

## **Business to Business Terms & Conditions of Sale**

### **Standard Terms And Conditions For Sale Of Goods Of Data Southern Enterprises T/A DS Medical To Trade Customers**

#### **1 DEFINITIONS**

In this document the following words shall have the following meanings:

- 1.1** "Buyer" means the organisation or person who buys Goods from the Seller;
- 1.2** "Goods" means the articles to be supplied to the Buyer by the Seller;
- 1.3** "Intellectual Property Rights" means all patents, registered and unregistered designs, copyright, trade marks, know-how and all other forms of intellectual property wherever in the world enforceable;
- 1.4** "List Price" means the list of prices of the Goods maintained by the Seller as amended from time to time;
- 1.5** "Seller" means Data Southern Enterprises Limited T/A DS Medical, Eagle E2, Daedalus Park, Daedalus Drive, Lee on the Solent, Hampshire. PO13 9FX

#### **2 GENERAL**

- 2.1** These Terms and Conditions shall apply to all contracts for the sale of Goods by the Seller to the Buyer to the exclusion of all other terms and conditions referred to, offered or relied on by the Buyer whether in negotiation or at any stage in the dealings between the parties, including any standard or printed terms tendered by the Buyer, unless the Buyer specifically states in writing, separately from such terms, that it wishes such terms to apply and this has been acknowledged by the Seller in writing.
- 2.2** These Terms and Conditions are available on request by email from the Seller or can be viewed online at [www.dsmedical.co.uk](http://www.dsmedical.co.uk). The Seller reserves the right to amend the Terms and Conditions from time to time without directly notifying previous Buyers.
- 2.3** Acceptance of sales order confirmation or pro forma invoice of the Goods shall be deemed conclusive evidence of the Buyer's acceptance of these Terms and Conditions

#### **3 PRODUCT INFORMATION**

- 3.1** Any description given or applied to the Goods is given by way of identification only and the use of such description shall not constitute a sale by description. For the avoidance of doubt, the Buyer hereby affirms that it does not in any way rely on any description when entering into the contract.
- 3.2** Item specifications are correct at time of advertising. Manufacturers reserve the right to amend specifications without notice. The Seller will endeavour to provide true and accurate up-to-date specification information wherever possible. The Buyer should confirm by email or telephone current specifications.
- 3.2** The Seller reserves the right to alter prices or withdraw and modify models from time to time without directly notifying previous Buyers. Products illustrated in all of the Seller's literature and websites are done so as accurately as modern reproduction methods will allow.

#### **4 PRICE AND PAYMENT**

**4.1** The price shall be that in the Seller's current Trade List Price, or such other price as the parties may agree in writing. The price is exclusive of VAT or any other applicable costs. All goods are sold ex-works and carriage shall be paid for by the Buyer.

**4.2** Payment of the price and VAT and any other applicable costs shall be done before delivery for pro-forma accounts or within agreed payment days of the Seller invoice subject to approved credit terms. Credit terms can be removed by the Seller without explanation.

**4.3** The Seller shall be entitled to charge interest on overdue invoices from the date when payment becomes due from day to day until the date of payment at a rate of 2.00% per annum above the base rate of the Bank of England.

**4.4** If payment of the price or any part thereof is not made by the due date, the Seller shall be entitled to:

**4.4.1** require payment in advance of delivery in relation to any Goods not previously delivered;

**4.4.2** refuse to make delivery of any undelivered Goods whether ordered under the contract or not and without incurring any liability whatever to the Buyer for non-delivery or any delay in delivery;

**4.4.3** terminate the contract.

## **5 SAMPLE**

Where a sample of the Goods is shown to and inspected by the Buyer, the parties hereto accept that such a sample is so shown and inspected for the sole purpose of enabling the Buyer to judge for itself the quality of the bulk, and not so as to constitute a sale by sample.

## **6 DELIVERY SERVICE**

**6.1** Unless otherwise agreed in writing, delivery of the Goods shall take place at the address specified by the Buyer within the timescale specified by the Seller.

**6.2** Standard delivery is conducted using a third party courier, third party pallet carrier, or Seller's own vehicle. Delivery times vary according to each mode of transportation as available by third party couriers.

**6.3** The delivery address specified by the Buyer must be safely accessible by the courier between the hours of 0800 to 1800 Monday to Friday.

**6.4** The delivery service is completed by one person (the driver) up to the vehicle tailgate. It is the responsibility of the buyer to ensure vehicle access including suitable parking and the handling of the Goods beyond the vehicle tailgate.

NB. Should the Buyer require additional delivery services which are not covered by the standard delivery terms such as date specific, this must be specified by the Buyer during order review/checkout:

A sales representative from the Seller will contact the Buyer to discuss additional delivery services required are priced on application and upon acceptance from the Buyer such charges will be added to standard delivery charge.

**6.5** The delivery period specified by the Seller is an estimate only and shall not be of the essence of the contract. All deliveries conducted by the truck method will be booked in advance

by telephone and the Buyer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery

**6.6** The Seller shall use its reasonable endeavours to meet any stated delivery period or booked delivery date. In any event, time of delivery period or delivery booking shall not be of the essence and the Seller shall not be liable for any losses, costs, damages or expenses incurred by the Buyer or any third party arising directly or indirectly out of any failure to meet any estimated delivery period or date.

**6.7** If the Seller is unable to commence delivery of the Goods for reasons beyond its control, then the Seller shall be entitled to place the Goods in storage until such times as delivery may be effected and the Buyer shall be liable for any expense associated with such storage.

**6.8** If the Seller is unable to complete delivery whilst the Goods are in transit for reasons beyond its control, then the Buyer shall be liable for any wasted delivery expenses incurred by the Seller.

## **7 ORDER COLLECTION**

**7.1** Orders can be collected by the Buyer between the hours of 08:30 to 17:00 Monday to Thursday (excluding Bank Holidays) and 08:30 – 16:00 on a Friday from DS Medical, Eagle E2, Daedalus Park, Daedalus Drive, Lee on the Solent, Hampshire PO13 9FX.

**7.2** The Buyer will be notified by the Seller when order is ready for collection.

**7.3** It is the responsibility of the Buyer to provide the appropriate vehicle to conduct the collection. If the Buyer is unable to complete the collection of the Goods on the date agreed, then the Seller shall be entitled to place the Goods in storage until such times as collection or delivery may be effected and the Buyer shall be liable for any expense associated with such storage.

**7.4** The Seller will not apply storage charges to the Buyer if delivery is deferred by the Buyer, however the Seller reserves the right to cancel the order and refund deposits at the Seller's discretion if deferment exceeds 30 days.

## **8 RISK**

Risk in the Goods shall pass to the Buyer at the moment the Goods are dispatched from the Seller's premises. Where the Buyer chooses to collect the Goods itself, risk will pass when the Goods are entrusted to it or set aside for its collection, whichever happens first.

## **9 TITLE**

Title in the Goods shall not pass to the Buyer until the Seller has been paid in full for the Goods. The goods may be resold provided the proceeds of resale are paid to the Buyer to the extent necessary to discharge in full the amount due to the Seller

## **10 CANCELLATION AND RETURNS**

**10.1** During delivery the Buyer shall inspect the packaging for visible signs of transit damage before signing any delivery receipt document. In the event of visible signs of transit damage the

Buyer must clearly sign the goods received as 'damaged' on the delivery receipt document before signing. The Buyer shall then notify the Seller within 24 hours.

**10.2** The Buyer shall inspect the Goods immediately upon receipt and shall notify the Seller within 1 days of delivery if the Goods are transit damaged, defective or do not comply with any of the Contract.

**10.3** Where the claim of pre-installation damage is made then it shall be the responsibility of the Seller to collect the damaged Goods and the Buyer shall be entitled to replacement Goods or a full refund including any applicable shipping costs.

**10.4** Goods to be collected must be fully re-packaged and sealed in the original packaging format clearly showing the order number obtained from the Seller and must be immediately available for collection. The Seller will not accept any attempt to apply storage charges from the Buyer in this period.

**10.5** Where the claim of post-installation defect is made then it shall be the responsibility of the Buyer to return the faulty Goods. The Buyer shall be entitled to replacement Goods or a full refund including shipping costs provided a manufacturing fault can be established and not as a result of misuse by the Buyer or a third party user.

**10.6** Goods to be returned must be delivered to the Seller between the hours of 08.00 to 17.30 Monday to Friday at the Seller's premises within 14 days of reporting the fault.

**10.7** Where returned Goods are found to be damaged but repairable due to the Buyer's or third party's misuse the Buyer will be liable for the cost of remedying such damage and all related shipping costs.

## **11 WARRANTY**

**11.1** Any Goods to be repaired or replaced shall be returned to the Seller at the Buyer's expense, if so requested by the Seller.

**11.3** Where the Goods have been manufactured and supplied to the Seller by a third party, any warranty granted to the Seller in respect of the Goods shall be passed on to the Buyer.

**11.4** The Seller shall be entitled in its absolute discretion to refund the price of the defective Goods in the event that such price has already been paid.

**11.5** The remedies contained in this Clause are without prejudice to the other Terms and Conditions herein, including, but without limitation, Clauses 10 and 11.

## **12 LIABILITY**

**12.1** No liability of any nature shall be incurred or accepted by the Seller in respect of any representation made by the Seller, or on its behalf, to the Buyer, or to any party acting on its behalf, prior to the making of this contract where such representations were made or given in relation to:

**12.1.1** the correspondence of the Goods with any description;

**12.1.2** the quality of the Goods

**12.3** All implied terms, conditions or warranties as to the correspondence of the Goods to any description or the satisfactory quality of the Goods or the fitness of the Goods for any purpose whatsoever (whether made known to the Seller or not) are hereby excluded from the contract.

### **13 LIMITATION OF LIABILITY**

**13.1** Where any court or arbitrator determines that any part of Clause 10 above is, for whatever reason, unenforceable, the Seller shall be liable for all loss or damage suffered by the Buyer but in an amount not exceeding the contract price.

**13.2** Nothing contained in these Terms and Conditions shall be construed so as to limit or exclude the liability of the Seller for death or personal injury as a result of the Seller's negligence or that of its employees or agents.

### **14 FORCE MAJEURE**

The Seller shall not be liable for any delay or failure to perform any of its obligations if the delay or failure results from events or circumstances outside its reasonable control, including but not limited to acts of God, strikes, lock outs, accidents, war, fire, breakdown of plant or machinery or shortage or unavailability of raw materials from a natural source of supply, and the Seller shall be entitled to a reasonable extension of its obligations. If the delay persists for such time as the Seller considers unreasonable, it may, without liability on its part, terminate the contract.

### **15 RELATIONSHIP OF PARTIES**

Nothing contained in these Terms and Conditions shall be construed as establishing or implying any partnership or joint venture between the parties and nothing in these Terms and Conditions shall be deemed to construe either of the parties as the agent of the other.

### **16 ASSIGNMENT AND SUB-CONTRACTING**

The contract between the Buyer and Seller for the sale of Goods shall not be assigned or transferred, nor the performance of any obligation sub-contracted, in either case by the Buyer, without the prior written consent of the Seller.

### **17 WAIVER**

The failure by either party to enforce at any time or for any period any one or more of the Terms and Conditions herein shall not be a waiver of them or of the right at any time subsequently to enforce all Terms and Conditions of this Agreement.

### **18 SEVERABILITY**

If any term or provision of these Terms and Conditions is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if these Terms and Conditions had been agreed with the invalid, illegal or unenforceable provision eliminated.

## **19 INTELLECTUAL PROPERTY AND RIGHT TO USE IT**

The Buyer acknowledges and agrees that all copyright, trademarks and all other intellectual property rights in all the Seller's literature and websites shall remain at all times vested in the Seller. The Buyer is permitted to use this material only as expressly authorised by the Seller. The Buyer acknowledges and agrees that the material and content contained within the website is made available for personal non-commercial use only and the Buyer may (if necessary to make a purchase on the website) download such material and content. Any other use of the material and content of the website is strictly prohibited. The Buyer agrees not to (and agree not to assist or facilitate any third party to) copy, reproduce, transmit, publish, display, distribute, commercially exploit or create derivative works of such material and content.

## **20 WEBSITE USE AND LINKS**

**20.1** Access to and use of the Sellers websites are subject to these Terms and Conditions. The Buyer agrees that use of these website services is entirely at the risk of the Buyer.

**20.2** By using the Sellers websites the Buyer agrees not to attempt to undermine the web site's functionality and integrity

**20.3** The Sellers websites may include links to third party websites that are controlled and maintained by others. Any link to other websites is not an endorsement of such websites and you acknowledge and agree that we are not responsible for the content or availability of any such sites.

## **21 GOVERNING LAW AND JURISDICTION**

This Agreement shall be governed by and construed in accordance with the law of England and the parties hereby submit to the exclusive jurisdiction of the English courts.