

Dynament Ltd - Conditions of Acceptance

1. GENERAL

The following terms and conditions shall apply to and be deemed to be incorporated in all contracts to supply goods entered into or made by **DYNAMENT LIMITED**.

2. DEFINITIONS AND INTERPRETATION

2.1 In this contract the following words shall have the following meanings (unless the context otherwise requires):-

- "the Buyer" the Buyer named in the Order Acceptance including any agent who makes the Offer to the Seller and which the Seller accepts.
- "the Seller" means Dynament Limited (registered in England with company number 4182377).
- "the Contract" the contract for the supply of Goods by the Seller of which these terms and conditions shall form a part resulting from the Seller's acceptance of the Offer.
- "the Contract Price" the amount shown in the Quotation or Order Acceptance as the price for the Goods.
- "the Delivery Date" the date on which the Goods (or any instalment) are delivered.
- "the Goods" any goods or materials to be supplied by the Seller under the Contract.
- "the Offer" the offer verbal or written submitted by the Buyer to the Seller.
- "Order Acceptance" means a document so headed which has been issued by the Seller and of which these terms and conditions form part or to which they are annexed.
- "the Warranty Period" two years commencing on the Delivery Date.

2.2 In these terms and conditions references to any statute or statutory provision shall, unless the context otherwise requires, be construed as a reference to that statute or statutory provision as from time to time amended, consolidated, modified, extended, re-enacted or replaced.

2.3 In these terms and conditions references to the masculine include the feminine and the neuter to the singular include the plural and vice versa as the context permits.

2.4 The headings appearing in these terms and conditions are for guidance only and shall not in any way be deemed to affect the interpretation or effect thereof.

3. ACCEPTANCE

3.1 The Order Acceptance is the acceptance of the Offer made by the Buyer to the Seller which is accepted on and subject to these terms and conditions.

3.2 Subject to any agreed variation under clause 3.4, the Buyer hereby agrees that these are the only terms and conditions which regulate the Contract.

3.3 These terms and conditions shall supersede any terms and/or conditions of any nature of the Buyer whether expressed to be by the way of offer, acceptance, counter offer or otherwise.

3.4 Any attempt by the Buyer to vary or amend these terms and conditions will not be binding on the Seller unless the Seller has agreed in writing to the variation or amendment.

4. WARRANTIES AND LIABILITIES

4.1 Subject to the conditions set out below the Seller warrants that

4.1.1 the Goods will correspond with the Supplier's specification for the Goods as set out on the Supplier's published data sheets at the date of the Contract;

4.1.2 the Goods will be manufactured under a manufacturing plan which meets the standards required by ISO 9001; and

4.1.3 the Goods will be free from defects in material and workmanship for the Warranty Period which shall commence on the Delivery Date.

4.2 Subject to clause 4.5 each individual sensor comprised in the Goods will be configured according to the Buyer's instructions and accompanied by a certificate of conformance.

4.3 The above warranties are given by the Seller subject to the following conditions:-

4.3.1 the Seller shall be under no liability in respect of any defect in the Goods arising from errors in any drawing, design or specification supplied by the Buyer;

4.3.2 the Seller shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligent use, abnormal working conditions, failure to follow the Seller's instructions (whether oral or in writing), misuse or alteration or repair of the Goods without the Seller's approval;

4.3.3 that the Buyer fulfils its obligations set out in clause 5.

4.4 Any claim by the Buyer which is based on any defect arising during the Warranty Period in the quality or condition of the Goods, defects in their material or workmanship or their failure to correspond with specification shall be notified to the Seller as soon as reasonably practicable on becoming apparent and (in the case only of a claim based on the failure of the Goods to correspond with specification) within three months of the Delivery Date. All Goods claimed to be defective shall be returned to the Seller within 30 days of any such notification. If delivery is not refused, and the Buyer does not notify the Seller accordingly, the Buyer shall not be entitled to reject the Goods and the Seller shall have no liability for such defect or failure, and the Buyer shall be bound to pay the Contract Price as if the Goods had been delivered in accordance with the Contract.

4.5 Where the Buyer has been supplied with a configuration unit by the Seller for the purpose of configuring Goods purchased from the Seller, or with information enabling it to address the firmware protocol within Goods purchased from the Seller, clause 4.2 shall not apply and the Seller will have no liability in respect of the Goods except as expressly stated in clause 4.1. The Buyer will be required to sign a separate acknowledgement to this effect when purchasing a configuration unit.

4.6 Where any valid claim in respect of any of the Goods which is based on any defect in the quality or condition of the Goods or their failure to meet specification is notified to the Seller in accordance with the terms and conditions herein, the Seller shall at its option replace the Goods in question free of charge or refund to the Buyer the price of the Goods in question but the Seller shall have no further liability to the Buyer.

4.7 Save as expressly provided herein all warranties conditions or statements express or implied statutory or otherwise as to quality workmanship or fitness of the Goods are excluded and the Seller shall not be liable for any injury loss or damage of whatsoever nature and however arising in connection with any defective or unsuitable workmanship goods or materials whether original or replaced except in so far as such liability cannot lawfully be excluded from the Contract

4.8 The Seller shall not in any event be liable for loss of profit or any other form of consequential loss including (without limitation) loss of production or loss of use.

4.9 No terms conditions guarantees representations or undertakings made to the Buyer by any of the Seller's salesmen agents employees or representatives shall be binding unless confirmed in writing by the Seller.

4.10 The Buyer and the Seller shall enter into the Contract in the knowledge that the liability of the Seller is to be limited in accordance with these terms and conditions and the price shall be agreed accordingly. The Buyer acknowledges that a higher price would be payable but for such limitations.

4.11 The Buyer will indemnify the Seller and keep the Seller indemnified from and against any and all loss, damage or liability (whether criminal or civil) suffered, and expenses (including legal fees) and costs incurred, by the Seller as a result of or in connection with any and all claims in respect of the Goods howsoever arising made by any third party, whether they be made in respect of contractual or tortious liability breach of statutory duty or any other liability including (without limitation) claims arising out of any injury or alleged injury to any third party or out of damage to the property of any third party whether or not based on an allegation of "failure to warn".

5. BUYER'S RESPONSIBILITIES

5.1 The Buyer acknowledges that it is responsible for the selection of the Goods for their intended application, and for giving instructions to the Seller as to the configuration of the Goods, and that the Seller makes no representation and gives no warranty as to the fitness or suitability of the Goods (as configured in accordance with the Buyer's instructions) for any particular application in use.

5.2 It shall also be the responsibility of the Buyer correctly to install and commission the Goods as part of a safe working system, to calibrate the Goods appropriately, and to inform the end user as to the safe use and maintenance of the Buyer's products which incorporate the Goods.

5.3 Where the Buyer has previously purchased a configuration unit from the Seller it will also be the responsibility of the Buyer to configure the Goods.

6. RESERVATION OF TITLE

6.1 The Goods shall remain the sole and absolute property of the Seller as legal and equitable owner until such time as the Buyer shall have paid to the Seller:

6.1.1 the Contract Price together with all applicable Value Added Tax and other taxes or charges referred to in clause 11.1; and

6.1.2 all monies owed by the Buyer to the Seller on any account whatsoever.

6.2 Until such time as the Buyer becomes the owner of the Goods the Buyer will store them on its premises separately from its own goods and materials or those of any other person and in a manner which makes them readily identifiable as the Goods of the Seller.

6.3 The Buyer is licensed by the Seller to agree to sell all the Seller's Goods subject to the express condition that the entire proceeds thereof are held in trust for the Seller and are not mingled with other monies or paid into any overdrawn bank account and shall be at all times identifiable as the Seller's money.

6.4 The Seller may for the purpose of recovery of the Goods enter upon the premises where they are stored or laid or where they are reasonably thought to be stored or laid and may remove the same.

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7. TRANSFER OF RISK

- 7.1 Notwithstanding that the property in the Goods may not have passed to the Buyer the Buyer shall carry all risk of loss of and damage to them when the Goods are delivered.
- 7.2 From when the risk of loss of and damage to the Goods commences to when the Seller is paid in full for them the Buyer shall:-
- 7.2.1 indemnify and keep indemnified the Seller against all loss of and damage to the Goods and against any reduction in the resale value thereof below the price to be paid by the Buyer;
- 7.2.2 insure and keep insured the Goods in an amount at least equal to the price paid therefore by the Buyer; and
- 7.2.3 hold upon trust for the Seller absolutely all proceeds of such insurance.

8 DELIVERY

- 8.1 Delivery of the Goods shall take place at the location specified in the Quotation or Order Acceptance or (if no location is so specified) at the premises of the Buyer.
- 8.2 Any date or time stated in the Contract for delivery of the Goods is given in good faith and every endeavour will be made to adhere to it subject to clause 9 below. Any such date or time is an estimate only and the Seller shall not be liable for failure to deliver the Goods within the time or by the date stated.
- 8.3 The cost of delivery is not included in the Contract Price. Where delivery is arranged by the Seller it will invoice the cost of delivery in addition to the Contract Price. Alternatively the Buyer may make its own arrangements for collection and delivery.

9. TIME

Time shall be of the essence of the Contract for the performance by the Buyer of its obligations herein and the Buyer shall indemnify the Seller against any loss or damage caused by delay for whatsoever reason. Time shall not be of the essence of the Contract for the performance by the Seller of its obligations herein.

10. DRAWINGS AND SPECIFICATIONS

- 10.1 The Seller reserves all rights protected by statute, license, registration or common law vested in the Seller by way of patent, utility, model right, trade marks, design right, registered design or copyright or trade secrets in any documentation, drawings, plans or specifications, technical or commercial information, data or formulae, or in any goods written, drawn or manufactured (as the case may be) by the Seller. The Buyer agrees to keep the same confidential and not to reproduce the same or cause or permit the same to be reproduced without the written consent of the Seller provided that this restriction shall not apply to information or knowledge relating to the above which may become public knowledge (other than as a result of the Buyer's breach).
- 10.2 The Buyer shall provide such complete instructions particulars information and materials if specified as shall be necessary or required by the Seller to enable the Seller to complete the Contract.

11. PRICE AND PAYMENT

- 11.1 The Contract Price shall be strictly net unless otherwise quoted. The Seller shall be entitled to add to the Contract Price the amount of any tax or other Governmental charges in the UK or otherwise which the Seller must pay in respect of the Goods (including Value Added Tax). Such taxes or Governmental charges shall include those now in effect or those which are hereinafter imposed or any increases thereto prior to delivery.
- 11.2 The Seller's prices are calculated in pounds sterling. The Buyer may opt to pay the Contract Price in Euros or U.S. Dollars instead of pounds sterling. In such cases the Seller will convert the Contract Price to the selected currency on the date of receipt of the Offer using the Federal Reserve Bank of New York exchange rate as shown on the website www.x-rates.com. The Seller will honour such prices for call-off orders for up to one year following the date of conversion.
- 11.3 Subject to any special terms for payment agreed in writing between the Buyer and the Seller, the Seller shall be entitled to invoice the Buyer for the Contract Price (or any instalment) on or at any time after the Delivery Date for the Goods (or any instalment) provided that if Goods (or any instalment) are to be collected by the Buyer or if the Buyer wrongfully fails to take delivery of the Goods (or any instalment) the Seller shall be entitled to invoice the Buyer for the Contract Price at any time after the Seller has notified the Buyer that the Goods (or any instalment) are ready for collection or (as the case may be) the Seller tendered delivery of the Goods.
- 11.4 The Buyer shall pay the Contract Price without deduction on delivery or (where a credit account has been established by the Buyer with the Seller) on or before the thirtieth day following the date of the invoice, notwithstanding that the property in the Goods has not passed to the Buyer. The time for payment of the Contract Price shall be of the essence of the Contract. Receipts for payment will be issued only upon request.
- 11.5 If the Buyer fails to make any payment on the due date under any Contract then without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to cancel and/or suspend any further deliveries of Goods to the Buyer under this or any other Contract.
- 11.6 Interest will be charged on all overdue accounts at the rate of four per cent above National Westminster Bank Plc base lending rate for the time being in force. Such interest will accrue from day to day and be payable both before and after any judgment.
- 11.7 No payment may be withheld nor any sums owing to the Buyer set off against any payment due hereunder without the consent of the Seller.
- 11.8 The Seller shall add to the Contract Price the cost of extras incurred by the Seller in relation to:-
- 11.8.1 additional items ordered;
- 11.8.2 tests alterations or commissioning additions;
- 11.8.3 alterations in design quantity specification or manufacturing details including the correction of any error on the part of the Buyer therein provided always that the Seller shall reserve the right to amend the unit rates applicable to the Contract Price;
- 11.8.4 the failure of the Buyer to adhere to instruction given by the Seller as to use of Goods.

12. TERMINATION OF THE CONTRACT

- 12.1 The Seller shall be entitled to terminate the Contract by notice in writing to the Buyer if:-
- 12.1.1 the Buyer makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or
- 12.1.2 an encumbrancer takes possession or a receiver is appointed, of any of the property or assets of the Buyer; or
- 12.1.3 the Buyer ceases or threatens to cease to carry on business; or
- 12.1.4 the Buyer fails to make payment within seven days of a written notice from the Seller stating that the period for payment has expired.
- 12.2 If the Seller determines the Contract under clause 12.1 then without prejudice to any other right or remedy available to the Seller the Seller shall be entitled to payment for the value of the Goods delivered (together with interest as referred to in clause 11.5) and in addition thereto an amount (by way of damages and not a penalty) equivalent to the profit the Seller would have made on the balance of the Goods not delivered by reason of the occurrence of any events referred to in the relevant sub-clause of clause 12.1.
- 12.3 In the circumstances outlined in clause 12.1 the Seller shall also be entitled to suspend any further deliveries of Goods under the Contract without any liability to the Buyer, and if any Goods have been delivered but not paid for the Contract Price shall become immediately due and payable notwithstanding any provisions agreement or arrangement to the contrary.

13. FORCE MAJEURE

- 13.1 The Seller shall not be under any liability of whatever kind for non-performance in whole or in part of its obligations under the Contract due to Force Majeure. Following notification by the Seller to the Buyer of such a cause, the Seller may without liability cancel the Contract or vary the terms of the Contract including but not limited to extending the time of performance of the Contract for a period at least equal to the time lost by reason of such causes.
- 13.2 In clause 13.1 "Force Majeure" means causes beyond the control of the Seller or beyond the control of the Seller's suppliers including but not limited to war (whether an actual declaration thereof is made or not), sabotage, insurrection, riot, third party failure or delay in transportation, acts of any Government or any agency thereof, , judicial actions, labour disputes, strikes, embargoes, illness, accident, fire, explosion, flood, tempest or other acts of God, or delay in delivery to the Seller or to the Seller's suppliers.

14. GENERAL

- 14.1 Any notices required or permitted to be given by either party to the other under these conditions shall be in writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.
- 14.2 No waiver by the Seller of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 14.3 If any provision of these terms and conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the provisions of these terms and conditions and the remainder of the provision in question shall not be affected thereby.
- 14.4 The Contract shall in all respects be construed and operate as a contract made in England and the construction validity and performance of the Contract shall be governed in all respects by English Law. The parties agree to submit to the non-exclusive jurisdiction of the English courts.