

**STANDARD TERMS AND CONDITIONS
OF SALE AND SUPPLY FOR
DIGITIMER LIMITED**

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1. DEFINITIONS AND EXPLANATION

1.1. In these conditions:

‘Buyer’ means the person who accepts a quotation of the Seller for the sale of the Goods and/or Services or whose order for the Goods and/or Services is accepted by the Seller;

‘Conditions’ means the standard terms and conditions of sale set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in Writing between the Buyer and the Seller;

‘Contract’ means the contract for the purchase and sale of the Goods and/or the supply of the Services;

‘Document’ includes, in addition to a document in Writing, any map, plan, graph, drawing or photograph, any film, negative, tape or other device embodying visual images and any disc, tape or other device embodying any other data;

‘Goods’ means the goods (including any instalment of the goods or any parts for them) which the Seller is to supply in accordance with these Conditions;

‘Input Material’ means any Documents or other materials, and any data or other information provided by the Buyer relating to the Goods and/or Services;

‘Statutory rate of interest applying to late payment’ means the current rate of interest chargeable under the Late payment of Commercial Debts (Interest) Act 1998 including any statutory modification or re-enactment thereof and Statutory Instruments made under the Act;

‘Output Material’ means any Documents or other materials, and any data or other information provided by the Seller relating to the Goods and/or Services;

‘Seller’ means Digitimer Limited (whose registered office is at Suite 501 (PO Box 501), The Nexus Building Broadway Letchworth Garden City SG6 9BL or any of its subsidiaries or subsidiary undertaking as defined by Companies Act 1985);

‘Services’ means the services (if any) which the Seller is to supply in accordance with these conditions;

'Writing' includes facsimile, e-mail and electronic transmission and comparable means of communication.

- 1.2. Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.
- 1.3. The headings in these Conditions are for convenience only and shall not affect their interpretation.

2. BASIS OF THE SALE

- 2.1. The Seller shall sell and the Buyer shall purchase the Goods and/or Services in accordance with any written purchase order of the Buyer, which is accepted by the Seller, by the issue of a purchase acknowledgement. No contract will arise between the Buyer and the Seller until such purchase acknowledgement is issued. All Goods and/or Services are supplied subject to these Conditions, which shall govern the Contract to the exclusion of any other terms and conditions. It is a condition of the Contract that Goods supplied by the Seller must not in any circumstances be used where their failure could directly endanger life.
- 2.2. No variation to these Conditions shall be binding unless agreed in Writing between the authorised representatives of the Buyer and of the Seller.
- 2.3. The Seller's employees or agents are not authorised to make any representations concerning the Goods and/or Services unless confirmed by a director of the Seller in Writing. In entering into the Contract the Buyer acknowledges that it does not rely on, and waives any claim for breach of, any such representations which are not so confirmed.
- 2.4. Any advice or recommendation given by the Seller or its employees or agents to the Buyer or its employees or agents as to the storage, application or use of the Goods and/or Services which is not confirmed in Writing by a director of the Seller is followed or acted upon entirely at the Buyers own risk, and accordingly the Seller shall not be liable for any such advice or recommendation which is not so confirmed.
- 2.5. Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.

3. ORDERS AND SPECIFICATIONS

- 3.1. The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Buyer, and for giving the Seller any necessary information relating to the Goods and/or Services within a sufficient time to enable the Seller to perform the Contract in accordance with its terms.
- 3.2. The quantity, quality and description of and any specification for the Goods and/or Services shall be those set out in the Seller's purchase acknowledgement.
- 3.3. If the Goods are to be manufactured or any process is to be applied to the Goods by the Seller in accordance with a specification submitted by the Buyer, or utilising tooling, software or other goods or equipment supplied by the Buyer, or if Services are to be performed in accordance with a specification supplied by the Buyer, the Buyer shall indemnify the Seller against all loss, damages, costs and expenses awarded against or incurred by the Seller in connection with or paid or agreed to be paid by the Seller in settlement of any claim for infringement of any patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person which results from the Seller's use of the Buyer's specification or tooling, software or other goods or equipment.
- 3.4. The Buyer shall at its own expense supply the Seller with all necessary Documents or other materials, and all necessary data or other information relating to the Goods and/or Services, within sufficient time to enable the Seller to provide the Goods and/or Services in accordance with the Contract. The Buyer shall ensure the accuracy of all Input Material.
- 3.5. The Buyer shall at its own expense retain duplicate copies of all Input Material and insure against its accidental loss or damage. The Seller shall have no liability for any such loss or damage to the Input Material, however caused. All Output Material shall be at the sole risk of the Buyer from the time of delivery to or to the order of the Buyer.
- 3.6. The Seller reserves the right to make any changes in the specification of the Goods and/or Services which are required to conform with any applicable safety or other statutory requirements or, where the Goods and/or Services are to be supplied to the Seller's specification, which do not materially affect their quality or performance.

- 3.7. Save as set out in Clause 4 no order which has been accepted by the Seller may be cancelled by the Buyer except with the agreement in Writing of the Seller and on terms that the Buyer shall indemnify the Seller in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Seller as a result of cancellation.

4. PRICE OF THE GOODS/SERVICES

- 4.1. The price of the Goods and/or Services shall be as per the Seller's purchase acknowledgement plus any additional sums which are agreed between the parties for the provision of the Goods and/or Services . All prices quoted are valid for 30 days after which time they may be altered by the Seller on giving notice to the Buyer.
- 4.2. The Seller reserves the right, by giving notice to the Buyer at any time before delivery, to increase the price of the Goods and/or Services to reflect any increase in the cost to the Seller which is due to any factor beyond the control of the Seller (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Goods and/or Services which is requested by the Buyer.
- 4.3. Except as otherwise stated under the terms of any quotation or in any price list of the Seller, and unless otherwise agreed in Writing between the Buyer and the Seller, all prices are given by the Seller on an ex-works basis, and where the Seller agrees to deliver the Goods, the Buyer shall be liable to pay the Seller's charges for transport, packaging and insurance.
- 4.4. The price is exclusive of any applicable value added tax, which the Buyer shall be additionally liable to pay to the Seller.

5. TERMS OF PAYMENT

- 5.1. The Seller shall be entitled to invoice the Buyer for the price of the Goods and/or Services on or at any time after delivery of the Goods and/or Services, unless the Goods are to be collected by the Buyer or the Buyer wrongfully fails to take delivery of the Goods, in which event the Seller shall be entitled to invoice the Buyer for the price at any time after the Seller has notified the Buyer that the Goods are ready for collection or (as the case may be) the Seller has tendered delivery of the Goods.

- 5.2. The Buyer shall pay the price of the Goods and/or Services within 30 days of the date of the Seller's invoice, and the payment of the price shall be of the essence of the Contract. Receipts for payment will be issued only upon request. The Buyer shall not make any deductions, set-offs or counterclaims against the invoice price.
 - 5.3. If the Buyer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to:
 - 5.3.1. cancel the contract, suspend any further deliveries or suspend the provisions of the Services to the Buyer;
 - 5.3.2. appropriate any payment made by the Buyer to such of the Goods and/or Services (or the goods supplied under any other contract between the Buyer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer); and
 - 5.3.3. charge interest on the outstanding amount (both before and after any judgment) at the statutory rate of interest applying to late payment from the due date until the outstanding amount is paid in full.
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6. DELIVERY

- 6.1. Delivery of the Goods shall be made by the Buyer collecting the Goods at the Seller's premises at any time after the Seller has notified the Buyer that the Goods are ready for collection or, if some other place for delivery is agreed by the Seller, by the Seller delivering the Goods to that place.
- 6.2. Delivery of the Services shall be deemed to have been made once the Seller reasonably determines that the Services have been performed.
- 6.3. Any dates quoted for delivery of the Goods are approximate only and the Seller shall not be liable for any delay in delivery of the Goods howsoever caused. Time for delivery shall not be of the essence unless previously agreed by the Seller in Writing. The Goods may be delivered by the Seller in advance of the quoted delivery date upon giving reasonable notice to the Buyer.

- 6.4. Where the Goods and/or Services are to be delivered in instalments, each delivery shall constitute a separate contract and failure by the Seller to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.
- 6.5. If the Seller fails to deliver the Goods and/or Services for any reason other than any cause beyond the Seller's reasonable control or the Buyer's fault, and the Seller is accordingly liable to the Buyer, the Seller's liability shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest available market) of similar goods or services to replace those not delivered over the price of the Goods and/or Services.
- 6.6. If the Buyer fails to take delivery of the Goods or fails to give the Seller adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of the Seller's fault) then, without prejudice to any other right or remedy available to the Seller, the Seller may:
- 6.6.1. store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or
 - 6.6.2. sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the price under the Contract or charge the Buyer for any shortfall below the price under the Contract.

7. RISK AND PROPERTY

- 7.1. Risk of damage to or loss of the Goods shall pass to the Buyer:
- 7.1.1. in the case of Goods to be delivered at the Seller's premises, at the time when the Seller notifies the Buyer that the Goods are available for collection; or
 - 7.1.2. in the case of Goods to be delivered otherwise than at the Seller's premises, at the time of delivery or, if the Buyer wrongfully fails to take delivery of the Goods, the time when the Seller has tendered delivery of the Goods.

- 7.2. Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, the title in the Goods shall not pass to the Buyer until the Seller has received in cash or cleared funds payment in full of the price of the Goods and all other goods agreed to be sold by the Seller to the Buyer for which payment is then due.
- 7.3. Until such time as the title in the Goods passes to the Buyer, the Buyer shall keep the Goods separate from those of the Buyer and third parties and properly stored, protected and insured and identified as the Seller's property.
- 7.4. Until such time as the title in the Goods passes to the Buyer, the Buyer shall be, subject to the Seller informing the Buyer to the contrary, entitled to resell or use the Goods in the ordinary course of its business, but shall account to the Seller for the proceeds of sale or otherwise of the Goods, whether tangible or intangible, including insurance proceeds, and shall keep all such proceeds separate from any moneys or property of the Buyer and third parties and, in the case of tangible proceeds, properly stored, protected and insured. The Buyer shall have no authority to enter into any contract of sale on behalf of the Seller and any such contract shall accordingly be concluded in the name of the Buyer.
- 7.5. Until such time as the title in the Goods passes to the Buyer (and provided the Goods are still in existence and have not been resold), the Seller shall be entitled at any time to require the Buyer to deliver up the Goods to the Seller and, if the Buyer fails to do so forthwith, to enter upon any premises of the Buyer or any third party where the Goods are stored and repossess the Goods.
- 7.6. The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Seller, but if the Buyer does so all moneys owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.
- 7.7. Save as otherwise stated therein, the provisions of this clause 7 shall survive the termination of any contract made pursuant to these conditions for whatever reason and in particular but without limitations by the Seller by the acceptance or repudiation of this contract by the Buyer.

8. RIGHTS IN INPUT AND OUTPUT MATERIAL

- 8.1. The title to and any copyright or other intellectual property rights in:
 - 8.1.1. any Input Material shall belong to the Buyer;

- 8.1.2. any Output Material shall, unless otherwise agreed in Writing between the Buyer and a direction of the Seller, belong to the Seller, subject only to the right of the Buyer to use the Output Material for the purposes of utilising the Goods and Services which right shall automatically terminate if the Buyer fails to settle any invoice rendered by the Seller in accordance with Clause 5; and
- 8.1.3. the Goods shall remain vested in the Seller.
- 8.2. Any Input Material or other information provided by the Buyer which is so designated by the Buyer and any Output Material shall be kept confidential by the Seller, and all Output Material or other information provided by the Seller which is so designated by the Seller shall be kept confidential by the Buyer; but this shall not apply to any Documents or other materials, data or other information which are public knowledge at the time when they are so provided by either party, and shall cease to apply if at any future time they become public knowledge through no fault of the other party.
- 8.3. The Buyer warrants that any Input Material and its use by the Seller for the purpose of providing the Goods and/or Services will not infringe the intellectual property rights or other rights of any third party, and the Buyer shall indemnify the Seller against any loss, damages, costs, expenses or other claims arising from any such infringement.
- 8.4. Subject to the Buyer complying with Clause 8.3, the Seller warrants that any Output Material and its use by the Buyer for the purposes of using the Goods and/or Services will not infringe the intellectual property rights or other rights of any third party, and the Seller shall indemnify the Buyer against any loss, damages, costs, expenses or other claims arising from any such infringement.

9. WARRANTIES AND LIABILITY

The Price of Goods and/or Services are based, in part, on the limits of the Seller's liability in these Conditions. The Buyer's attention is drawn in particular to the conditions 9.2 to 9.8 (inclusive). In setting these limits the Seller has had regard to its insurance cover, copies of which are available on request. The Buyer should make its own insurance arrangements for risks falling outside the scope of this cover.

- 9.1. The Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Seller to the extent that the Seller is able to pass such warranty or guarantee on to the Buyer.

- 9.2. The Seller warrants to the Buyer that the Services will be provided using reasonable care and skill and, as far as reasonably possible, in accordance with the Purchase Acknowledgement and at the intervals and within the times referred to in the Purchase Acknowledgment.
- 9.3. The Seller shall:
- 9.3.1. be under no liability in respect of any defect in the Goods or Services arising from any Input Material or instructions supplied by the Buyer which are incomplete, incorrect, inaccurate, illegible, out of sequence or in the wrong form or arising from their late arrival or non-arrival, or where the Goods have been used, in circumstances where their failure could directly endanger life in breach of Clause 2;
 - 9.3.2. be under no liability for the Goods in respect of any defect arising from fair wear and tear, wilful damage, negligence, 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;
 - 9.3.3. be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total price for the Goods and/or Services has not been paid by the due date for payment.
- 9.4. Subject as expressly provided in these Conditions, all warranties, conditions or other terms implied by statute or common law, are excluded to the fullest extent permitted by law.
- 9.5. Any claim by the Buyer which is based on any defect in the quality or condition of the Goods and/or Services or their failure to correspond with specification shall (whether or not, in the case of goods, delivery is refused by the Buyer) be notified to the Seller within 7 days from the date of delivery of the Goods and/or Services or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure. If the Buyer does not notify the Seller accordingly of the defect or failure in the Goods and/or Services, the Buyer shall not be entitled to reject the Goods and the Seller shall have no liability for such defect or failure in the Goods and/or Services, and the Buyer shall be bound to pay the price as if the Goods and/or Services had been delivered in accordance with the Contract.
- 9.6. Except in respect of death or personal injury caused by the Seller's negligence or fraudulent misrepresentation:

- 9.6.1. the Seller shall not be liable to the Buyer for any loss of profit or any indirect, special or consequential loss or damage, costs, expenses or other claims for consequential compensation whatsoever which arises out of or in connection with the supply of the Goods and/or Services or their use or resale by the Buyer, except as expressly provided in these Conditions;
- 9.6.2. the Seller's entire liability to the Buyer arising under or in connection with these Conditions whether for negligence, breach of contract, or otherwise shall be the greater of:
 - 9.6.2.1. the aggregate of all charges made paid or payable for the Services in the 12 months immediately preceding the events giving rise to the claim or which would have been payable had the contract run for 12 months for the Services; and
 - 9.6.2.2. the total price of the Goods; or
 - 9.6.2.3. the amounts of insurance held and then available to the Seller under its insurance policies in respect of the Buyer's loss.
- 9.7. The Seller shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Seller's obligations in relation to the Goods and/or Services, if the delay or failure was due to any cause beyond the Seller's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Seller's reasonable control:
 - 9.7.1. act of God, explosion, flood, tempest, fire or accident;
 - 9.7.2. war or threat of war, sabotage, insurrection, civil disturbance or requisition;
 - 9.7.3. acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;
 - 9.7.4. import or export regulations or embargoes;
 - 9.7.5. strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Seller or of a third party);
 - 9.7.6. difficulties in obtaining raw materials, labour, fuel, parts or machinery; and
 - 9.7.7. power failure or breakdown in machinery.

- 9.8. In the event that the Seller is prevented from carrying out its obligations under this Agreement, in accordance with Clause 9.7 above, the Seller shall give notice of suspension as soon as is reasonably possible to the Buyer stating the date and the extent of the suspension and its cause. The Seller shall resume the performance of its obligations as soon as reasonably possible after the removal of the cause and shall so notify the Buyer. In the event that the cause continues for more than one month either party may terminate this Contract by giving the other party 30 days' written notice.

10. INSOLVENCY OF BUYER

- 10.1. This clause applies if:
- 10.1.1. 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
 - 10.1.2. an encumbrancer takes possession, or a receiver is appointed, over any of the property or assets of the Buyer; or
 - 10.1.3. the Buyer ceases, or threatens to cease, to carry on business; or
 - 10.1.4. the Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.
- 10.2. If this clause applies then, notwithstanding any other rights available to the Seller, the Seller may be entitled to cancel the Contract or suspend any deliveries and/or the provision of the Services without any liability to the Buyer, and if the Goods and/or Services have been delivered but not paid for the price shall become immediately payable regardless of any previous agreement or arrangement to the contrary and the Buyer's right to resell the Goods set out in Clause 7.4 above will automatically be revoked.

11. TERMINATION

Either party may (without limiting any other remedy) at any time terminate the Contract by giving written notice to the other if the other commits any breach of these Conditions and (if capable of remedy) fails to remedy the breach within 30 days after being required by written notice to do so.

12. EXPORT TERMS

- 12.1. In this Clause 12 'Incoterms' means the international rules for the interpretation of trade terms of the International Chamber of Commerce as in force at the date when the Contract is made. Unless the context otherwise requires, any term or expression which is defined in or given a particular meaning by the provisions of Incoterms shall have the same meaning in these Conditions, but if there is any conflict between the provisions of Incoterms and these Conditions, the latter shall prevail.
- 12.2. Where the Goods are supplied for export from the United Kingdom, the provisions of this Clause 12 shall (subject to any special terms agreed in Writing between the Buyer and a director of the Seller) apply notwithstanding any other provision of these Conditions.
- 12.3. The Buyer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and for the payment of any duties thereon.
- 12.4. Unless otherwise agreed in Writing between the Buyer and the Seller, the Goods shall be delivered ex works.
- 12.5. The Buyer shall be responsible for arranging for testing and inspection of the Goods at the Seller's premises before shipment. The Seller shall have no liability for any claim in respect of any defect in the Goods which would be apparent on inspection and which is made after shipment, or in respect of any damage during transit.

13. GENERAL

- 13.1. Any notice 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. A notice is deemed to have been served as follows:
 - 13.1.1. if personally, by fax or e-mail at the time of delivery;
 - 13.1.2. if posted, at the time of expiration of 48 hours or (in the case of airmail) 7 days after the envelope containing the notice is posted.

- 13.2. Unless specifically stated to the contrary, no failure or delay by either party in exercising any of its rights under these Conditions shall be deemed to be a waiver of that right, and no waiver by either party of any breach of these Conditions by the other shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 13.3. If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provisions in question shall not be affected.
- 13.4. A person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement but this does not affect any right or remedy of a third party which exists or is available apart from that Act.
- 13.5. The Contract shall be governed by the laws of England, and the parties hereby submit to the non-exclusive jurisdiction of the English Courts for all purposes arising in connection with these Conditions.
- 13.6. These Conditions, and the documents referred to in them, constitutes the entire agreement and understanding of the parties and supersedes any previous agreement between the parties relating to the subject matter of this Contract. Each of the parties acknowledges and agrees that in entering into this Contract, and the documents referred to in it, it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether party to this agreement or not) other than as expressly set out in the Contract. The only remedy available to it for breach of any warranty shall be for breach of contract under the terms of this agreement. Nothing in this sub-clause shall, however, operate to limit or exclude any liability for fraud.
- 13.7. The Buyer shall not without the prior written consent of the Seller assign, transfer, charge, declare a trust over, or deal with this Agreement or its rights under it or part of it, or purport to do any of the same

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