

STANDARD TERMS AND CONDITIONS OF SALE

1. Definitions

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

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

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

“**Products**” means the products are or to be supplied by the Seller to the Buyer.

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

“**Purchase Order**” shall mean any order for the Products placed by Buyer with Seller.

“**Delivery**” shall mean delivery of the Products.

2. Contract

2.1. The contractual relationship between the Seller and the Purchaser shall be subject to these General Terms and Conditions of Sale (“Conditions”) and no addition or variation shall apply unless agreed in writing between Seller and Buyer. No terms and conditions stated by Buyer in any Purchase Order, confirmation, acknowledgment or acceptance to these Conditions shall be binding upon Seller if in conflict with, inconsistent with, in addition to these Conditions unless accepted by Seller in writing.

2.2. These Conditions shall be deemed accepted by Buyer if Buyer: (i) places a Purchase Order if Buyer has previously received an invoice with these Conditions in a former transaction of the Products, (ii) accepts each of the Products stated in the face page hereof that have been delivered pursuant to the section 5.1. hereof, or (iii) makes payment for each Delivery pursuant to this invoice.

2.3. Once these Conditions are accepted by Buyer, these Conditions may not be modified or cancelled by either party unless agreed in writing between Seller and Buyer.

2.4. A Purchase Order shall be in writing. No Purchaser Order placed by the Buyer shall be deemed to be accepted by the Seller until a written acknowledgement of Purchase Order is issued by the Seller or (if earlier) the Seller delivers the Products to the Buyer. No Purchase Order can be cancelled by the Buyer unless approved by Seller in writing.

2.5. Prices of Products 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 Products offered and no such particulars shall be binding on the Seller.

3.2. All Products 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 Products shall be as set out in the Seller’s quotation or acknowledgement of Purchase Order.

4. Liability

4.1. Subject to the remaining sub-clauses of this clause, the Seller’s liability in respect of any defective Products manufactured or supplied by the Seller or for any loss or damage, consequential or otherwise, is limited to replacement of the Products 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 Products were delivered to the Buyer.

4.2. The Seller may, at its option, give the Buyer a credit in respect of the Products found to be defective of up to the full value of the price paid by the Buyer.

4.3. The Products are sold on the condition that they will be used only in the prescribed manner and for the purpose for which they were intended. The Buyer must satisfy itself that the intended use of the Products 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 Products and the purpose for which they were designed. In the event that the Buyer is purchasing for onward sale, the Buyer must make known to its customer the prescribed use of the Products and the purpose for which they were designed.

4.4. The Seller has available information and product literature concerning the conditions necessary to ensure that the Products supplied by the Seller will be safe and without risk to health when properly used. If the Buyer is not already in possession of such literature or requires any information or advice in connection with the safe use of the Products, the Buyer should immediately contact the Seller.

- 4.5. The Seller shall not be liable for any damage, loss or injury resulting from any misuse of the Products or any use which is not in accordance with the prescribed manner or the purpose for which they were designed.
- 4.6. To the extent permitted by law, the Seller shall not in any event be liable to the Buyer or any third party for an injury, loss or damage, whether direct, indirect, consequential or incidental, which arise out of or in connection with the Contract, including but not limited to liability for loss of use, loss of work in progress, down time, loss of revenue or profits, loss of contracts, failure to realize savings unless such damage is caused by Seller's gross negligence.
- 4.7. All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 4.8. Where the Buyer provides a specification of the Products to be manufactured by the Seller, the Seller shall not be liable for any defect in the Products caused by compliance with that specification.
- 4.9. If the Buyer packages or causes the Products to be packaged in such a way so as to make the Products defective then the Buyer shall indemnify the Seller against all damage and loss caused by reason of the product being defective.
- 4.10. In the case of Products 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 Products found to be defective or attributable directly or indirectly to the acts, omissions, negligence or default of the Buyer or the Buyer's servants or agents including (in particular but without prejudice to the generality of the foregoing) any failure by the Buyer to comply with any recommendations of the Seller as to the storage, handling and use of the Products.
5. **Delivery**
- 5.1. Any dates specified by the Seller for delivery of the Products 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 Buyer to terminate or rescind the Contract unless such delay exceeds [180] days.
- 5.3. The Seller shall be under no liability to the Buyer in respect of any damaged Products 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 Products is sent to the Seller in writing within 14 days of delivery. The Buyer must notify the Seller (and, if appropriate, the carrier) in writing of the non-receipt or shortage in delivery of any Products by the Buyer 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 Products (even if caused by the Seller's negligence) unless the Buyer 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 Products shall be limited to replacing the Products within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Products.
- 5.4. The Buyer shall hold the Seller indemnified against any loss or damage arising by the failure to give the notification of receipt or damaged Products within the time limit specified above.
- 5.5. The Buyer shall accept deliveries which are within ten per cent either less or more than the quantity ordered. The Buyer shall not be entitled to object to or reject the Products or any of them by reason of the surplus or shortfall and will pay the unit invoiced price for the quantity of Products delivered.
- 5.6. Any request by the Buyer 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 Products shall be deemed conclusively to have been made.
- 5.7. If the Buyer fails to take delivery of the Products 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 Products shall pass to the Buyer (including for loss or damage caused by the Seller's negligence). The Products shall be deemed to have been delivered and the Seller may elect to store the Products until actual delivery whereupon the Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance) and the Seller may sell the Products 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 Products 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 Products or where the Seller makes short delivery shall not entitle the Buyer to repudiate the Contract.

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

6. **Risk**

6.1. Risk shall pass to the Buyer on the Products being tendered for delivery at the Buyer's designated premises or on delivery to the carrier nominated by the Buyer or (where the Products are to be collected by the Buyer from the Seller) on being loaded onto the vehicle of the Buyer or his agent (whichever is the earlier). The Buyer must insure the Products 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 Products are stored by the Seller at the premises of the Buyer in contemplation of ongoing sales (consignment), the Products are at the risk of the Buyer.

7. **Reservation of Title**

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

- (a) hold the Products on a fiduciary basis as the Seller's bailee;
- (b) store the Products (at no cost to the Seller) separately from all other goods of the Buyer 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 Products; and
- (d) maintain the Products 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 Buyer shall produce the policy of insurance to the Seller.

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

- (a) any sale shall be effected in the ordinary course of the Buyer's business at full market value; and
- (b) any such sale shall be a sale of the Seller's property on the Buyer's own behalf and the Buyer shall deal as principal when making such a sale. Until property in

the Products passes from Seller in accordance with section 7.1, the entire proceeds of sale of the Products shall be held on trust for Seller and shall not be mixed with other money or paid into any overdrawn bank account and shall be at all material times paid into a separate bank account and identified as Seller's money.

7.2. The Buyer'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 Buyer or the Seller has any reason to have doubt as to the Buyer's solvency; or
- (b) the Buyer encumbers or in any way charges any of the Products.

7.3. Until such time as property in the Products passes from Seller to Buyer, at any time upon Seller's request, Buyer shall immediately return such Products to Seller.

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

7.5. If Buyer incorporates the Products into goods with the result that the Products lose their separate identity and are not readily severable in their original state from other goods, then property (including legal title) in such mixed goods, which incorporate Products, shall vest in Seller immediately upon their coming into existence. All rights vested in Seller which apply to the Products shall apply equally to such mixed goods.

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

8. **Payment and Interest**

8.1. Payment shall be made by the Buyer 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 Buyer fails to pay to Seller any amount payable hereunder when due, Seller shall be entitled without prejudice to any other rights or remedies under the applicable law, to charge any late payment interest from due date until the actual date of payment at the highest annual interest rate permitted under applicable regulations.

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

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

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 Products are in transport, either the Seller or the Buyer 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. Insolvency

In the event Buyer shall be adjudicated as bankrupt, or make a general assignment for the benefit of creditors, or a receiver be appointed on account of the insolvency of Buyer, or should Buyer at any time fail to make any payment to Seller when due or fail to perform any obligation hereunder, Seller shall be at liberty, without prejudice to any other right or remedy, to withhold Delivery of any undelivered Products, stop any Products in transit or cancel the balance of any Purchase Order and, if the Products have already been delivered, to require immediate payment of the Products or to repossess the Products and to enter Buyer's premises to this effect.

11. Waiver

Seller shall not be deemed to have waived any of its rights or remedies hereunder unless such waiver is in writing and signed by Seller and then only to the extent specifically set forth in such writing. A waiver with reference to one event shall not be considered as continuing or as a bar to waiver of any right or remedy as to a subsequent event.

12. Confidentiality

Other than when obliged by law the Buyer shall not without the prior written consent of the Seller communicate to any person, firm or company whatsoever the price paid for any Products or services or any of the methods of use of the Products 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 Buyer to carry out those processes or use the Products.

13. Entire Agreement

These Conditions comprise the entire understanding between Seller and Buyer with respect to their subject matters and supersede any previous or contemporaneous communication, representations or agreements, including the Purchase Order, whether oral or written.

14. Notice

All notifications to be given by the Buyer to the Seller referred to in these Conditions must be in writing and sent by recorded delivery or facsimile transmission. Unless the Buyer 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. Assignment

The Buyer 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.

17. 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 the Republic of Singapore.