

DCL ENGINEERING PTY LIMITED
A.B.N. 13 093 796 242

TERMS AND CONDITIONS OF SALE (T.C.15.07.2013)

The following further terms and conditions of sale apply to every tender, quotation, estimate, offer or counter-offer submitted by DCL ENGINEERING PTY LIMITED trading as DCL ENGINEERING GROUP, DCL Surface Engineering and CFM International, and to any resulting contract, unless expressly varied in writing by the Company.

1. DEFINITIONS AND INTERPRETATION

- 1.1. "Business Hours" means 9am to 5pm Monday to Friday, except public holidays in the place of delivery of the Equipment or of the performance of the Company's work under the Contract;
- 1.2. "Buyer" means the person whose offer is accepted in writing by the Company and where the context permits, includes its employees, officers, agents and subcontractors;
- 1.3. "Claims" includes, without limitation, actions, claims, demands, liability, losses, damages, expenses, costs, loss of profits, loss of production and other consequential damages.
- 1.4. "Company" means DCL ENGINEERING PTY LIMITED A.B.N. 13 093 796 242 of 27 Malta Street Fairfield East NSW 2165 phone number: 02 9754 1300 email: contact@dcleng.com.au and where the context permits, includes its employees, officers, agents and subcontractors;
- 1.5. "Contract" is defined in clause 2;
- 1.6. "Conditions" means these terms and conditions;
- 1.7. "Equipment" means all goods agreed to be supplied by the Company under the Contract, and includes portions of such goods;
- 1.8. "non-excludable condition" means all implied terms, conditions and warranties, whether implied by custom, general law or statute, the exclusion of which would contravene any statute or cause any part of the Contract to be void.
- 1.9. "offer" includes a counter-offer;
- 1.10. Expressions importing a "person" includes a corporation, incorporated association, partnership and government authority;
- 1.11. "Price" means the total price of the Contract in the currency stated by the Company;
- 1.12. "Tender" includes any estimate, offer or quotation made or given by the Company;
- 1.13. The singular includes the plural and vice versa.
- 1.14. Any term in these Conditions which is unenforceable will be read down so as to make it enforceable or if this is not possible, it will be severed from the Conditions, without affecting the balance of the Conditions.
- 1.15. Reference to law or statute includes laws or statutes which replace or vary them and all regulations under them.
- 1.16. Each indemnity and release in these Conditions is separate and independent and survives the expiry or termination of the Contract.

2. FORMATION OF CONTRACT

The Company and the Buyer expressly agree that the Buyer's acceptance of the Company's Tender does not form a contract between the parties but instead represents the Buyer's order and offer to the Company to enter a contract on the Tender's terms or if a counteroffer is made by the Buyer, then on the terms of such counteroffer.

A contract is formed (the "Contract") on the day the Company delivers to the Buyer an unqualified written acceptance of the Buyer's offer ("Contract Date"). The Contract terms are made up of the terms of the Buyer's offer accepted by the Company, these Conditions and any variations to those terms subsequently agreed by both parties in writing.

3. PRICE

- 3.1 The Price is based upon the market conditions existing at the date of the Tender and is based on the work to be performed by the Company and/or delivery of the Equipment taking place during Business Hours.
- 3.2 The Price, or any part of it, may be varied by the Company at any time in accordance with, or in proportion to (as the Company in its sole discretion determines), any one or more of the following circumstances:
 - a) Any variation in wage rates or conditions of employment of the Company's employees; or
 - b) Any variation in the cost of required transport, services, component parts, importation rates, additional costs relating to exchange rates, and on raw material cost increases.
- 3.3 The Price, or any part of it, may also be increased by the Company at any time if the Buyer requests the work to be performed by the Company or for the Equipment to be delivered on an urgent basis, necessitating the Company performing such work or any part of it, or delivering such Equipment or any part of it, outside of Business Hours. In this event, the Company will notify the Buyer of the increased Price. The increased Price will be deemed accepted by the Buyer and deemed to be the new Price, if the Buyer instructs or allows the Company to continue to do the work or make such delivery on an urgent basis.
- 3.4 Goods and Services Tax is payable by the Buyer to the Company, in accordance with relevant laws, together with payment of the Price or any part of the Price.

4. PART PAYMENTS

- 4.1 Notwithstanding anything to the contrary, where the Price includes an amount for the assembly or installation of the Equipment, 90% of the Price is due and payable to the Company on delivery of the Equipment as stated in clause 5 and the balance 10% of the Price is payable immediately on completion of the assembly or installation.
- 4.2 Where the Price does not include an amount for assembly, the Buyer is liable to pay the Price immediately on delivery as stated in clause 5 & the Price is payable in accordance with clause 8.
- 4.3 In the event that the Company agrees to deliver part of the Equipment and/or to perform part of the services stated in a Contract or Tender, the Company may issue an invoice to the Buyer for that part of the Equipment delivered and/or the part of the services performed.

5. DELIVERY

- 5.1 Delivery of the Equipment shall be at the Company's place of business.
- 5.2 The Company will notify the Buyer ("Notice Date") as to when the Equipment is ready for delivery.
- 5.3 Delivery of the Equipment shall be deemed to take place on the earlier to occur of:
 - a) Collection from the Company's place of business by the Buyer or its authorised agent; and
 - b) The expiration of seven (7) days from the Notice Date.
- 5.4 If the Buyer fails to collect the Equipment within 14 days from the Notice Date, the Company is entitled to payment by the Buyer for storage charges.
- 5.5 Upon delivery, the Equipment shall cease to be at the Company's risk and shall be at the sole risk of the Buyer.
- 5.6 The Company does not accept responsibility or liability for any Claims arising from failure to deliver within the time specified in the Contract terms.
- 5.7 The Company is not a common carrier and does not accept liability for any Claims or fine arising from Equipment transported by the Company.

6. INTELLECTUAL PROPERTY

- 6.1 In all cases where the contract requires the Company to do work or produce Equipment in accordance with specifications, designs or descriptions provided by the Buyer, the Buyer indemnifies the Company, and will keep the Company indemnified, against any Claims arising from any infringement or alleged infringement of any patent, design, trade mark, copyright or other intellectual property or protected rights in any way arising from, or relating to, those specifications, designs or descriptions.
- 6.2 The Company shall not be liable to defend any Claims covered by this indemnity.

7. TERM

- 7.1 The time quoted by the Company for delivery of the Equipment, including completion of any other work or part pursuant to the Contract, shall be calculated from the Contract Date and is subject, where applicable, to prompt delivery to the Company of drawings, materials, information, equipment or services to be provided by the Buyer or to be provided by sources or suppliers specified by the Buyer ("Buyer's provisions"), necessary to permit the Company to commence or maintain the relevant work in production.
- 7.2 The time quoted is extended by all delays in the Buyer's provisions and by causes beyond the reasonable control of the Company or which could not have been reasonably foreseen by the Company when the time was quoted.
- 7.2. The Buyer indemnifies and releases the Company from all Claims incurred as result of delays in the Buyer's provisions.
- 7.3 If the commencement or progress of the Company's work to fulfill the Contract is delayed or suspended at the request of the Buyer then, subject to any written agreement by the Company to the contrary, the Buyer indemnifies and releases the Company from all Claims incurred as a result of the work being so delayed or suspended.

8. VARIATION

- 8.1 All requests by the Buyer for variations to the work or Equipment to be provided by the Company shall be in writing. The Company is not obliged to accept such requests. Any Company acceptance may be subject to conditions, including without limitation a change of price (which will be deemed to be the new Price), a change of quoted time of completion and changes to any other conditions as a result of such request, and the Company shall not be required to act upon such requests for variation until the Buyer has accepted in writing the conditions upon which the Company has agreed to carry out such variations.

9. TERMS OF PAYMENT

- 9.1 Payment of the Price or any part is due and payable within thirty (30) days of the date of the Company's invoice to the Buyer.
- 9.2 If the Buyer fails to pay amount invoiced in full by the due date, the Company may charge interest on the overdue account at the rate of 3% per annum above the interest rate charged at that time by the Company's bank on overdraft accounts from the due date to the date of payment.
- 9.3 The Company may refuse to deliver Equipment or do work at any time, if payment for the whole or any part of any invoice to the Buyer is not paid or delayed.
- 9.4 The Company will notify the Buyer as to acceptable payment methods and the Buyer must pay in accordance with any such method.

10. PASSING OF PROPERTY

- 10.1 The legal and equitable title to and the property in the Equipment shall not pass from the Company to the Buyer until the Buyer has paid the Price in full to the Company. Until such time, the Buyer shall possess the Equipment as fiduciary agent and bailee of the Company, entrusted as such by the Company, and shall not resell nor transfer possession of the Equipment other than in the ordinary course of business of the Buyer and shall store the Equipment separately from other goods of the Buyer in such a way that they can be recognised and remain identifiable as the property of the Company. Where the Buyer sells or disposes of the Equipment or any of them before the Price has been paid in full, the Buyer shall hold the proceeds of sale and the benefits of all contracts or agreements for sale of the Equipment in a separate account and on trust for the Company, and will account to the Company for those proceeds immediately on the Company's request.
- 10.2 If requested by the Company, the Buyer shall, at the Buyer's expense, insure the Equipment against loss or damage from the date of Delivery until title to the Equipment passes to the Buyer.

- 10.3. The Buyer authorises the Company to appropriate any payment by the Buyer to any outstanding invoice, as determined by the Company in its sole discretion.
- 10.4. The Company may at any time without notice, retake possession of Equipment delivered to the Buyer for which full payment has not been received by the Company, but the Buyer shall not be entitled to return the Equipment except in accordance with these Conditions.
- 11. EQUIPMENT RETURNED FOR CREDIT**
- 11.1. Equipment will be accepted for credit or refund only with the Company's prior written agreement and within 14 days of Delivery of the Equipment to the client. A service fee of 15% of the Price will be deducted from the credit or refund on any returned Equipment accepted by the Company. Returned Equipment shall be delivered to the Company, in good order and condition, unused and in the original packaging, accompanied by a dispatch note stating the original invoice number, date of Delivery and reason for return with a NCR-non conformance report. The Equipment will be returned at the Buyer's expense, except where the Company agrees in writing that it was wrongly or over supplied, in which case the Company will pay the Buyer a reasonable fee, in an amount determined by the Company in writing, for the cost of the return. Equipment manufactured or assembled to the Buyer's specifications will not be accepted for return.
- 12. FORCE MAJEURE**
- 12.1. Subject to any non-excludable condition, the Company is not liable for Claims or injuries suffered by the Buyer due to any cause arising from acts, events, non-happenings, omissions, accidents or acts of God beyond the reasonable control of the Company, including but not limited to industrial action, blackouts, shortage of labour, civil commotion, war, fire, explosion, storm, flood, earthquake, machinery breakdown, compliance with any direction or order of any governmental authority, or inability to obtain suitable raw materials, equipment, fuel, power, components or transportation.
- 13. PERFORMANCE**
- 13.1. Subject to any non-excludable condition and then only to the extent as set out by the non-excludable condition, no warranty shall apply as to fitness for purpose nor operation performance. When suitability, performance, size, number or capacity of Equipment (and if applicable, ancillary attachments whether supplied by the Company or not) is recommended, quoted or selected by the Company, with the aim that the Equipment performs to a particular standard specified by the Buyer or estimated by the Company, such recommendation, quotation or selection is based on the Company's best then experience. Subject to any non-excludable condition and then only to the extent as set out by the non-excludable condition, the Company is not liable for failure to perform to the standard specified by the Buyer or estimated by the Company.
- 14. GENERAL WARRANTIES**
- 14.1. Subject to any non-excludable condition, the warranties set out in these Conditions are the only warranties made by the Company in relation to Equipment and any work and services provided, or to be provided, by the Company and are in addition to the Buyers' other rights and remedies at law which cannot be excluded, in relation to the Equipment and any services provided by the Company to which the warranties relate.
- 14.2. The Company may give the Buyer an additional guarantee contained in a guarantee card supplied with the Equipment, the terms of which are deemed to be incorporated into these Conditions.
- 14.3. All drawings, illustrations, specifications, catalogues, photographs, advertising matter and details in instruction books, operator's handbooks, publicity material or other publications supplied by the Company are informative only, do not form part of the contract and are expressly excluded from the Contract.
- 14.4. Subject to any non-excludable condition, the Company is not liable for any representations not specifically confirmed by the Company in writing to the Buyer.
- 14.5. Subject to any non-excludable condition, all specified weights, measurements, power capacities and other particulars of Equipment offered, are stated in good faith, and any inaccuracy shall not vitiate the Contract nor be the basis of any Claims against the Company, nor justify rejection of the Equipment or Company work or services.
- 14.6. Where on account of restrictions, quotas or directions imposed by any government authority, the Buyer cancels the Contract, the Buyer indemnifies the Company against all Claims arising from such cancellation, including without limitation, the cost of purchased raw materials, component parts, Equipment or other goods.
- 14.7. The Buyer may cancel a contract only with the Company's written agreement and, at the option of the Company, must pay a cancellation fee of 35% of the Price or forfeiture any deposit paid.
- 14.8. If the Buyer commits any breach of its obligation or goes into liquidation (or if an individual, goes into bankruptcy), whether compulsorily (including provisionally) or voluntarily, or has a trustee, manager, or receiver appointed, the Company may terminate the Contract and may retake possession of the Equipment or re-sell the Equipment, and the Buyer indemnifies the Company against any Claims arising therefrom.
- 15.0 SPECIFIC WARRANTIES**
- The following clauses in relation to warranties are subject to any non-excludable condition and then only to the extent as set out by the non-excludable condition:
- 15.1 WARRANTY: NEW EQUIPMENT**
- If within the earlier of twelve months from the date of Delivery to the Buyer or 1,000 hours from commencement of use of the new Equipment ("new Equipment warranty period"), any of the new Equipment sold by the Company is found to be defective in materials or workmanship or does not conform to any applicable drawings and specification approved by the Company, the Company has no liability other than to, and will at its option either, repair the Equipment or provide a replacement part, provided that:
- within the new Equipment warranty period, the Buyer has given prompt (and at no time, more than 7 days after awareness of the alleged defect) written notice to the Company of any alleged defect; and
 - the Buyer has provided the Company a reasonable opportunity to perform all appropriate tests thereon; and
 - the alleged defective Equipment, or such part as agreed by the Company in writing, is promptly returned at the Buyer's expense to a designated Company service centre.
- Any defective part or Equipment replaced, will become the Company's property, and the repaired or new part will be delivered free to the Buyer's site, as agreed by the Company.
- 15.2 WARRANTY: REPAIRED PRODUCTS**
- In relation to parts repaired or replaced by the Company, if within the earlier of six months from the date of repair or replacement or 500 hours from commencement of use of the repaired or replaced parts ("repaired parts warranty period"), any part of the repaired or replaced parts is found to be defective in materials or workmanship or design carried out by the Company, the Company will at its option, either repair the Equipment or provide a replacement part, provided that:
- within the repaired parts warranty period, the Buyer has given prompt (and at no time, more than 14 days after awareness of the alleged defect) written notice to the Company of any alleged defect; and
 - the Buyer has provided the Company a reasonable opportunity to perform all appropriate tests thereon; and
 - the alleged defective Equipment, or such part as agreed by the Company in writing, is promptly returned at the Buyer's expense to a designated Company service centre.
- Any replaced part, will become the Company's property, and the repaired or new part will be delivered free to the Buyer's site, as agreed by the Company.
- For clarity, no separate warranty applies under this clause to repaired Equipment as a whole or to parts not repaired or replaced by the Company.
- 15.3 WARRANTY: PURCHASED EQUIPMENT**
- The Company does not warrant any equipment of other manufacturers, whether designated by the Buyer or purchased by the Company for resale to the Buyer either separately or as part of the Equipment manufactured by the Company. For such equipment, the relevant manufacturer's warranty will apply and the Buyer indemnifies and releases the Company in relation to any Claims arising from equipment supplied by other manufacturers.
- 15.4 WARRANTY: SUPPLY OF SERVICES**
- When the Company supplies services to the Buyer (as distinct to the supply of Equipment), relating to process development, equipment selection, design, detail, reverse engineering, supply of cad drawings, contract supervision and contract management, the Company shall exercise its best skill, competence and experience to undertake such services, but otherwise makes no warranty with respect to such services.
- 15.5 WARRANTY EXCEPTIONS**
- The warranties given by the Company do not cover, and the Company is not liable for any Claims, where any of the following has occurred:
- Failures not reported to the Company within the warranty period specified or in accordance with these Conditions.
 - Failures or damage due to inherent design defect, misapplication, abuse, improper installation, improper use or abnormal conditions of operation.
 - Failure due to operation, whether intentional or otherwise, above or below rated capacities or in an otherwise improper manner, ie: failure to laser align on assembly a gearbox supplied from the company.
 - Equipment damaged in shipment or without the fault of the Company.
- 15.6 WARRANTY: LIMIT OF LIABILITY**
- Except as otherwise provided by any non-excludable condition and then only to the extent as set out by the non-excludable condition, the Company's liability in relation to any Claims shall in no event exceed the greater of the cost of correcting defects in the Equipment or services supplied by the Company or the Price plus 10%, or it may be satisfied at the Company's sole discretion, by the Company refunding the relevant part of the Price, and the Company shall not be liable for, and Claims shall not include:
- Claims incurred by the Buyer, or any person not being the Company, attempting to, or arising from any attempt to, repair or rework any allegedly defective Equipment or service.
 - Claims whether direct or indirect, and whether or not resulting from, or contributed to, by the default or negligence of the Company unless covered by warranties stated in these Conditions;
 - Defects arising or contributed by goods provided, or a specifications, designs or descriptions stipulated or specified, by the Buyer.
 - Defects caused due to non-compliance with conditions of operation provided by the Company or from improper use of the Equipment.
 - Defects arising from faulty transportation, storage or maintenance, misuse, incorrect erection or installation or faulty repair by the Buyer, or by alterations carried out without the Company's written consent and any conditions of such consent.
 - Normal wear and tear or deterioration.
 - Defects arising more than 18 months from the date of Delivery, nor in any aspect of the services more than 12 months from commencement of the services;
 - Latent defects.
 - Collateral damage to items other than the Equipment.
- The Buyer will, at its own expense, arrange for any dismantling and reassembly of goods, other than the Equipment, to the extent that is necessary to allow the Company to remedy a defect.
- 16 CLAIMS FOR WARRANTY**
- Claims for warranties under these Conditions or at law must be made in writing, either sent by prepaid post or by email, to the Company's address stated in clause 1.3. The Buyer bears the cost of sending the notice of its claim;
- 17 APPLICABLE LAW**

The Contract is governed by the laws of New South Wales, Australia and each party submits to the non-exclusive jurisdiction of the courts of New South Wales.