



## **Conditions of Sale (Effective November 2010).**

### **1. DEFINITIONS.**

In these conditions, the following words shall have the following meanings:

the "Customer" shall mean the corporate entity firm or person seeking to purchase the Goods from the Company.

the "Company" shall mean Diemould Services Company, Unit 4 Anglo Office Park, Lincoln Road, High Wycombe, Buckinghamshire. HP12 3RH.

the "Contract" shall mean any contract for goods or services made between the Company and the Customer.

The "Goods" shall mean the products, articles or things to be sold by the Company.

The "Services" shall mean any services provided by the Company to the Customer (whether or not the Customer shall purchase the Goods or not).

### **2. THE CONTRACT.**

2.1 These conditions shall be incorporated into each and every Contract made between the Company and the Customer and

(i) shall apply to the exclusion of any terms or conditions put forward by or on behalf of the Customer and

(ii) shall not create any agency or partnership between the Company and the Customer or any third party.

2.2 No variation or waiver of or addition to these conditions, whether written or oral, shall have effect unless and until authorised in writing by a Director of the Company.

2.3 Quotations, whether written or oral, submitted by the Company shall be deemed to be an invitation to treat and not an offer.

2.4 Any order given in respect of a quotation must state the date, the reference of that quotation and if applicable address for delivery.

### **3. TIME LIMITS.**

Any time or date quoted by the Company for delivery or collection of all or any of the Goods or performance of any Services is an estimate only, and the Company shall not be liable for any failure to meet any such estimate, nor for any loss, whether financial or otherwise, resulting directly or indirectly therefrom. Time is not and shall not be of the essence in relation to this condition.

### **4. COLLECTION AND DELIVERY.**

4.1 Where it is agreed that the Company shall deliver or procure delivery of the Goods, when ready, it shall do so to such address in the United Kingdom as the Customer may specify or, if no such address is specified to any address of the Customer to which correspondence and/or goods may previously have been sent under the Contract. The manner of the delivery shall be such as the Company in its sole discretion shall deem appropriate unless delivery costs are accepted by the Customer in which case the Customer may specify the method of delivery.

4.2 If the Company or the appointed carrier is unable to effect delivery on arrival at the Customers premises for any reason whatsoever, an additional charge for any return or subsequent visit will be made.

### **5. LOSS OR DAMAGE IN TRANSIT.**

5.1 The Customer is under a duty wherever possible to inspect the Goods on delivery or on collection (as the case may be).

5.2 Where the Goods cannot be examined the carriers or such other note (as the case may be) shall be marked by the Customer at the time of delivery "Not Examined".

5.3 The Company shall be under no liability whatsoever for any defects or shortages that would be apparent on careful inspection and, in any event, the Company accepts no liability for any such defects or shortages as aforesaid unless notified of the details within two days following receipt of the goods and confirmed in writing within fourteen days following receipt of goods.

5.4 In all cases where defects or shortages are complained of, the Company shall be under no liability to the Customer in respect thereof unless a reasonable opportunity to inspect the Goods is provided to the Company by at least 48 hours notice in writing before any use is made thereof or any alteration or modification is made thereto by the Customer.

5.5 The Company shall make good any defects or shortages in accordance with the terms of this condition but otherwise shall be under no liability whatsoever, whensoever or howsoever arising, whether by way of negligence or otherwise for such defects or shortages.

### **6. CANCELLATION BY THE CUSTOMER.**

6.1 No cancellation of the whole or any part of the order, whether it is an order by instalment or otherwise, by the customer, is permitted except where agreed in writing by a manager of the Company.

6.2 Goods which are standard stocked items once delivered may not be returned unless authorisation has been given as specified in condition 6.1 and provided that the following conditions are satisfied

6.2.1 Goods will only be accepted if they are in brand new and unused condition.

6.2.2 Goods will only be accepted if returned within three weeks of the date of collection or delivery, carriage prepaid

6.2.3 In every case a restocking charge will be made

6.2.4 In every case the invoice number or despatch note number and date together with reason for return must be stated.

6.3 Goods which have been manufactured specifically for the Customer may not be returned.

6.4 The Company will not be held responsible for goods lost during their return from the Customer to the Company. Proof of sending cannot be accepted as proof of receipt.

### **7. PRICE.**

7.1 Any price quoted by the Company is based upon current price ruling as at the date appearing on the quotation, but the actual price to be charged to the Customer under the Contract shall be based upon such ruling price current as at the date of invoice and shall include for customers within Great Britain the cost to the Company of any carriage, insurance and/or storage effected by it in connection with the Customer's order save in those cases when the Customer specifies a delivery method and agrees to pay for delivery charges and/or where a charge is made for small orders. In accordance with the terms of this condition, the Company shall be entitled at any time up to the date of the invoice to vary the price quoted to the Customer.

7.2 Unless otherwise expressly stated in writing all prices are exclusive of and therefore subject to the addition of VAT.

### **8. DATE FOR PAYMENT.**

8.1 The Customer shall make payment in full when the Customer places the order save for approved accounts accepted by the Company as creditworthy following completion of and return of the Company's application form for credit account available from the Company, when the Customer shall make payment in full within 30 days from the end of the month in which the Goods are invoiced or performance of Services is completed. Interest at the yearly rate of 3% over the base rate for the time being and from time to time of National Westminster Bank Plc will be charged from day to day on all monies outstanding from thirty days after the end of the month of invoice or completion of performance of Services until the actual date of receipt of payment.



8.2 Any delay or default by the Customer in making payment in accordance with condition 8.1 shall render all sums owing to the Company on any account whatsoever including the costs of recovery of such sums, due and payable forthwith without requirement for any notice to be given to the Customer, and interest will be charged in accordance with condition 8.1 with immediate effect until the date of actual receipt of payment.

8.3 The Customer shall not be entitled to withhold payment of any amount payable to the Company by reason of any dispute or claim by the Customer (whether or not the Goods or Services are to be provided by instalments and in such case each instalment is deemed to constitute a separate and distinct Contract). In the case of any short delivery or delivery of damaged Goods to the Customer the Customer shall remain liable to pay the full invoiced price of all other Goods delivered.

#### **9. DISPUTES AND SET-OFFS.**

Any liability of the Company under the Contract shall be subject to and conditional upon the due performance and observance by the Customer of all its obligations under these conditions and subject to these conditions the Customer shall not be entitled to withhold or delay payment or exercise any right of set-off whatsoever and howsoever arising or arisen which might otherwise be available to it.

#### **10. RISK.**

Risk in the Goods shall pass to the Customer when the Goods are received by, or collected by the Customer or its agent.

#### **11. TITLE.**

11.1 Notwithstanding the passing of risk under condition 10 unless and until payment shall have been made to the Company of all sums due to it under the Contract and/or under any other Contract between the Customer and the Company on any account whatsoever, property in and beneficial title to the Goods shall remain in the Company and:

11.2 Subject to conditions 11.3 and 11.4 the Customer shall be free to sell the Goods in the ordinary course of its business on the basis that the proceeds of sale shall be transferable to the Company and pending such transfer shall be held in trust for the Company, and the Customer shall account therefore to the Company on demand for monies outstanding under clauses 7 and 8 and:

11.3 The Company may at any time revoke the Customer's power of sale referred to in condition 11.2 by written notice to the Customer if the Customer shall for seven days or more be in default in payment of any sum whatsoever due to the Company (Whether in respect of the Goods or any other Goods supplied by the Company or Services rendered, whether or not under the Contract by the Company or for any other reason whatsoever) or if any cheque or other negotiable instrument drawn or accepted by the Customer in favour of the Company shall on presentation for payment be dishonoured or if the Company in good faith shall have doubts as to the solvency of the Customer and:

11.4 The Customer's power of sale referred to in condition 11.2 shall automatically cease if any receiver and/or manager or administrative receiver shall be appointed over any or all of the assets or undertaking of the Customer, or if any winding up order shall be made against the Customer, or if the Customer shall go into voluntary liquidation (otherwise than for the purpose of, and followed by the reconstruction or amalgamation or call any meeting of or make any arrangement or composition with creditors or if any petition in respect of a bankruptcy order shall be presented against the Customer or if an application shall be made for an interim order in connection with any proposals for a voluntary arrangement of the Customer's affairs and:

11.5 Upon determination of the Customer's power of sale under conditions 11.3 and/or 11.4 the Customer shall place the Goods at the disposal of the Company, and the Company shall be entitled, using only such force as may be necessary to enter upon any premises of the Customer for the purpose of removing the Goods from the premises (including severance from the reality where necessary).

11.6 The Company shall at any time be entitled to appropriate any payment made by the Customer in respect of any Goods in settlement of such invoices or accounts in respect of such Goods as the Company may in its absolute discretion think fit notwithstanding any purported appropriation to the contrary by the Customer.

#### **12. TERMINATION AND SUSPENSION.**

Without prejudice to any rights and remedies available to it, whether under the Contract or otherwise, the Company shall be entitled, in its absolute discretion and upon giving to the Customer written notice of its intention to do so, either to terminate wholly or in part the Contract and/or any other contract with the Customer or to withhold or vary performance of all or any of its obligations under the Contract and/or any other contract in any one or more of the following events:

12.1 If any sum owing to the Company from the Customer on any account whatsoever shall be unpaid after the due date for payment the Company shall henceforth have a general lien for any such sum on all and any property of the Customer in its possession;

12.2 If the Customer shall refuse to take delivery or collect any of the Goods in accordance with the terms of the Contract;

12.3 If the Customer shall commit any act of insolvency (which shall be deemed to mean and include the passing of a resolution or the presentation of a petition for the winding up of the Customer, other than for the purposes of and followed by amalgamation or reconstruction, the appointment of a receiver and/or manager or an administrator or administrative receiver over the whole or any part of the Customer's undertaking and assets, the making by the Customer of any composition with or the calling by the Customer of any meeting of its creditors generally, and/or the levying of execution on any of its assets) or bankruptcy (which shall be deemed to mean and include the presentation of a petition in respect of a bankruptcy order or an application for an interim order in connection with any proposals for a voluntary arrangement of the Customer's affairs);

12.4 If the Customer shall commit any breach of any contract with the Company;

12.5 If the Company in good faith shall have doubts as to the solvency of the Customer;

12.6 Where it is necessary to make alternative arrangements to deal with supply shortages. In such circumstances, the Customer's obligation to purchase Goods hereunder shall remain binding to the extent that the Company meets the Customer's order.

12.7 If the Customer refuses to permit or hinders performance of Services.

The Company shall be entitled to exercise its rights of termination or suspension hereunder at any time during which the event or default giving rise thereto shall not have ceased or been remedied, and in the event of any such suspension, the Company shall be entitled to require as a condition of resuming performance under the Contract, to require pre-payment of, or such security as it may stipulate for, the payment of any sum or sums due or to become due to it.

12.8 If the Customer shall exceed the credit limit agreed between him and the Company from time to time on any account, the Company reserves absolutely the right to exercise its rights of suspension hereunder. The Company shall be entitled to require as a condition of resuming performance under the Contract, payment of such proportion of the sums or sum outstanding on any such account by the Customer of such further sum as the Company sees fit in its absolute discretion to bring the Customer back within its agreed credit limit.

#### **13 WARRANTY AND LIABILITY.**

13.1 The Company undertakes to use its best endeavours to ensure sound materials and workmanship.

13.2 The Company reserves the right to change specifications of items, or to discontinue items without notice.

13.3 Orders for non catalogue items are accepted on the understanding that the quantity delivered and invoiced may be plus or minus 10% of the quantity stated on the order.



13.4 The Company shall make good by reimbursement of the whole or part of the price (and, where relevant, as a deduction of any part of the price remaining unpaid) or at its option by repair or by replacement any defect developing under normal use in the Goods and due solely to faulty design (except where supplied by or on behalf of the Customer), materials and/or workmanship, provided that:

13.4.1 The Customer shall be responsible for ensuring that Goods are fit for the purpose for which he wishes to use them and the Company gives no warranty (and none shall be implied) that the Goods are fit for any particular purpose; and

13.4.2 The defect in question shall have appeared within 3 months after the Customer shall have taken possession of the Goods or performance of Services completed and shall have been thereupon promptly notified in writing to the Company; and

13.4.3 Any Goods alleged to be defective shall be stored in a safe place by the Customer until such time as the company authorises their disposal in writing; and

13.4.4 Any Goods alleged to be defective shall, if so required by the Company, be promptly returned at the Customers risk and expense to the Company's works for inspection, and the Company shall in its reasonable opinion consider them to be defective solely by reason of faulty design, materials or workmanship; and

13.4.5 No attempt shall have been made by the Customer or by any third party to remedy any defect before, if so required by the Company, the Goods in question shall have been returned to the Company for inspection; and

13.4.6 The Goods in question shall have been serviced and maintained properly and in accordance with the Company's recommendations and shall not have been fitted with any parts, components and/or accessories other than those manufactured or recommended by the Company.

13.5 The liability of the Company arising from all and any claims relating to any single Contract shall be limited to a maximum sum of £200 in total or such amount (less the costs of recovery incurred by the Company) as the Company receives from the manufacturer of the Goods giving rise to the claim from the Customer. The Company shall not be liable for any claim or claims relating to any breach of warranty, expressed or implied, brought after three months of the date the Contract was made. The liability of the Company is also subject to compliance by the Customer with all the terms contained in this clause 13. Apart from such reimbursement, replacement or repair, the Company, its employees and agents shall be under no liability to the Customer or any third party for any injury, loss or damage of any kind whatsoever, howsoever and wheresoever rising or arisen, and whether direct or indirect, including without limitation any injury, loss or damage arising out of and/or incidental to:

13.5.1 Any negligence of the Company and/or any of its employees and/or agents (except insofar as such negligence may result in death or personal injury); and/or

13.5.2 The Company's performance and/or failure to perform and/or breach any of its obligations, whether express or implied, under the Contract and/or otherwise; and/or:

13.5.3 The supply, installation, repair and/or maintenance of any of the Goods; and/or:

13.5.4 Any defect in any of the Goods; and/or:

13.5.5 Any advice given and/or representation made by the Company or on its behalf in relation to the nature, quality, specification, design, performance, use and/or installation of any of the Goods.

13.5.6 Any performance of any Services.

13.6 The terms of this condition replace all conditions, warranties, representations, statements, liabilities and other terms whatsoever implied by common law, statute and/or otherwise all of which shall accordingly be excluded to the extent allowed by law, and the Company shall, in relation to the Goods and Services, have no obligation to the Customer, either arising by statute or in tort or in Contract and whether arising out of any negligence of the Company and/or any of its employees and/or agents (and whether under the Contract or any other Contract), other than the express obligations contained in these conditions or in any other document expressly incorporated in writing into the Contract. Accordingly, it shall be for the Customer to insure against any liability arising from the performance of the Services and from its use of the Goods.

#### **14. THIRD PARTY CLAIMS.**

14.1 The Customer shall indemnify the Company in full against any liability whatsoever (including any liability based in the negligence of the Company and, where the Customer buys in the course of a business, any liability which the Company may incur, whether by court proceedings or by a bona fide out of court settlement, as a result of a claim against the Company under Part 1 of the Consumer Protection Act 1987 in respect of an alleged defect in the Goods, or arising as a result of any warranty given by the Customer to any third party, whether such warranty is imposed by statute on or otherwise required of the Customer) together with all and any taxation on any and every payment made by the Customer pursuant to this indemnity which it may incur resulting from any claim made against the Company by any third party, including without limitation any employee or agent of the Customer or any subsequent customer or hirer or other bailee of the Goods or any of the arising or arisen directly or indirectly out of the performance and/or any non-performance and/or breach of the Contract and/or otherwise out of or connected with the manufacture and/or supply of the Goods and without limitation any loss caused directly by the Goods during transit or any of them or the provision of any of the services.

14.2 The Customer agrees to indemnify the Company against all damages, penalties, costs and expenses arising out of the infringement of any Copyright, Patent, Registered Design or Trade Mark (or any claim for such infringement) howsoever arising out of the performance of the Company's contractual obligations to the Customer.

#### **15. FORCE MAJEURE.**

The Company shall have no liability whatsoever for any failure to perform, or for any delay in the performance of, any of its obligations under the Contract arising wholly or in part by reason of any factor beyond its direct control.

#### **16. NOTICES.**

Any notice required to be given in writing under the Contract shall be given either by facsimile transmission or by first class post addressed to the Company.

#### **17. GOVERNING LAW.**

The Contract shall be governed by English law.

#### **18. EXCLUSION OF OTHER CONDITIONS.**

These Conditions of Sale supersede all previous sets of conditions which have previously appeared in the Company's catalogues, price lists or elsewhere.