

DCL ENGINEERING GROUP
A.B.N. 13 093 796 242

TERMS AND CONDITIONS OF SALE (T.C.01-10-2008)

The following further terms and conditions of sale apply to every tender or quotation submitted by DCL ENGINEERING GROUP and CFM International, and to any resulting contract, unless expressly varied in writing by that company.

1. DEFINITIONS

- 1.1. "the Buyer" means the person whose order is accepted in writing by the Company;
- 1.2. "the Company" means DCL ENGINEERING A.B.N. 13 093 796 242
- 1.3. "the Equipment" means all goods offered by the Company in any Tender, and includes portions of such goods;
- 1.4. "the Price" means the total price denominated in that currency quoted by the Company in respect of the Buyer's order;
- 1.5. "the Tender" includes any estimate, offer or quotation made or given by the Company;

2. FORMATION OF CONTRACT

The Company and the Buyer expressly agree that no invitation, offer or counter-offer shall constitute until the Company has delivered to the buyer an unqualified written acceptance of that offer or counter-offer, as the case maybe.

3. PRICE

The Price is based upon conditions existing at the date of the Tender, and shall be varied in accordance with or in proportion, to, as the case may be, any one or more of the following circumstances:

- a) Any variation in the wage rates or conditions of employment of the Company's employees; or
- b) Any variation in the cost of transport, services, component parts, or raw materials.

4. ASSEMBLY

- 4.1. Notwithstanding anything to the contrary in these conditions, where the price quoted includes an amount for the assembly or installation of the Equipment, the Buyer shall pay the Company upon delivery of the Equipment an amount equal to 90% of the Price whenever the work of assembly or installation cannot be carried out immediately upon arrival of the Equipment at the place where it is to be assembled or installed, provided that the reason that such work cannot be carried out is in no way attributed to the Company.
- 4.2. Upon completion of the work of assembly or installation the Buyer shall immediately pay the balance of the Price to the Company.

5. DELIVERY

- 5.1. Delivery of the Equipment shall be at the Company's place of business.
- 5.2. Delivery of the Equipment shall be deemed to take place on the earlier to occur of:
 - a) Collection from the Company's place of business by the Buyer or its authorised agent; and
 - b) The expiration of seven (7) days from the Company notifies the Buyer that the Equipment is ready for delivery.
- 5.3. If the Buyer fails to collect the Equipment within 30 days from the date the Company notifies the Buyer that the Equipment is ready for delivery, the Company is entitled to payment by the Buyer for reasonable storage charges.
- 5.4. Upon delivery, the Equipment shall cease to be at the Company's risk and shall be at the sole risk of the Buyer.
- 5.5. The Company does not accept responsibility for failure to deliver within the time specified in the Tender.
- 5.6. The Company is not a Common Carrier and will not accept any liability for loss, damage, expense, penalty or fine for goods being transported by the Company.

6. SERVICES

- 6.1. In all cases where the contract between the Company and the Buyer is in relation to work covered by a specification, design or description as provided by the Buyer, the Buyer shall fully indemnify the Company against any action, claim or demand, costs or expenses arising from or incurred by reason of any infringement, or alleged infringement, of letters patent, design, trade mark or name, copyright or other protected rights in respect of any machine, plant, work, material or thing, system or method of using, fixing, working or arrangement used or fixed by the Company as required by that specification, design or description.
- 6.2. The Company shall not be liable to defend any action, claim or demand or to contest any costs or expenses covered by this indemnity.
- 6.3. The time quoted by the Company for completion of the work or specified portion of the work shall be calculated from the date the Company accepts the Buyer's offer or counter-offer, as the case may be, and shall be subject, where applicable, to delivery to the Company of the Buyer's drawings, materials or other information necessary to permit the Company to commence or maintain the work in production.
- 6.4. The time quoted shall also be subject to extension by reason of any of the following causes:
 - a) Any extension of time arising pursuant to clause 7.1;
 - b) The unavailability when required by the Company of any information, materials, equipment or services where the Customer has required that such information, materials, equipment or services be obtained from a specific source of a specific supplier or where the buyer has undertaken to provide that information, materials, equipment or services to the Company; or
 - c) If the work is delayed by causes beyond the reasonable control of the Company or which could not have been reasonably foreseen by the Company.
- 6.5. If carrying out of the work is delayed by the Buyers failure to supply when required by the Company the information, materials, equipment or services agreed to be supplied by the Buyer, then the Buyer shall be liable to the Company for all claims, demands, losses, costs or expenses suffered or incurred by the Company as result of such failure to supply that information, materials, equipment or services when required by the Company.
- 6.6. If the commencement or progress of the work is delayed or suspended at the request of the Buyer then, subject to any agreement in writing by the Company to the contrary, the Buyer shall be liable for all claims, demands, losses, costs or expenses suffered or incurred by the Company as a result of the work being so delayed or suspended.
- 6.7. The Company's liability shall be limited to defective Equipment as referred to in Clause 10 hereof but shall under no circumstances include any liability in respect of consequential loss or damage, in particular, but not limited to, loss of profits.

7. VARIATION

- 7.1. All requests by the Buyer for variation to the work shall be in writing, and upon receipt of such request the Company shall specify the conditions upon which it will agree to such variations, including any change of price, time of completion of the work and any other conditions which it may specify as a result of such request, and the Company shall not be required to act upon such requests for variation until the Buyer has accepted in writing the conditions upon which the Company has agreed to carry out such variations.

8. TERMS OF PAYMENT

- 8.1. The Price is due and payable within thirty (30) days of the date of the Company's invoice to the Buyer.
- 8.2. If the Buyer fails to pay the Price in full by the due date, the Company may charge interest on the overdue account at the rate of 20% per annum.
- 8.3. The Company may refuse to deliver Equipment at any time if payment for the whole or any part of any order is overdue from the Buyer.

9. PASSING OF PROPERTY

- 9.1. The legal and equitable title to and the property in the Equipment shall not pass from the Company to the Buyer until the Buyer has paid the Price in full to the Company. Until such time the Buyer shall possess the Equipment as fiduciary agent and bailee of the Company entrusted as such by the Company and shall not resell or transfer possession of the Equipment other than in the ordinary course or business of the Buyer and shall store the Equipment separately from other goods of the Buyer in such a way that they can be recognised and remain identifiable as the property of the Company. Where the Buyer sells or disposes of the Equipment or any of them before the Price has been paid in full, the Buyer shall hold the proceeds of sale and the benefits of all contracts or agreements for sale of the Equipment in a separate account and account to the Company for the proceeds.
- 9.2. Notwithstanding Clause 9.1 herein the Equipment shall be at the Buyer's risk after it leaves the possession of the Company. If requested by the Buyer in writing to do so, the Company shall at the Buyer's expense insure the Equipment against loss or damage from the time that it leaves the Company's premises until title to the Equipment passes to the Buyer.
- 9.3. The Buyer authorises the Company to appropriate any payment to particular Equipment, including Equipment no longer in the possession or control of Buyer, unless the Buyer first expressly appropriates that payment to particular Equipment and communicates that appropriation to the Company.
- 9.4. The Company may at any time without notice retake possession of Equipment delivered to the Buyer for which payment has not been received by the Company, but the Buyer shall not be entitled to return the Equipment on any grounds whatsoever.

10. EQUIPMENT RETURNED FOR CREDIT

- 10.1. Equipment will be accepted for credit only by prior agreement and within 14 days of delivery or the extent that is has been wrongly or over supplied. Returned equipment shall be delivered to the company free of charge, in good order and condition, unused and in the original packaging, accompanied by a dispatch note stating the original invoice number, date of supply and reason for return. Except where equipment has been wrongly or over supplied, a charge as determined by the company will be made for handling costs.

11. FORCE MAJEURE

- 11.1. Save as otherwise provided in these conditions, the company shall be under no liability for costs, loss, damages or injuries suffered by the Buyer in event of any delay due to any cause arising from or attributable to acts, events, non-happenings, omissions, accidents or acts of God beyond the reasonable control of the company, including but not limited to industrial action, strikes, blackouts, shortage of labour, civil commotion, riots, war, threat of or preparation for war, breaking off of diplomatic relations, fire, explosion sabotage, storm, flood, earthquake, fog, subsidence, pestilence or epidemics, machinery breakdown, failure of plant of collapse or structure, voluntary or mandatory compliance with any direction, request or order of any person having or appearing to have authority whether for defence or other governmental or national purpose, or any requisition for materials or services apparently stated to be for purposes of defence, or inability to obtain suitable raw materials, equipment, fuel, power, components or transportation.

12. PERFORMANCE

- 12.1. Except as otherwise provided by State or Federal Law no warranty shall apply as to fitness of purpose, or operation performance where such performance is conditional on Empirical factors or on the whole installation or on the individual or overall operation or on the skills of an operator. When suitability, performance, size, number or capacity of a product (and if applicable, ancillary

attachments whether supplied by the Company or not) is recommended, quoted or selected by the Company to perform a duty either specified by the Purchaser or estimated by the Company, such recommendation, quotation or selection shall be based on the Company's best experience, but liability for failure to perform the specified or estimated duty will not be accepted by the Company.

13. WARRANTIES

13.1. The warranties set out herein are except as otherwise provided by State or Federal Law, the only warranties which apply in respect of goods supplied by the Company.

14. WARRANTY

- 14.1. The Company may give the Buyer an additional guarantee contained in a guarantee card supplied with the Equipment, the terms of which are deemed to be incorporated into these conditions.
- 14.2. All drawings, illustrations, specifications, catalogues, photographs, advertising matter and details in instruction books, operator's handbooks, publicity material or other publications supplied by the Company are informative only and do not form part of the contract and are expressly excluded therefrom.
- 14.3. The Company shall not be responsible for any representations not specifically confirmed by it in writing to the Buyer.
- 14.4. All specified weights, measurements, power capacities and other particulars of Equipment offered are stated in good faith, but inaccuracy shall not vitiate the contract or be the basis of any claim against the Company, nor justify rejection.
- 14.5. Where on account of restrictions, quotas or directions imposed by any government or government instrumentality the Buyer cancels the contract, the Buyer shall be liable to indemnify the Company against any losses which it may incur in relation to such contract in respect of purchased raw materials or component parts or Equipment or for any expenses incurred by the Company in connection with special equipment.
- 14.6. The Buyer may cancel a contract only with the Company's written agreement, and shall at the option of the Company pay a minimum cancellation payment of 35% of the price, or be liable to forfeiture of the deposit.
- 14.7. If the buyer commits any breach of its obligations hereunder or goes into liquidation whether compulsorily (including provisionally) or voluntarily or has a scheme trustee/manager, official manager or receiver appointed, the Company may declare the contract to be at an end, and in such case the Company may retake possession of the Equipment re-sell the Equipment and any loss sustained by the Company shall be made good by the Buyer.

15.1 WARRANTY: NEW PRODUCTS

If within a period of twelve months from the date of delivery to the Purchaser or 1,000 hours from commencement of service whichever is the sooner, any new product sold by the Company is found to be defective in materials or workmanship or does not conform to any applicable drawings and specification approved by the Company the Company will at its option either repair or provide a replacement part or product provided that:

- a) the Purchaser has given written notice to the Company of any alleged defect within the warranty period specified above and
- b) the Purchaser has provided the Company a reasonable opportunity to perform all appropriate test thereon and
- c) the defective part is promptly returned free to a designated Company service centre. Any defective part replaced will become the Company property and the repaired or new part will be delivered free to the Purchaser's site.

15.2 WARRANTY: REPAIRED PRODUCTS

On repaired products, the warranty shall be six months or 500 hours from commencement of service whichever is the sooner, and otherwise the same as new products except that it shall only apply to parts repaired or replaced by the Company. No separate warranty shall apply to repaired products as a whole or to parts not repaired or replaced by the Company.

If the Buyer returns Equipment within six (6) months from the date of delivery, the Company will at its option replace or repair the Equipment where the Equipment was defective as a result of:

- a) Defects in workmanship carried out by the Company
- b) Defects in raw materials supplied by the Company; or
- c) Defective design where the design was carried out by the Company.

15.3 WARRANTY EXCEPTIONS

The warranties given by the Company herein to the extent permitted by State and Federal Law, do not cover:

- a) Failures not reported to the Company within the warranty period specified herein.
- b) Failures or damage due to mis-application, abuse, improper installation or abnormal conditions of operation.
- c) Failure due to operation, whether intentional or otherwise, above or below rated capacities or in an otherwise improper manner.
- d) Products damaged in shipment or without the fault of the Company.

15.4 WARRANTY: PURCHASED EQUIPMENT

The Company does not warrant any equipment of other manufacturers which is designated by the buyer or purchased by the Company for resale to the Purchaser either separately or as part of equipment manufactured by the Company. For such equipment, the warranty established by the manufacturer of the equipment will apply.

15.5 WARRANTY: SUPPLY OF SERVICES

When the Company acts for and is remunerated by the Purchaser, to whom the Company's relationship is that of a supplier of services relating to process development, equipment selection, design, detail, contract supervision and contract management the Company shall exercise its best skill, competence and experience to undertake such services but except as otherwise provided by State and Federal law makes no warranty with respect to such services.

15.5 WARRANTY: LIMIT OF LIABILITY

Except as otherwise provided by State or Federal law the Company gives no warranty other than that contained herein, in connection with the sale or use of its products or services, the Company's liability on its warranty shall in no event exceed the cost of correcting defects in the product or services supplied and shall not include:

- a) Expense incurred by the Purchaser in an attempt to repair or rework any allegedly defective Product or service. Losses, costs, expenses, liabilities and damages (including loss of profits, all liabilities of the Purchaser to its customers or third persons, and all other consequential damages) whether direct or indirect, and whether or not resulting from or contributed to by the default or negligence of the Company, its agents, employees and subcontractors, which might be claimed as the result of the use of failure of the product sold or the services supplied.

16 APPLICABLE LAW

The Contract shall be construed according to and shall be subject to the laws of New South Wales (N.S.W), Australia.