

# Designer Systems

## Product manufacturing and Services Terms and Conditions

### 1. INTERPRETATION

1.1 In these Conditions:-

“we” “us” “our” means Designer Systems

“Contract” means the contract for the purchase and sale of the Product and Services subject to these Conditions;

“Contract Price” means the total price for the Contract quoted by us to you for the Project Development;

“Conditions” means the terms and conditions set out below;

“Product” means the Product which you have commissioned us to design and manufacture for you;

“Intellectual Property Rights” means any patent, know how, trade mark, service mark, trade name, registered design, copyright, moral right, design right, database right, semi-conductor topography right or any other industrial or commercial right including any application for registration or protection of any of the same anywhere in the world;

“you” means the customer whose commission to design and manufacture a Product is accepted by us;

“Services” the design and where applicable installation services which you have commissioned us to perform.

### 2. BASIS OF THE CONTRACT

2.1 We shall sell and you shall buy the Product and the Services subject to these Conditions, which supersede any other terms which you may ask us to sign or which you may supply.

2.2 Any variation to these Conditions is of no effect unless agreed in writing by our authorised representative.

2.3 A single Proforma Payment of 50% [100% if you are an organisation based outside of the United Kingdom or an individual] of the Contract Price shall be due before Services Contract commencement.

2.4 A 25% stage payment of the Contract Price shall be due at 75% completion of a Services Contract.

2.5 A single 100% payment shall be due 14 days from invoice date of a Product Manufacturing Contract.

2.6 Timescales for the completion of the Contract are approximate and we shall not be liable to you for any failure or delay in our performance of all or any part of the Contract which is caused by the failure of us, our agents or contractors, you, your employees, agents or contractors.

2.7 Our employees and representatives are not authorised to make any representation concerning the Product or Services and you are advised to ask for written confirmation of representations.

### 3. ORDERS AND SPECIFICATIONS

- 3.1 You are responsible for ensuring that the terms of any project (including any specification) are complete and accurate and that you give us any necessary information relating to the Product and Services within a sufficient time to enable us duly to perform the Contract.
- 3.2 Where the Product is manufactured in accordance with information, drawings or instructions supplied by you:-
- 3.2.1 no guarantee or warranty is given by us as to the practicability, efficiency, safety or otherwise of the Product;
- 3.2.2 you shall indemnify us against all liability incurred by us as a result of:-
- (a) the Product infringing any Intellectual Property Rights or any statutory provision; any impracticability, inefficiency, lack of safety or defect in the Product where any of
  - (b) these is due wholly or partly to faults or omissions in any such information, drawings or instructions.
- 3.3 All work (including design drawings) and any idea, invention or improvement made by or on our behalf pursuant to the Contract and all Intellectual Property Rights in the Product belong to us.
- 3.4 We reserve the right to make any changes in the specification of the Product or Services which are required for the Product or Services to conform with any applicable safety or other statutory or EU requirements or, where the Product or Services are to be supplied to your specification, which do not materially affect their quality or performance.
- 3.5 Any advice or recommendation given by us or our employees or agents to you as to the storage, application or use of the Product which is not confirmed in writing by us is followed or acted upon entirely at your own risk.
- 3.6 Any typographical, clerical or minor/other error or omission in any document or information issued by us shall be subject to correction without any liability on our part.

### 4. DESCRIPTION

- 4.1 All descriptions, samples and illustrations issued by us are intended merely to present a general idea of the Product and Services described and do not form part of the Contract.
- 4.2 The final specification of the Product and Services shall be as approved by you in the System Design Specification. Whilst every effort will be made to supply the Product in accordance with the quality of samples submitted or quoted for, this cannot be guaranteed and no condition or warranty to this effect shall be implied.

### 5. CANCELLATION AND DELAY

- 5.1 No stage of the Contract may be cancelled by you except with our written agreement and on terms that you shall indemnify us against all loss (including loss of profit), costs, (including the cost of all labour and materials used), damages, charges and expenses incurred by us as a result of your cancellation.
- 5.2 If we accept your cancellation of the Contract at any stage then any Proforma Payment paid prior to the cancellation date shall not be refunded.
- 5.3 We will endeavour to comply with any reasonable requests for postponement of delivery or installation but shall be under no obligation to do so.

## 6. PRICE

- 6.1 The price of the Product and Services is the Contract Price quoted to you in writing or any other electronic means.
- 6.2 We reserve the right at any time before delivery or performance to amend the Contract Price to take into account any variation in cost to us.
- 6.3 The Contract Price is exclusive of the cost of delivery to you (including transport, packaging, insurance and any taxes, duties or surcharges).
- 6.4 The Contract Price is subject to VAT and any other government duty or tax applicable unless otherwise agreed in writing.
- 6.5 If you request any alteration in the design or specification of the Product we are entitled, should we choose to accept such alteration, to vary the Contract Price.

## 7. PAYMENT

- 7.1 Payment of the Proforma Payment is due on commencement of the Services Contract. Payment of the Final Payment is due on Services Contract completion. Payment for a Product Manufacturing Contract is due 14 days from invoice date unless otherwise agreed in writing.
- 7.2 Time of payment is of the essence.
- 7.3 For the purposes of these Conditions, payment is received when we receive it in cleared funds.
- 7.4 Payment by you shall be made without any deduction or set off.
- 7.5 If you fail to make payment on the due date then, without prejudice to any other right or remedy available to us, we shall be entitled to:
  - 7.5.1 cancel the Contract or suspend any further deliveries to you;
  - 7.5.2 appropriate any payment made by you to such of the Product or Services (or the goods supplied under any contract between you and us) as we may think fit (notwithstanding any purported appropriation by you);
  - 7.5.3 charge you interest at an annual rate of 3% above Barclays Bank Plc base rate from time to time which will accrue daily (both before and after judgement) and be calculated on a daily basis on overdue accounts from the date of invoice until payment; or
  - 7.5.4 claim interest and compensation for debt recovery costs under the Late Payment of Commercial Debts (Interest) Act 1998 and the Late Payment of Commercial Debts Regulations 2002;
  - 7.5.5 retain *all* Intellectual Property Rights (notwithstanding any purported appropriation to you) created during the Contract and dispose of said rights six (6) months following Final Payment due date as we may think fit.
- 7.6 We are entitled to set off sums owed by us to you against sums owed by you to us.

## 8. DELIVERY AND INSTALLATION

- 8.1 We shall use all reasonable endeavours to carry out the Contract within the timescales agreed.
- 8.2 Any dates for delivery and/or performance are approximate only and time of delivery and/or performance is not of the essence.
- 8.3 Where the Product is to be delivered or Services are to be performed in instalments, each delivery or performance shall be a separate contract and failure by us to deliver or perform any one or more of the instalments in accordance with these Conditions or any claim by you in respect of any one or

more instalment shall not entitle you to treat the Contract as a whole as repudiated.

- 8.4 Timescales for the completion of the Contract are approximate and we shall not be liable to you for any failure or delay in our performance of all or any part of the Contract which is caused by the failure of us, our agents or contractors, you, your employees, agents or contractors.
- 8.5 If we fail to deliver the Product (or any instalment) for any reasons other than any cause beyond our, our agents or contractors reasonable control, or your fault, and we are accordingly liable to you, our liability shall be limited to the excess (if any) of the cost to you (in the cheapest available market) of similar Products to replace those not delivered over the price of the Product. It should be possible to obtain the cheapest available product however doing so may take additional time.

## 9. RISK AND PROPERTY

- 9.1 The Product remains our property until:-
- 9.1.1 the full Contract Price has been received by us; and
  - 9.1.2 all other sums which are or which become due from you on any account with us have been received by us.
- 9.2 The Product is at your risk from the time of delivery.

## 10. WARRANTY AND DEFECTS

- 10.1 Subject to the Conditions set out below we warrant to you that the Product will correspond with the final agreed specification approved by you in the System Design Specification at the time of delivery and will be free from defects in material and workmanship for a period of 12 months from the date of delivery or, if applicable, installation.
- 10.2 We shall not be liable under this warranty (or any other warranty, condition or guarantee) if:-
- 10.2.1 the total Contract Price has not been paid by the due date for payment; or
  - 10.2.2 any defect arises from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow our instructions (whether oral or written) or maintenance requirements, misuse or alteration or repair of the Product without our prior approval; or
  - 10.2.3 the Product has been improperly installed or connected (unless we carried out the installation and connection).
- 10.3 This warranty does not extend to parts, materials or equipment not manufactured by us, in respect of which you shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to us and which we are entitled to and able to assign to you.
- 10.4 Any claim by you which is based on any defect in the quality or condition of the Product or Services or their failure to correspond with specification must (whether or not delivery is refused by you) be notified to us within seven days from the date of installation or performance or, where the defect or failure was not apparent on reasonable inspection, within a reasonable time after discovery of the defect or failure.
- 10.5 In no event shall you be entitled to reject the Product on the basis of any defect or failure which is so slight that it would be unreasonable for you to reject them. If you do not notify claims in accordance with condition 10.4 then:-
- 10.5.1 you shall not be entitled to reject the Product and/or Services; and
  - 10.5.2 we shall have no liability for such defect or failure; and
  - 10.5.3 you shall be bound to pay the full Contract Price for the Product and/or Services

- 10.6 In the event you have a valid claim which has been notified to us pursuant to condition 10.4, we shall be entitled to repair or replace the Product or carry out the Services again (or the part or element in question) free of charge or, at our option, refund to you the Contract Price (or a proportionate part of the price), but we shall have no further liability to you .

## 11. LIMITATION OF LIABILITY

### YOUR ATTENTION IS PARTICULARLY DRAWN TO THIS CONDITION

- 11.1 The following sets out our entire financial liability (including any liability for the acts or omissions of our employees, agents or subcontractors) to you in respect of any breach of these Conditions any representation, statement or act or omission (including negligence) arising under or in connection with the Contract between us and in respect of any contemplated performance or lack of performance.
- 11.2 All warranties, conditions or other terms implied by statute, common law, trade usage or otherwise are excluded to the fullest extent permitted by law but this exclusion does not apply to:-
- 11.2.1 any implied condition that we have or will have the right to sell the Product when the property is to pass; or
- 11.2.2 where the Product are sold to a person dealing as a consumer within the meaning of the Unfair Contract Terms Act 1977, any implied term relating to the conformity of the Product with their description or sample or as to their quality or fitness for a particular purpose.
- 11.3 Where the Product or Services are sold under a consumer transaction (as defined by the Consumer Transactions (Restrictions on Statements) Order 1976) your statutory rights are not affected by these Conditions.
- 11.4 Nothing in these Conditions excludes or limits our liability for death or personal injury caused by our negligence or for fraudulent misrepresentation.
- 11.5 Subject to conditions 11.2 and 11.4:-
- 11.5.1 we shall not be liable to you for any loss of profit, loss of production, financial loss, depletion of goodwill or any indirect loss, damage, costs or expenses whatsoever which arise out of or in connection with the Contract or its contemplated performance or lack of performance; and
- 11.5.2 subject to condition 11.5.1, our total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise, arising in connection with the performance or contemplated performance or lack of performance of this Contract shall be limited to the Contract Price.
- 11.6 You agree to indemnify us against any damages, losses, costs, claims or expenses incurred by us towards a third party arising out of or in connection with the Product or Services supplied by us or their operation or use and whether arising by reason of our negligence or otherwise.

## 12. HEALTH AND SAFETY

### You agree to:-

- 12.1 pay due regard to all information supplied by us relating to the installation and use of the Product necessary to ensure the Product will be safe and without risk to health at all times when they are being set, used, cleaned or maintained by any person at work;
- 12.2 comply with the General Product Safety Regulations 1994 if and to the extent that they are applicable to the Product;
- 12.3 indemnify us in respect of any and all claims arising from the Product being unsafe as a result of your activities;

- 12.4 monitor the safety of the Product, to pass on to us information as to the risks of the Product and to co-operate in any action we decide to take to avoid those risks;

### 13. LIEN

We shall have a general lien (together with a power of sale) on all property owned by you in our possession in satisfaction of any payment due or owing from you on any account.

### 14. EXPORT

- 14.1 Where the Product is to be exported to you;
- 14.1.1 Payment shall be made in England in pounds sterling or such currency as is agreed in writing by us;
- 14.1.2 you shall be responsible for complying with any legislation or regulations governing the importation of the Product into the country of destination and for the payment of any duties the of Product.

### 15. GENERAL

- 15.1 Each of our rights or remedies under the Contract is without prejudice to any other right or remedy we may have, whether or not under the Contract.
- 15.2 If any provision of the Contract (including any provision of condition 9) is found by any competent authority to be invalid, unenforceable or unreasonable, it shall be severed from the remainder of the Contract which shall continue in full force and effect. Failure or delay by us in enforcing or partially enforcing any provision of the Contract is not a waiver of any of its rights under the Contract.
- 15.3 Any waiver by us of any breach by you is not a waiver of any subsequent breach.
- 15.4 Any notice to be given by either party to the other under these Conditions must be in writing addressed to that other party at its registered office or principal place of business or such other address as may have been notified for these purposes and shall be delivered personally or sent by first class post or facsimile transmission.
- 15.5 Notices addressed to us shall be marked for the attention of Mr S. Dicker.
- 15.6 All rights under the Contracts (Rights of Third Parties) Act 1999 are excluded.

### 16. ASSIGNMENT

- 16.1 We may assign or subcontract the Contract or any part of it and may dispose of or deal in any manner with any of its rights or beneficial interests under it.
- 16.2 You may not assign the Contract or dispose of or deal in any manner with any of its rights or beneficial interests under it.

### 17. ENGLISH LAW

- 17.1 The Contract shall be governed by English law, and we both submit to the exclusive jurisdiction of the English courts.
- 17.2 Condition 17.1 is for our benefit only and as a result we shall not be prevented from taking proceedings in any other courts with jurisdiction, whether concurrently or not.