

## DAVIS DERBY LIMITED CONDITIONS OF PURCHASE FOR MATERIALS

### 1. DEFINITIONS

- (a) 'Buyer' shall mean the Company so named in the Purchase Order.
- (b) 'Seller' shall mean the Person, Firm, or Company to whom the Purchase Order is issued.
- (c) 'Goods' shall mean each and every item to be supplied and/or all work to be done by Seller as specified in the Purchase Order.
- (d) 'Contract' shall mean the agreement between Buyer and Seller comprising the Purchase Order, these conditions and any other documents (or parts thereof) specified in the Purchase order.

### 2. DELIVERY DATE

The date of delivery of the Goods shall be that specified in the Purchase Order unless otherwise subsequently agreed in writing between Buyer and Seller. Seller shall furnish such programmes of manufacture as Buyer may reasonably require and Seller shall give notice to Buyer immediately if such programmes are likely to be delayed.

### 3. INCORRECT DELIVERY

All Goods must be delivered at the delivery point specified in the Purchase Order. If Goods are incorrectly delivered Seller shall be responsible for any additional expense incurred in delivering them to their correct destination.

### 4. PRICE

Buyer shall pay the agreed purchase price which is calculated in accordance with or is recorded in the Contract. Unless otherwise stated on the Purchase Order prices shall be fixed and Buyer shall not be liable to any increase in the cost of the materials, labour, or any other costs or for the storage, packaging, insurance, delivery or, minimum order charges. Value Added Tax where applicable shall be shown separately on all invoices as a strictly nett extra charge.

### 5. TERMS OF PAYMENT

Unless otherwise stated on the Purchase Order payment will be effected by the close of the month following the month during which the Goods and any documents or parts thereof specified in the Purchase Order are received at the specified delivery point, subject to the receipt of a valid invoice referenced to the purchase Order Number.

### 6. PROPERTY AND RISK

- (a) Goods (other than provided for under clause 6 (b)) shall become the property of the Buyer immediately on delivery at the point specified in the Purchase Order.
- (b) Where Buyer pays part of the said agreed purchased price before taking delivery of the Goods or any part thereof then such payments shall be regarded as part payments and not deposits of the said agreed purchase price and the property in any materials procured for or manufactured by Seller for the purposes of the contract, or otherwise appropriated to the Contract shall pass to the Buyer from the date of such payments up to the total value thereof.
- (c) The risk in the Goods including any free issue materials provided by Buyer and any materials referred to in clause 6(b) the property which has passed to Buyer shall remain with Seller until such are delivered and accepted at the point specified in the Purchase Order.

### 7. ACCEPTANCE

In the case of goods delivered by Seller not conforming with the Contract including without limitation reasons of quality being unfit for the purpose for which they are specified (where such purpose has been made known in writing to the Seller) Buyer shall have the right within a reasonable time of their delivery to reject such goods and shall give Seller reasonable opportunity at Seller's expense to remove and replace rejected Goods which conform with the Contract. In the event of continuing failure of the Seller to provide Goods which conform with the Contract, Buyer may terminate the Contract under the provision of clause 17.1. The making of payment shall not prejudice Buyer's rights under this clause.

### 8. INCOTERMS

Incoterms shall apply to the Purchase Order.

### 9. PATENT RIGHTS

Seller will indemnify Buyer against any claim for infringement of Letters Patent, Registered Design, Trade Mark or Copyright by the use or sale of any article or material supplied by Seller to Buyer and against all costs and damages which Buyer may incur in any action for such infringement or for which Buyer may become liable in any such action. Provided always that this indemnity shall not apply to any infringement which is due to Seller having followed a design or instruction furnished or given by Buyer or to the use of such article or material in a manner or for a purpose or in a foreign country not specified by or disclosed to Seller, or to any infringement which is due to the use of such article or material in association or combination with any other article or material not supplied by the Seller. And provided also that this indemnity is conditional on Buyer giving to Seller the earliest possible notice in writing of any claim being made or action threatened or brought against Buyer and on Buyer permitting Seller at Seller's own expense to conduct any litigation that they may ensure and all negotiations for a settlement of the claim. Buyer on his part warrants that any design or instruction furnished or given by him shall not be such as will cause Seller to infringe any Letters Patent, Registered Design, Trade Mark or Copyright in the execution of the contract.

### 10. FORCE MAJEURE

If either party is prevented or hindered from carrying out its obligations under the contract by circumstances beyond its reasonable control, including without limitation, any form of Government intervention, strikes and lockouts (such circumstances being herein referred to as Force Majeure) then the performance of such obligations shall be suspended for such time as the circumstances aforesaid last and the party affected shall not be liable for any delay occasioned thereby. Provided that if such delay shall extend for an unreasonable time the party not affected by the circumstances aforesaid may by notice in writing cancel any or all deliveries not made and no liability shall by reason of such cancellation attach to either party. Buyer shall pay Seller such a sum as may be equitable in respect of work performed prior to cancellation. Shortage of labour, materials or utilities or delays by sub-contractors shall not by themselves constitute Force Majeure unless they are caused by circumstances which are Force Majeure circumstances within the meaning of the Clause. Costs arising from Force Majeure circumstances shall be borne by the party incurring such costs.

## 11. PROGRESS AND INSPECTION

Buyer's representatives shall have the right to progress and inspect all Goods at Seller's works and the works of the sub-contractors at all reasonable times and to reject Goods or any part thereof that do not comply with the Contract. Seller's subcontracts shall be made and endorsed accordingly. Any inspection, checking, approval or acceptance given on behalf of Buyer shall not relieve Seller or his sub-contractors from any obligation under the Contract.

## 12. BUYERS RIGHTS IN SPECIFICATIONS, PLANS, DRAWINGS, PATTERNS, ETC.

Any specifications, plans, drawings, patterns or designs supplied by Buyer to Seller in connection with the Contract remain the property of Buyer, and any information derived therefrom or otherwise communicated to Seller in connection with the Contract shall be kept secret and confidential by Seller and shall not without the consent in writing of Buyer, be published or disclosed to any third party, or made use of by Seller except for the purpose of implementing the Contract. The obligations with respect to secrecy and confidentiality contained in the Clause shall not apply to information which:

- (i) was already in Seller's possession or in the public domain prior to its disclosure by Buyer, or
- (ii) is purchased or otherwise legally acquired by Seller at any time from third parties having good title thereto, or
- (iii) comes into public domain, otherwise than through the fault of Seller.

## 13. RESPONSIBILITY FOR INFORMATION

Seller shall be responsible for any errors or omissions in any drawings, calculations, packaging details or other particulars supplied by him, whether an such information has been approved by Buyer or not, provided that such errors or omissions are not due to inaccurate information furnished in writing by Buyer.

## 14. ASSIGNMENT AND SUB LETTING

The Contract shall not be assigned by Seller nor shall the contract be sub let as a whole. Seller shall not sub let nor permit any sub contractor to sub let any part of the Contract without Buyers written consent, which shall not be unreasonably withheld. The restriction contained in the Clause shall not apply to sub contracts for materials, for minor details or for any part of the Goods for which the makers are named in the Contract. Seller shall be responsible for all work done and material and articles supplied by sub contractors.

## 15. FREE ISSUE MATERIALS

Where Buyer for the purposes of the Contract provides free issue materials to Seller for incorporation into the Goods such materials shall be and remain the property of the buyer. Seller shall maintain all such materials in good order and condition subject in the case of tooling, patterns and the like, to fair wear and tear. Seller shall use such materials economically and solely in connection with the Contract. Surplus free issue materials shall be disposed of at Buyers direction. Waste or loss of such materials arising from bad workmanship or failure of Seller to maintain such materials in good order and condition shall be made good at Seller's expense. Seller shall certify to Buyer that free issue materials have been incorporated into the goods to the extent required by the Purchase Order.

## 16. WARRANTY PERIOD

Seller shall as soon as reasonably practicable and at its own expense make good, repair or replace all Goods which are or become defective during the period of twelve months from putting into service or unless otherwise expressly stated in the Contract, eighteen months from delivery, whichever expires first where such defects occur under proper usage and are due to faulty design. Seller's erroneous instructions as to sue or erroneous use data, or inadequate or faulty materials or workmanship, or any other breach of Seller's warranties expressed or implied. Repairs or replacement shall themselves be subject to the foregoing obligations for a period of twelve months from date of delivery, reinstallation or passing of tests (if any) whichever is appropriate after repair or replacement. Unless otherwise stated in the Contract. Seller shall further be liable in damages (if any) up to the limit of the price of the defective Goods. Seller should not in any event be liable for damages in respect of loss of production or of profits resulting from defects.

## 17. SELLERS DEFAULT OR INSOLVENCY

- 17.1 If Seller commits a breach of the Contract and fails within ten day of notice by Buyer to take such steps as are reasonable to rectify such breach, Buyer may, without prejudice to any other of his right, terminate the Contract forthwith by notice in writing to Seller.
- 17.2 If Seller becomes insolvent or (being a company) makes an arrangement with its creditors or has a liquidator or a receiver appointed or commences to be wound up (other than for the purposes of amalgamation or reconstruction) Buyer may, without prejudice to any other of his rights terminate the Contract forthwith by notice to Seller or any person in whom the Contract may have become vested. In such event it shall be lawful for Buyer to enter the premises where the Goods are situated and take possession of the Goods and any materials the property in which has passed to or is vested in Buyer.

## 18.LAW

The construction, validity and performance hereof shall be governed by the Law of England.

### Davis Derby Limited

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