, charges and the loss of profit by the Seller.

12. CONFIDENTIALITY

Other than when obliged by law the Purchaser shall not without the prior written consent of the Seller communicate to any person, firm or company whatsoever the price paid for any Goods or services or any of the methods of use of the Goods or the details of any services or processes supplied by the Seller or any operating instructions or technical data relating thereto acquired from the Seller except to such employees as may be employed by the Purchaser to carry out those processes or use the Goods.

13. RETURN OF PACKAGES

The Purchaser will be charged for any drums and/or returnable packages which are not returned in good condition to the point of despatch, carriage paid, within three months of the invoice date for Goods carried by such drums and/or returnable packages.

14. NOTICE

All notifications to be given by the Purchaser to the Seller referred to in these Conditions must be in writing and sent by recorded delivery or facsimile transmission. Unless the Purchaser can produce to the Seller the requested proof of such posting or transmission receipt of such, notice shall not be deemed to have occurred.

15. SEVERANCE

If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable, it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.

16. THIRD PARTY RIGHTS

The parties do not intend any provision of this Agreement to be enforceable pursuant to the Contracts (rights of Third Parties) Act 1999.

17. ASSIGNMENT

The Purchaser shall not without the Seller's prior written consent assign or purport to assign or transfer to any other party any Contract subject to these Conditions.

18. GOVERNING LAW AND JURISDICTION

The formation, existence, construction, performance, validity and all aspects of the Contract shall be subject to the laws of, and the parties submit to the jurisdiction of the courts of England and Wales.