

## DVS TERMS AND CONDITIONS



**1.1** In the context of these conditions:

- (i) The term "Seller" shall be construed as meaning DVS Ltd which accepts an order for the supply of goods.
- (ii) the term "Buyer" shall be construed as meaning the person, firm or company named in the order form or the person, firm or company who or which issues an order to the Seller for the supply of goods, and all references to "him" and "his" hereafter shall be construed accordingly.
- (iii) the term "goods" shall be construed as meaning any item, article or thing supplied by the Seller to the Buyer, whether the same bears the logo DVS or otherwise.

**1.2** The Buyer warrants and hereby acknowledges that he contracts on his own behalf and not on behalf of or as agent for any other person, firm or company, unless express notice in writing to the effect of such agency has prior to or at the time of the making of this contract been delivered by him to the Seller at the Seller's registered office and such notice has been duly acknowledged in writing by the Seller.

**1.3** The Buyer acknowledges that before entering into a contract for the purchase of any goods from the Seller he has expressly represented and warranted that he is not insolvent and has not committed any act of bankruptcy, or being a company with limited or unlimited liability, knows of no circumstances which should entitle any debenture holder or secured creditor to appoint a Receiver, to petition for winding up of the company or to exercise any other rights over or against the company's assets.

**2.1** Unless otherwise expressly agreed in writing by the Seller no goods shall be supplied by the Seller to the Buyer except in accordance with these Conditions, which supersede any earlier sets of Conditions appearing in the Seller's catalogues or elsewhere. These Conditions shall constitute the entire Terms and Conditions of the contract between the Buyer and the Seller and, in the event of any conflict, these Conditions shall override and prevail over any terms or conditions stipulated incorporated or referred to by the Buyer whether in the order or in any negotiations or otherwise.

**2.2** Any representation or warranty written or orally made or given prior to this contract is hereby expressly excluded and all brochures, specifications, drawings, catalogues, particulars, shapes, descriptions and illustrations, price lists and other advertising material are intended only to present a general idea of goods described therein.

**2.3** Any waiver by the Seller of any one or more of these Conditions does not constitute a permanent waiver of any Condition so waived nor a general waiver of these Conditions as a whole, and nor does the same in any way prejudice the exercise of the Seller's rights hereunder.

**3.1** Any time or date named by the Seller for the delivery of any goods is given as a forecast in the light of prevailing Conditions and is given and intended as an estimate only. **3.2** If notwithstanding the Seller's best endeavours the Seller fails to despatch or deliver the goods by such time or date, such failure shall not constitute a breach of this contract and the Seller shall not be liable to the Buyer to make good any damage or loss whatsoever whether arising directly or indirectly out of any delay in delivery.

**3.3** In the event that for any reason the Seller is unable to supply any goods on or at the time or date named for delivery, such time or date shall be postponed for a reasonable period.

**3.4** In the event that by any circumstances or reason beyond its reasonable control the Seller is unable to supply any goods within a reasonable period after the date named for delivery, the Seller and the Buyer shall be entitled to cancel or withdraw from the contract in respect of any goods then not delivered, but the Seller shall not be liable for any damage or loss whatsoever whether arising directly or indirectly out of such cancellation or withdrawal or out of any non-delivery of any goods.

**4.1** Delivery shall be taken by the Buyer no later than the date (if any) named for delivery or, if no date so be named, at the date when the Seller is ready to despatch or deliver the goods.

**4.2** In the event that for any reason the Buyer fails to accept delivery of the goods at the due date aforesaid then:

- (i) The Seller reserves the right immediately or at any time thereafter to cancel the Buyer's order, such cancellation entitling the Seller to dispose of the goods and obtain from the Buyer compensation for loss of profit in addition to any other sums due to the Seller under these Conditions;
- (ii) the Seller shall be entitled at its discretion to store the goods until the actual delivery or other disposal thereof and the Buyer shall be liable to the Seller for the reasonable cost (including insurance) of so doing.
- (iii) upon any subsequent acceptance of delivery by the Buyer, the Seller shall be entitled to add to the price charged for the goods a sum representing any increase in the costs of delivery of the goods accruing between the delivery date named and the date of actual delivery;
- (iv) upon any subsequent acceptance of delivery by the Buyer, the price payable by the Buyer in respect of the goods shall be increased to the Seller's price for the goods that prevails at the date of such delivery.

**4.3** These provisions shall be in addition to and not in substitution of any other payment or charges for which the Buyer may become liable in respect of his failure to take delivery at the appropriate date.

**5** The Seller shall endeavour to supply the exact quantity of goods ordered by the Buyer, but the total quantity of goods to be supplied shall be subject to a tolerance of 20% and the Buyer shall be obliged to pay pro rata for the goods actually delivered notwithstanding that any part of the goods ordered shall remain outstanding.

**6** Unless otherwise stipulated by the Seller the prices quoted by the Seller are inclusive of carriage within England and Wales provided they are delivered by the Sellers own transport, but are exclusive of VAT which will be added at the current rate and tax point. Delivery will be made by the Sellers transport, subject to transport being available and at the discretion of the Seller. In the event that any goods are to be delivered to

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the Buyer or to his order outside England and Wales, the Seller shall be entitled to add to the invoice price a reasonable sum in respect of carriage charges. If an order is placed for goods with a retail price + VAT of less than £5.00 there will be a minimum charge of £5.00 to which VAT will be added and in the event of delivery being required the minimum charge will be £15.00 + VAT.

**7.1** The Buyer shall inspect and test the goods immediately upon delivery thereof to him and shall within fourteen days of such inspection give notice in writing to the Seller of any matter, thing or defect by reason on which he alleges that the goods are not in accordance with the contract.

**7.2** In the event of any goods being subject to defects not discoverable upon reasonable inspection or testing at the time of delivery, then within 14 days of the actual discovery of such alleged defect, and in the event within 2 months of delivery of the goods to the Buyer, the Buyer shall give notice in writing to the Seller thereof.

**7.3** The Company will at its discretion either refund the cost or replace or repair free of charge any Products proved to the Company's satisfaction to have been lost or damaged in transit up to the moment of delivery provided that within five days of receipt of the Products in the case of damage or within fourteen days of receipt of invoice in the case of loss the Customer notifies both the carrier and the Company in writing of the nature and extent of the damage or loss. The Company accepts no liability for delay in transit. Unless the Products are checked on receipt the carriers documentation should be endorsed "unexamined".

**8.1** Subject as in hereinafter provided the Seller will at its discretion replace at the point of delivery and at its own cost any goods of its own manufacture in which defects arising solely from faulty materials or workmanship appear within the period of 12 months from the date of delivery thereof the Buyer, provided that:

(i) In no event will the Seller's liability hereunder exceed the invoice value (exclusive of VAT) of such defective goods:

(ii) The Buyer shall have complied with all his obligations (including payment for the goods) under this contract:

(iii) The Buyer has at his own cost returned the allegedly defective goods to the Seller for inspection.

**8.2** The Seller shall not hereunder be liable in any event:

(i) In respect of any defect in goods of which notice pursuant to Clause 7 hereof has not been given within the period therein specified.

(ii) In respect of any defect in goods supplied which are not of the Seller's manufacture although in such event the Seller shall endeavour to enforce at the expense of the Buyer (payment on account of such expense being deposited by the Buyer with the Seller prior to such enforcement) any manufacturers' guarantee for the benefit of the Buyer;

(iii) In respect of any damage which has been sustained to the goods in transit unless the Seller and the carrier have each been notified thereof in writing within 3 days of delivery of the goods to the Buyer (inclusive of the day of delivery);

(iv) In respect of any defect in goods which have been improperly or incorrectly stored or installed or which have been used for any purpose other than that for which the goods were intended or which have not been used or maintained in accordance with the manufacturers' instructions.

(v) In respect of any defect in goods which have been cut, misused, permitted or allowed to fall into a poor state of condition or repair or which have not been serviced in accordance with the manufacturers' instructions.

(vi) For any expenditure, loss of profit or consequential loss of any kind howsoever caused.

**8.3** The Seller's liability under Clause 8.1. and 8.2. hereof shall be in lieu of any warranties or conditions whether express or implied by statute, common law or otherwise howsoever, which warranties and conditions are hereby expressly excluded.

**8.4** Save as aforesaid and save in respect of death or personal injury arising from the negligence of the Seller its servants or agents, the Seller shall not be liable for any claim or claims for direct or indirect consequential or incidental injury, loss or damage made by the Buyer against the Seller whether in contract or tort (including negligence on the part of the Seller its servants or agents) arising out of or in connection with any defects in the goods or any act, omission, neglect or default (whether or not the same constitutes a fundamental breach of the contract or breach of a fundamental term thereof) of the Seller its servants or agents in the performance of this contract.

**8.6** The Seller's obligations contained in this clause shall apply only to the Buyer.

**8.7** The Buyer accepts as reasonable that the Seller's total liability for any goods which are defective shall be as set out in these Conditions; in fixing that limit the Seller has had regards to the contract price of the goods, the nature of the goods, the use which they will receive and the resources available to each party including servicing facilities and insurance cover to meet any liability.

**9** If the Buyer shall at any time cancel this contract or refuse to accept delivery of the goods, the Buyer shall be liable to the Seller for the total contract price in respect thereof, subject to credit in such sum (net of the costs of sale or other disposal) as the Seller may realise in selling or otherwise disposing of the goods elsewhere.

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**10.1** The time within which the Buyer is to pay for the goods shall be of the essence of this contract and in the event that the Buyer shall fail to make payment by the due date all sums due to the Seller from the Buyer under this or any other contract for the supply of goods shall forthwith become due and payable to the Seller.

**10.2** All accounts are payable on demand. In the absence of demand payment in full for the goods supplied shall be made by the Buyer to the Seller on or before the last day of the month next succeeding the month in which the Seller's invoice is dated. In the event of payment being made by cheque such payment shall not be deemed to have been made until such cheque be honoured.

**10.3** The Seller shall be entitled to charge interest at the rate of 2.5% per month upon all overdue balances. The Seller shall also be entitled to charge such reasonable costs as it may incur in recovering any overdue balance.

**10.4** The Seller shall be entitled to charge interest at the rate of 2.5% per month upon the price of any goods of which the buyer has failed to take delivery, from the date upon which delivery was due until the date of actual delivery or other disposal of the goods by the Seller.

**10.5** The Buyer shall not be entitled to withhold suspend or set off payment for goods delivered for any reason whatsoever.

**10.6** There will be a reasonable charge made on each occasion for any cheque rendered in payment where the cheque has to be represented or is initially refused.

**10.7** The Seller shall be entitled to charge such reasonable costs as it may incur in recovering any overdue balances from the Buyer and such costs shall be added to the Buyer's existing overdue balances.

**11** The Seller shall be entitled to suspend or cancel any or any further deliveries of goods due under this or any other contract between the Buyer and the Seller

- (a) if any payments due from the Buyer and the Seller under this or any other contract between the Buyer and the Seller is overdue;
- (b) if the Buyer fails to take delivery of any goods ordered under this or any other contract;
- (c) if the price of the goods delivered or to be delivered by the Seller to the Buyer under this or any other contract, being goods in respect of which payment has not been received by the Seller from the Buyer, exceeds the limit of credit that the Seller may have from time to time by notification in writing or otherwise afforded to the Buyer;
- (d) if any proceedings have been commenced or threatened against the Buyer in which the Buyer's solvency or credit worthiness is at stake or is in any matter at issue, or if at any time the Seller is advised of circumstances casting doubt upon the Buyer's credit worthiness and satisfactory security for payment is not given by the Buyer upon request made by the Seller.

**12.1** The risk in respect of all goods sold under this contract shall pass to the Buyer upon dispatch of the goods by the Seller from the Seller's premises, notwithstanding agreement by the Seller to bear the cost of delivery or to deliver the goods itself. In any event the property in the goods shall not pass to the Buyer except as provided in Clause 13 hereof.

**12.2** In the case of export related contracts, the International Chamber of Commerce INCOTERM 1990 shall apply.

**13.1** Until the purchase price of the goods comprised in this or any other contract between the Buyer and the Seller shall have been paid or satisfied in full (if by cheque then only upon clearance);

- (i) the sole and absolute property in the goods comprised in this contract shall remain vested in the Seller as legal and equitable owner notwithstanding the delivery of the same and the passing of risk therein;
- (ii) the Buyer acknowledges that he is in possession of the goods solely as Bailee for the Seller;
- (iii) the Buyer shall store the goods in such a way that they can be readily identified as being the Seller's property;
- (iv) the Buyer shall on request inform the Seller of the precise location of each item of the goods identified where applicable by a serial number by supplying the Seller at the Buyer's expense within 7 days of the Seller's request with a written schedule of the said location;
- (v) the Buyer shall be at liberty to sell or agree to sell on the goods in the course of the Buyer's business subject to the express condition appearing in Clause 13.2. Hereof.

**13.2** The express conditions attaching to the Buyer's liberty to sell on the goods are:

- (i) That such sale or agreement to sell shall take place as agent (save that the Buyer shall not hold himself out such) and bailee for the Seller.
- (ii) that the entire proceeds of such sale are held by the Buyer on trust for the Seller and are not mingled with or monies paid into an overdrawn banking account, and shall at all times be identifiable as the Seller's monies;
- (iii) that in the event of such sale the Buyer shall account to the Seller upon demand with the proceeds of such sale; (iv) that if the Buyer has not received the proceeds of such sale he will if called upon to do so by the Seller within 7 days thereof assign to the Seller all rights against the person or persons to whom he has supplied the goods or any product or chattel made from or with the goods;
- (v) that the Seller may at any time revoke the Buyer's power of sale in the event of any breach by the Buyer of the terms of clauses 4 or 10 of these conditions and that the Buyer's right to sell shall automatically determine in any of the circumstances set out in clause 15. hereof.

**13.3** Upon determination of the Buyer's power of sale the Seller shall be entitled by itself its servants or agents to enter upon any of the Buyer's premises for the purpose of removing and repossessing such goods or their proceeds of sale and the Seller shall be entitled to claim from the Buyer the costs and expenses incurred by the Seller in and ancillary to the process of such removal and repossession.

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**13.4** Until title in the goods has passed to the Buyer the Buyer shall not purport to be the owner of the goods and shall not show such goods as stock in its accounts.

**13.5** The Buyer shall insure the goods against theft or any damage howsoever caused until their price has been paid or until sale, whichever shall first occur, and the Seller shall be entitled to call for details of the insurance policy.

**13.6** Nothing in these conditions shall entitle the Buyer to return the goods or to delay payment therefore or constitute or be deemed to have constituted the Buyer as the Seller's agent otherwise than for the purpose of this clause or render the Seller liable to any third party for any unauthorised representation or warranty made or given by the Buyer to such third party in relation to the goods or prevent the Seller from maintaining an action for the price notwithstanding that the property in the goods may not have been passed to the Buyer.

**14** The Seller retains a general lien on any of the Buyer's equipment or other goods in the Seller's possession for any unpaid balance the Buyer may owe to the Seller.

**15** In the event of any breach of these conditions not being remedied by the Buyer within 30 days of the Seller's written notice requesting such remedy or upon the Buyer entering into any composition or arrangement with his creditors or committing any act of bankruptcy or be adjudged bankrupt or upon the Buyer, being a company, entering into any composition or arrangement with its creditors or passing a resolution for winding up or entering into liquidation (whether voluntary or compulsory) or any similar arrangement or if a receiver is appointed of the Buyer's assets, the Seller shall be entitled without prejudice to its other rights hereunder to suspend all further deliveries and/or to determine this contract or any unfulfilled part thereof and the Buyer shall be responsible for any resulting loss to the Seller.

**16.1** This contract shall be governed by English Law and the parties hereto shall submit to the sole jurisdiction of the English Courts.

**16.2** In the case of overseas buyers, all disputes arising in connection with the present contract shall be finally settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules.

**17 (i)** The Company reserves the right to make deliveries/and or services by instalments and to render a separate invoice in respect of each such instalment.

(ii) If the Company exercises its right to make deliveries/and or services in accordance with sub-paragraph (i) above, then any delay in the provision of such deliveries/and or services, or failure to deliver any further instalment or instalments, shall not entitle the Buyer to reject the Contract or the delivery/service of any other instalment or to withhold payment in respect of any instalment previously delivered/serviced.