

## STANDARD CONDITIONS OF SALE

### **1. PARTIES**

“**Seller**” means any legal entity of 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 Corporation, 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 Standard 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 dispatches 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 Unless previously withdrawn, quotations are open for acceptance within the period stated in them. Where no period is stated, the quotation shall be open for acceptance for 30 days from the date it is dated unless withdrawn by the Seller during that time.

### **3. LIMITED WARRANTY**

- 3.1. The Goods provided hereunder are warranted to conform to Seller's specifications and to be free from defects in material and workmanship. Seller further warrants good

title to the Goods and that the Goods do not infringe any valid United States patent. TO THE EXTENT PERMITTED BY LAW, Seller DISCLAIMS ANY AND ALL OTHER WARRANTIES, EXPRESS AND IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR USE OR PURPOSE. Seller's sole obligation and Purchaser's sole remedy on account of breach of the foregoing warranty is the prompt replacement or correction of defective goods at Seller's expense, or, at Seller's option, the refund of the purchase price thereof. No claims hereunder shall be maintained unless notice of an alleged defect is received by Seller within sixty (60) days from the date of delivery and Seller retains the right to inspect any Goods alleged to be defective.

### **4. LIMITATION OF LIABILITY**

- 4.1. TO THE EXTENT PERMITTED BY LAW, IN NO EVENT SHALL SELLER BE LIABLE TO PURCHASER OR ANY THIRD PARTY FOR AN INJURY, LOSS OR DAMAGE, WHETHER DIRECT, INDIRECT, CONSEQUENTIAL OR INCIDENTAL (INCLUDING LOST PROFITS OR REVENUE, LOSS OF CONTRACTS, LOSS OF DATA, INTERRUPTION IN USE, UNAVAILABILITY OF DATA) ARISING OUT OF THE USE, OR THE INABILITY TO USE, GOODS PROVIDED HEREUNDER WHETHER SUCH DAMAGE RESULTS FROM BREACH OF WARRANTY, NEGLIGENCE OR ANY OTHER CAUSE AND WHETHER OR NOT SELLER KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH INJURY, LOSS OR DAMAGE.

### **5. TAX**

- 5.1. Any tax, or other governmental charge, or increase in any such tax or governmental charge, on the production, sale and/or shipment of the Goods sold under this Agreement, whether by federal, state, provincial or municipal/local authorities, imposed, or becoming effective, on or after this Agreement, will be added to the price then in payment then in effect for the Goods and will be paid (or reimbursed) by the Purchaser to the Seller.

### **6. DELIVERY**

- 6.1. 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.
- 6.2. 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 one-hundred and eighty [180] days.
- 6.3. 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 fourteen (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 ten (10) days of the invoice date relating to any delivery. The Company shall not be liable for any non-delivery of Goods (even if caused by the Company's negligence) unless the Purchaser gives written notice to the Company of the non-delivery in accordance with this condition 6.3. For the avoidance of doubt, any liability of the Company 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.
- 6.4. 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.
- 6.5. The Purchaser shall accept deliveries which are within ten per cent (10%) either less or more than the quantity ordered and 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.
- 6.6. Any request by the Purchaser for proof of delivery from the Seller or the carrier must be made in writing no later than four (4) months after the date of the invoice related to the delivery and in the absence of any such request in writing delivery of the Goods shall be deemed conclusively to have been made.
- 6.7. 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 Company'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 Purchaser for any shortfall.
- 6.8. 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 8 hereof and the Seller shall be entitled to withhold delivery of future instalments pending payment.
- 6.9. 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.
- 6.10. 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.
- 6.11. Seller prohibits receipt, storage, or use of Seller's Goods at residential locations. Seller will not fulfil orders that have a residential shipping address and will not ship any of its Goods to a residential address.
- 7. TITLE AND RISK OF LOSS**
- 7.1. Seller shall retain title to the Goods until they are paid for in full or used by the Purchaser in the ordinary course of business. The Purchaser shall provide any documentation reasonably requested by Seller to record Seller's interest in such goods. Risk of loss of the Goods shall pass to the Purchaser upon delivery and Purchaser shall adequately insure the Goods until they are paid in full.
- 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. Prices quoted are exclusive of Value Added Tax and are ex-works unless otherwise specified in writing.
- 8.3. Seller reserves the right to charge one and one half percent (1.5%) Interest per month from the date payment is due until paid in full (or the maximum annual legal rate for sales of commercial goods, whichever is less) on overdue balances. The Purchaser shall also reimburse Seller for any costs and expenses, including attorney fees, incident to the collection of any delinquent account.
- 9. FORCE MAJEURE**
- 9.1. Seller shall not be liable for delay or failure in the performance of the obligations contained in this invoice arising from any causes beyond the control of Seller, and in such case of the time for performance shall be extended by the period of such force majeure. HOWEVER, IN NO EVENT SHALL SELLER BE LIABLE FOR DAMAGES CAUSED DIRECTLY OR INDIRECTLY BY ANY DELAY IN DELIVERY.
- 10. BREACH**
- 10.1. If the Purchaser (i) fails to perform any of its obligations hereunder; (ii) fails to pay any payment on the due date; (iii) 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); (iv) ceases to trade or threatens to cease to trade; or (v) 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**

- 11.1. 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**

- 12.1. 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**

- 13.1. 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**

- 14.1. 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 if requested proof of such posting or transmission receipt of such, notice shall not be deemed to have occurred.

#### **15. SEVERANCE**

- 15.1. 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. NO WAIVER**

- 16.1. The waiver by either party of any default by the other party shall not waive subsequent defaults by such other party of the same or different kind.

#### **17. PROPRIETY RIGHTS**

- 17.1. Purchaser shall not use Seller's name, logo, trademarks, trade names, trade dress, design, look and feel or other propriety rights ("**Propriety Rights**") in any of its advertising, communications, publications or other work without the prior written permission of Seller.

#### **18. EXPORT CONTROL**

- 18.1. Purchaser shall comply with all laws, regulations and orders of the United States, the United States Organization, and the member states of the European Union and European Free Trade Association, applicable to the export, re-export, transfer or resale of products or the provision or services and related technical data ("**Export Laws**"). Purchaser shall not make Goods available in any country for which an export license or other governmental approval is required without first obtaining all necessary licenses or other approvals.

#### **19. NO ASSIGNMENT**

- 19.1. 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.

#### **20. GOVERNING LAW AND JURISDICTION**

- 20.1. This invoice and the sale of Goods described shall be governed by and construed in accordance with the laws of the State of New Jersey (without giving effect to choice of law provisions). The UN Convention on the International Sale of Goods shall not apply to this Contract.