

DELO MACHINE TOOL LIMITED TERMS & CONDITIONS OF BUSINESS FOR THE SUPPLY OF GOODS & SERVICES (UPDATED 2020)

1.0 – INTERPRETATION These conditions are issued on behalf of the DELO Machine Tools Limited so when we mention "deloMT", "we", "us" or "our" in these conditions, we are referring to the relevant company DELO Machine Tools Limited responsible for the supply of goods and services. deloMT is the controller and responsible for these conditions.

deloMT means DELO Machine Tools Limited, Registered in England & Wales with Company Number 12570535.

Business Day means a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

Commissioning means the installation, calibration and checking of the goods by deloMT or their contracted affiliates.

Contract means the contract between deloMT and the customer for the sale and purchase of the goods and services in accordance with these conditions.

Customer means the person or business that purchases the goods and services from deloMT. This includes partners, distributors and resellers.

Force Majeure Event means unforeseeable circumstances that prevents the fulfilment of the contract.

Order means the customer's written acceptance of the quotation.

Quotation means deloMT written quotation in respect of the goods and services which is accepted by the customer via the order.

Specification means any specification for the goods and services, including any related plans and drawings, that is agreed in writing by the customer and deloMT.

2.0 – CONSTRUCTION In these conditions the following rules apply.

2.1 – A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

2.2 – A reference to a party includes its personal representatives, successors or permitted assigns.

2.3 – A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.

2.4 – Any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

2.5 – A reference to writing or written includes letters and emails.

3.0 – BASIS OF CONTRACT

3.1 – These conditions apply to the contract to the exclusion of any other terms that the customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

3.2 – The order constitutes an offer by the customer to purchase the goods or services in accordance with these conditions. The customer is responsible for ensuring that the terms of the order and any applicable specification are complete and accurate.

3.3 – The order shall only be deemed to be accepted when deloMT issues a written acceptance of the order, at which point the contract shall come into existence.

3.4 – The contract constitutes the entire agreement between the parties. The customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of deloMT which is not set out in the contract.

3.5 – Any samples, drawings, descriptive matter, or advertising produced by deloMT and any descriptions or illustrations contained in deloMT catalogues or brochures are produced for the sole purpose of giving an approximate idea of the goods and services described in them. They shall not form part of the contract or have any contractual force.

3.6 – These conditions apply to the contract to the exclusion of any other terms that the customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

3.7 – A quotation for the goods and services given by deloMT shall only be valid for such period from its date of issue as is set out in the quotation.

4.0 – GOODS

4.1 – The goods and services are described in the specification.

4.2 – deloMT reserves the right to amend the specification if required by any applicable statutory or regulatory requirements with prior notice.

5.0 – DELIVERY

5.1 – deloMT shall ensure that...

5.2 – Each delivery of the goods and services is accompanied by a delivery note to include order and relevant customer details, type and quantity of the goods and services, special storage instructions (if any) and, if the order is being delivered by



instalments, the outstanding balance of goods and services remaining to be delivered.

5.3 – If the customer requires the return goods or services, that fact is clearly stated on the delivery note. The customer shall make any such packaging materials available for collection at such times as deloMT shall reasonably request. Returns and packaging materials shall be at the customers expense.

5.4 – deloMT shall deliver the goods and services to the location set out in the order or such other location as the parties may agree (Delivery Location) at any time after deloMT notifies the customer that the goods and services are ready.

5.5 – Delivery of the goods and services shall be completed on the goods or services arrival at the delivery Location.

5.6 – Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. deloMT shall not be liable for any delay in delivery of the goods or services that is caused by a Force Majeure Event or the customer's failure to provide deloMT with adequate delivery instructions or any other instructions that are relevant to the supply of the goods or services.

5.7 – If deloMT fails to deliver the goods and services, its liability shall be limited to the order value. deloMT shall have no liability for any failure to deliver the goods or services to the extent that such failure is caused by a Force Majeure Event or the customer's failure to provide deloMT with adequate delivery instructions or any other instructions that are relevant to the supply of the goods or services.

5.8 – If the customer fails to accept delivery of the good and services on the day on which delivery is attempted (the delivery date), then, except where such failure or delay is caused by a Force Majeure Event or deloMT failure to comply with its obligations under the contract...

5.8.1 – Delivery of the goods and services shall be deemed to have been completed at 5pm on the delivery date.

5.8.2 – deloMT shall store the goods or services until delivery takes place, and charge the customer for all related costs and expenses (including insurance).

5.8.3 – The customer must contact deloMT to rearrange delivery and pay deloMT costs of any subsequent attempt to deliver.

5.9 – If 10 business days after the delivery date, the customer has not accepted delivery of them, deloMT may resell or otherwise dispose of part or all of the goods or services, after deducting reasonable storage and selling costs, account to the customer for any excess over the price of the goods or services or charge the customer for any shortfall below the price of the goods or services.

5.10 – deloMT may deliver the goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the customer to cancel any other instalment.

6.0 – QUALITY

6.1 – deloMT warrants that on delivery, and for a period of 12 months from the date of delivery (warranty period), the goods shall...

6.1.1 – Conform in all material respects with and any applicable Specification.

6.1.2 – Be free from material defects in design, material and workmanship.

6.2 – Subject to...

6.2.1 – The customer gives notice in writing to deloMT during the warranty period within a reasonable time of discovery that some or all of the goods do not comply with the warranty set out herein.

6.2.2 – deloMT is given a reasonable opportunity of examining such goods.

6.2.3 – The customer (if asked to do so by deloMT) returns such goods to deloMT or the OEMs place of business at the customer's cost, deloMT shall, at its option, repair or replace the defective goods, or refund the price of the defective goods in full.

6.3 – deloMT shall not be liable for goods failure to comply with the warranty as set out herein...

6.3.1 – The customer makes any further use of such goods after giving notice in accordance with clause 6.2.

6.3.2 – The defect arises because the customer failed to follow deloMT oral or written instructions as to the storage, commissioning, installation, use and maintenance of the goods or (if there are none) good trade practice regarding the same.

6.3.3 – The defect arises as a result of deloMT following any drawing, design or specification supplied by the customer.

6.3.4 – The customer alters or repairs such goods without the written consent of deloMT.

6.3.5 – The defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions.

6.3.6 – The goods differ from the specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

6.4 – Except as provided in this clause 6, deloMT shall have no liability to the customer in respect of the goods failure to comply with the warranty set out in clause 6.1.

6.5 – The terms implied herein to the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the contract.

6.6 – These conditions shall apply to any repaired or replacement goods supplied by deloMT.



7.0 – TITLE & RISK

7.1 – The risk in the goods or services shall pass to the customer on completion of delivery.

7.2 – Title to the goods shall not pass to the customer until deloMT has received payment in full (in cash or cleared funds) for...

7.2.1 – The goods.

7.2.2 – Any other goods or services that deloMT has supplied to the customer in respect of which payment has become due.

7.3 – Until title to the goods has passed to the customer, the customer shall...

7.3.1 – Hold the goods on a fiduciary basis as deloMT bailee.

7.3.2 – Store the goods separately from all other goods held by the customer so that they remain readily identifiable as deloMT property.

7.3.3 – Not remove, deface or obscure any identifying mark or packaging on or relating to the goods.

7.3.4 – Maintain the goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery.

7.3.5 – Notify deloMT immediately if it becomes subject to any of the events listed in clause 10.2.

7.3.6 – Give deloMT such information relating to the goods as deloMT may require from time to time.

7.3.7 – The customer may not resell or use the goods in the ordinary course of its business.

7.4 – If before title to the goods passes to the customer the customer becomes subject to any of the events listed in clause 10.2, or deloMT reasonably believes that any such event is about to happen and notifies the customer accordingly, then, provided that the goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy deloMT may have, deloMT may at any time require the customer to deliver up the goods and, if the customer fails to do so promptly, enter any premises of the customer or of any third party where the goods are stored in order to recover them.

8.0 – PRICE & PAYMENT

8.1 – The price of the goods and services shall be the price set out in the quotation.

8.2 – deloMT may, by giving notice to the customer at any time up to five business days before delivery, increase the price of the goods or services to reflect any increase in the cost that is due to...

8.2.1 – Any request by the customer to change the delivery date(s), quantities or types of goods or services ordered, or the specification.

8.2.2 – Any delay caused by any instructions of the customer or failure of the customer to give deloMT adequate or accurate information or instructions.

8.3 – The price of the goods is exclusive of the costs and charges of packaging, insurance and transport of the goods.

8.4 – The price of the goods is exclusive of amounts in respect of value added tax (VAT). The customer shall, on receipt of a valid VAT invoice from deloMT, pay to deloMT such additional amounts in respect of VAT as are chargeable on the supply of the goods and services.

8.5 – deloMT may invoice the customer any time after acceptance of the order.

8.6 – The customer must pay the price for the goods and services 100% in advance of delivery, paid to DELO Machine Tools Limited, Sort Code 040075 Account 46070923, or, if different, as agreed in writing between the parties.

8.7 – If the customer fails to make any payment due to deloMT under the contract by the due date for payment, then the customer shall pay interest on the overdue amount at the rate of 5% per annum above the Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The customer shall pay the interest together with the overdue amount.

8.8 – The customer shall pay all amounts due under the contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). deloMT may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the customer against any amount payable by deloMT to the customer.

9.0 – COMMISSIONING

9.1 – Any commissioning or other services to be provided by deloMT in respect of the goods or services will be subject to deloMT standard terms and conditions for the supply of services, a copy of which is available on request.

10.0 – CUSTOMER INSOLVENCY OR INCAPACITY

10.1 – If the customer becomes subject to any of the events listed in clause 10.2, or deloMT reasonably believes that the customer is about to become subject to any of them and notifies the customer accordingly, then, without limiting any other right or remedy available to deloMT, deloMT may cancel or suspend all further deliveries under the contract or under any other contract between the customer and deloMT without incurring any liability to the customer, and all outstanding sums in respect of goods or services delivered to the customer shall become immediately due.

10.2 – For the purposes of clause 10.1, the relevant events are...

10.2.1 – The customer suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or (being a company or limited liability partnership) is deemed unable to pay its debts within the



meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply.

10.2.2 – The customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where the customer is a company) where these events take place for the sole purpose of a scheme for a solvent amalgamation of the customer with one or more other companies or the solvent reconstruction of the customer.

10.2.3 – (being a company) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the customer, other than for the sole purpose of a scheme for a solvent amalgamation of the customer with one or more other companies or the solvent reconstruction of the customer.

10.2.4 – (being an individual) the customer is the subject of a bankruptcy petition or order.

10.2.5 – A creditor or encumbrancer of the customer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days.

10.2.6 – (being a company) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the customer.

10.2.7 – (being a company) the holder of a qualifying charge over the customer's assets has become entitled to appoint or has appointed an administrative receiver.

10.2.8 – A person becomes entitled to appoint a receiver over the customer's assets or a receiver is appointed over the customer's assets.

10.2.9 – Any event occurs, or proceeding is taken, with respect to the customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned herein.

10.2.10 – The customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business.

10.2.11 – The customer's financial position deteriorates to such an extent that in deloMT opinion the customer's capability to adequately fulfil its obligations under the contract has been placed in jeopardy.

10.2.12 – (being an individual) the customer dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.

10.3 – Termination of the contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination. Clauses which expressly or by implication survive termination of the contract shall continue in full force and effect.

11.0 – LIMITATION OF LIABILITY

11.1 – Nothing in these conditions shall limit or exclude deloMT liability for...

11.1.1 – Death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable).

11.1.2 – Fraud or fraudulent misrepresentation.

11.1.3 – Breach of the terms implied by the Sale of Goods Act 1979.

11.1.4 – Defective products under the Consumer Protection Act 1987.

11.1.5 – Any matter in respect of which it would be unlawful for deloMT to exclude or restrict liability.

11.2 – Subject to clause 11.1...

11.2.1 – deloMT shall under no circumstances whatever be liable to the customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the contract.

11.2.2 – deloMT total liability to the customer in respect of all other losses arising under or in connection with the contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the price of the goods.

12.0 – FORCE MAJEURE

12.1 – Neither party shall be liable for any failure or delay in performing its obligations under the contract to the extent that such failure or delay is caused by a Force Majeure Event. A Force Majeure Event means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics, pandemics or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors.



13.0 – GENERAL

13.1 – Assignment and other dealings...

13.1.1 – deloMT may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the contract.

13.1.2 – The Customer may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the contract without the prior written consent of deloMT.

13.2 – Notices...

13.2.1 – Any notice or other communication given to a party under or in connection with the contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid post or other delivery service, commercial courier or email.

13.2.2 – A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 13.2.1 (if sent by post or other delivery service) at 9.00 am on the second business day after posting, or, if sent by email one business day after transmission.

13.2.3 – The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

13.3 – Severance...

13.3.1 – If any provision or part-provision of the contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the contract.

13.3.2 – If any provision or part-provision of this contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

13.4 – Waiver. A waiver of any right or remedy under the contract or law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

13.5 – Third party rights. A person who is not a party to the contract shall not have any rights to enforce its terms.

13.6 – Variation. Except as set out in these conditions, no variation of the contract, including the introduction of any additional terms and conditions, shall be effective unless it is in writing and signed by deloMT.

13.7 – Governing law. The contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the law of England and Wales.

13.8 – Jurisdiction. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this contract or its subject matter or formation (including non-contractual disputes or claims).

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