

## **TERMS AND CONDITIONS OF SALE FOR THE SUPPLY OF SERVICES AND/OR GOODS v2.2**

### **1. DEFINITIONS AND INTERPRETATION**

1.1 In these Conditions these words have the following meanings:

“DC/DC Power”	Devon & Cornwall DC power Ltd.
“The Contract”	Any contract under which DC/DC Power provides Services and/or sells Goods to the Customer.
“The Customer”	The individual, firm, company, or other party with whom DC/DC power contracts.
“Goods”	The whole or any part of the services which DC/DC Power is to supply.
“the Relevant Date”	The date referred to in Clause 5 hereof
“Services”	The whole or any part of the services which DC/DC Power is to supply or carry out.
“supply”	Includes (but is not limited to) any supply under a contract for sale.
“Third Party Contractor”	Any person firm or company appointed or employed by the Customer to supervise or carry out work on any site at which DC/DC Power is to supply Services or goods.

1.2 References to clauses (except where the context otherwise requires) are references to the clauses set out below.

1.3 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.

### **2. CONTRACT TERMS, VARIATIONS AND REPRESENTATIONS**

2.1 Unless superseded or withdrawn quotations are valid for a period of 30 days from the quotation date.

2.2 No order in pursuance of a quotation or otherwise shall be binding on the Company unless and until such order is accepted by DC/DC Power.

2.3 The Contract will be subject to these Conditions. Except as provided in clause 2.4 no representative or agent of DC/DC Power has authority to agree any modification or make any representation which is inconsistent with these Conditions or to enter into any contract except on the basis of them.

2.4 Any term or representation inconsistent with these Conditions will only bind DC/DC Power if it is in writing and signed by an authorised signatory of DC/DC Power. The words “unless otherwise agreed in writing by DC/DC Power” in these Conditions means unless otherwise agreed in writing and signed by an authorised signatory of DC/DC Power. A list of authorised signatories is available upon request.

2.5 Any illustrations, weights, measures, temperatures, capacities, descriptions or specifications contained in DC/DC Power’s catalogues, samples, price lists or other advertising material are intended merely to present a general picture of the Services and/or Goods and will not form a representation or be part of the Contract unless otherwise agreed by DC/DC Power in writing.

- 2.6 The acceptance of all orders by DC/DC Power is subject to the receipt by DC/DC Power of credit references for the Customer which DC/DC Power considers to be satisfactory.
- 2.7 DC/DC Power reserves the right to correct any clerical or typographical errors made by its employees at any time.

### **3. SPECIFICATION AND INFORMATION**

- 3.1 If Services are carried out or Goods are made to a specification or design supplied by the Customer or any third party on behalf of the Customer then the Customer will indemnify DC/DC Power against any infringement of any patent, design right, registered design, trademark, tradename, copyright or other intellectual property right and any loss, damage or expense it may incur because of any such infringement.
- 3.2 DC/DC Power reserves the right to make any reasonable changes in the specification of the Services or Goods which are required to conform with any applicable safety or other statutory requirements. Where the Services are to be carried out or the Goods supplied to the Customer's specification DC/DC Power reserves the right to make any reasonable changes to the specification of the Services or Goods which do not materially affect the quality or performance of the Goods or Services.
- 3.3 DC/DC Power accepts no responsibility for failure to comply with any planning or building regulations, local bye-law, statutory or other regulations in connection with the supply of the Services or Goods. DC/DC Power shall not be responsible for obtaining any consents and approvals unless DC/DC Power agrees in writing to obtain the same on behalf of the Customer. All fees and charges made by any person or authority and all administration charges of DC/DC Power in connection therewith will be payable by the Customer.
- 3.4 If the customer or its agents principals or any statutory body requires conformance with Construction Design Management Regulations then this shall be provided by DC/DC Power at additional cost.

### **4. PRICES**

- 4.1 Unless otherwise agreed in writing with DC/DC Power, prices charged will be those current at the time of completion of the Services or delivery of the Goods and DC/DC Power may increase its prices at any time to take account of any increase in the cost to DC/DC Power of purchasing any goods or materials or manufacturing, working on or supply of Services and/or goods. DC/DC Power may increase its prices at any time to take account of any error or inadequacy in any specification, instruction or design provided by the Customer or any modification carried out by DC/DC Power at the Customer's request.
- 4.2 All prices quoted are exclusive of VAT and the Customer shall pay any and all duties, taxes or other government charges payable in respect of the Services and/or Goods.
- 4.3 Where DC/DC Power has to spend time waiting or time is lost due to the act of default of the Customer or its servants or a Third Party Contractor or other agent of the Customer, DC/DC Power reserves the right to make an extra charge in respect thereof.
- 4.4 Where DC/DC Power reasonably deems it necessary to accommodate the same in the region of the job site DC/DC Power reserves the right to charge the Customer for accommodation and subsistence of DC/DC Power's Technicians or servants or of its agents.
- 4.5 In the event that DC/DC Power is prevented from carrying out the Services and/or delivering the Goods during the period specified due to the act or default of the Customer, its servants, any Third Party Contractor or other agent of the Customer then DC/DC Power shall be deemed to have performed the Contract and shall be entitled to payment therefore in accordance with sub-clause 5.2 hereof.
- 4.6 Unless otherwise agreed in writing by DC/DC Power, quoted prices assume that Services will be carried out during the normal working hours of DC/DC Power. The normal working hours of DC/DC Power are 8.00 am to 18:00 Monday to Friday excluding weekends and public and bank holidays.

- 4.7 In particular but without prejudice to the generality of the foregoing DC/DC Power shall be entitled to increase its charges to the Customer by such reasonable amounts as may be necessary to reflect increased labour rates DC/DC Power has to pay during any public holidays or any period when demand for labour is increased

## **5. PAYMENT**

- 5.1 For the purpose of these Conditions the Relevant Date means the date on which either (a) DC/DC Power despatches any consignment of the Goods or (b) the Customer takes delivery of any consignment of the Goods at the Company's premises or (c) the Customer defaults in his obligation under clause 6.1, whichever shall first occur, or (d) (in the case of Services) the Services or any part thereof are carried out or shall have been deemed to have been carried out in accordance with sub-clause 4.5.
- 5.2 DC/DC Power shall be entitled to submit an invoice on the Relevant Date or at any time thereafter. Subject so such other agreement as is made between DC/DC Power and the Customer full payment will be made by the Customer in cash not later than thirty days after the invoice date.
- 5.3 Time for payment will be of the essence of the Contract.
- 5.4 Without prejudice to any other rights it may have DC/DC Power reserves the right to charge interest on all overdue accounts at 4 % above Lloyds TSB Bank Plc base rate from time to time. For the purposes of clauses 7.2 and 9 the full purchase price of the Services and/or Goods will include any interest payable under this clause.
- 5.5 Non-payment on a due date will entitle DC/DC Power to demand payment of all outstanding balances under the Contract and/or other contracts between DC/DC Power and the Customer whether due or not and/or cancel all outstanding orders or contracts with the customer without prejudice to any other rights it may have.
- 5.6 The Customer will not be entitled to withhold payment of any invoice by reason of any right of set-off or any claim or dispute with DC/DC Power.
- 5.7 Without prejudice to any other rights it may have DC/DC Power will have the right to suspend performance of its obligations under the Contract or any other contract between DC/DC Power and the Customer if it reasonable believes that the Customer will not make payment in accordance with this clause.

## **6. DELIVERY OR COMPLETION OF SERVICES**

- 6.1 The Customer will give DC/DC Power all necessary instructions and approvals for carrying out the Services and delivering the Goods within seven days of notification that DC/DC Power is ready to carry out the Services or deliver the Goods (as the case may be). Unless otherwise agreed in writing by DC/DC Power the Customer will take delivery of the Goods at the nearest unloading point to the Customer's work or appropriate site and the Customer shall be responsible for notifying DC/DC Power of any restriction of service access such as weight, height or unloading hours.
- 6.2 Whilst DC/DC Power will use its reasonable endeavours so far as operational circumstances allow to commence or complete the Services or deliver Goods by or within any agreed dates, time or periods, DC/DC Power will not be liable for any failure to commence or complete the Services or deliver Goods by or within any such dates, times or periods. In particular but without prejudice to the generality of the foregoing the Customers accepts that DC/DC Power may be delayed in providing Services where demands from other Customers is exceptionally high. In addition to the foregoing the carrying out of Services and delivery of Goods upon agreed dates/times will also be conditional upon receipt of final instructions for performance or delivery being received promptly. The Services may be performed and the Goods delivered by DC/DC Power in advance of any agreed date upon giving reasonable notice to the Customer.
- 6.3 If DC/DC Power is delayed in or prevented from carrying out the Services or delivering the Goods due to war, government or parliamentary restriction, strike, lock-outs, fire, floods, explosions, labour disturbances, trade disputes, damage to or destruction of the Goods, breakdown of machinery, shortages of labour or of raw materials, or Act of God or due to any other cause beyond the reasonable control of DC/DC Power, DC/DC Power may cancel or suspend the Customer's order without incurring any liability for loss or damage.

- 6.4 DC/DC Power will try to comply with reasonable requests by the Customer for postponement of the performance of the Services or delivery of the Goods but shall not be under any obligation to do so. Where performance or delivery is postponed otherwise than due to DC/DC Power's default the Customer shall pay all costs and expenses of delay including a reasonable charge for storage and transportation.

## **7. CANCELLATION OR DEFERMENT**

- 7.1 DC/DC Power may defer any performance of Services or deliveries of Goods (or any services or goods under any other contract between DC/DC Power and the Customer) or treat the Contract between itself and the Customer as determined if the Customer fails to make any payment when it becomes due or enters into any composition or arrangement with its creditors or has a wind-up order made against it or has an administrative receiver or administrator appointed or passes a resolution for winding-up or a Court makes an order to that effect or if the Customer breaches any of these Conditions.
- 7.2 Clause 7.1 is without prejudice to DC/DC Power's rights to the full purchase price for the Services and/or Goods (or any other services and/or goods under any other contract) and damages for any loss suffered in consequence of the determination of the Contract (or any other contract between DC/DC Power and the Customer).
- 7.3 Cancellation by the Customer will only be accepted at the discretion of DC/DC Power. Acceptance of the cancellation will only be binding on DC/DC Power if in writing and signed by a Director of DC/DC Power. Any cost or expenses incurred by DC/DC Power up to the date of cancellation and all loss or damage resulting from the cancellation will be paid by the Customer to DC/DC Power forthwith.

## **8. DEFECTIVE SERVICES OR GOODS – LIMITATION OF LIABILITY**

- 8.1 The Customer will carefully examine the Goods on receipt and notify DC/DC Power and the carrier immediately of any damage or shortage. Within seven days of receipt or (in the case of total loss) of receipt of the invoice or other notification of despatch the Customer will give DC/DC Power written confirmation of the damage, loss or shortage. Within fourteen days of request the Customer will provide authority for DC/DC Power's servants or agents to inspect any damaged Goods. DC/DC Power's liability, if any, will be limited to replacing or (at its option) repairing such goods. DC/DC Power will have no liability for any consequential loss arising out of such damage, loss or shortage.
- 8.2 Save as otherwise provided in these Conditions DC/DC Power's liability in respect of any defect in or failure of default in work done (which expression shall, without prejudice to its generality, include all work done in or in connection with the design, manufacture, treatment, testing, erection, installation, repair or servicing of any Goods) or Goods supplied is limited to carrying out again any Services which it has failed to perform properly in accordance with the Contract and replacing or (at its option) repairing or paying for the repair or replacement of Goods which are found to be defective by reason of faulty or incorrect design, workmanship, parts or materials or default in work done.
- 8.3 DC/DC Power's liability for any direct loss or damage sustained by the Customer as a result of any error in any weight, dimension, capacity, performance or other description or information which has formed a representation or is part of the Contract will not exceed the price of the Services and/or Goods in respect of the which the description or information is incorrect.
- 8.4 Save in the case of batteries and subject to the provision of sub-clause 8.5 DC/DC Power will only be liable to the Customer in respect of the matters set out in sub-clauses 8.2 and 8.3 **PROVIDED THAT** the Customer informs DC/DC Power of the defect or default as soon as is reasonably practicable and in any event the defect or default is notified to DC/DC Power within six months of delivery of the Goods in the case of reconditioned Goods and twelve months of the delivery of the Goods in the case of new Goods or within twelve months of the completion of the Services and authority is provided for DC/DC Power's servants or agents to inspect the same.
- 8.5 In the case of batteries DC/DC Power will only be liable to the Customer in respect of the matters set out in sub-clauses 8.2 and 8.3 **PROVIDED THAT** the Customer informs DC/DC Power of the defect or default as

soon as is reasonably practicable and in any event the defect or default is notified to DC/DC Power within the time period of the guarantee which accompanies the battery.

- 8.6 Save as provided in these Conditions DC/DC Power shall have no other or further liability in respect of any direct loss or loss of profits or other economic, indirect or consequential loss or damage sustained by the Customer arising from or in connection with any such defect default or error as aforesaid.
- 8.7 Where DC/DC Power agrees to carry out again any Service or repair or replace Goods and time specified for performance or delivery under the Contract will be extended for such period as DC/DC Power may reasonably require.
- 8.8 Except for the terms implied in the Contract by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982, all conditions, warranties and other terms, express or implied, statutory or otherwise, are expressly included, save insofar as they are contained in these Conditions or otherwise expressly agreed by DC/DC Power in writing. If any legislation makes it unlawful to exclude or purport to exclude any terms from the Contract this clause will not apply to such term.
- 8.9 Except in respect of death or personal injury and save as hereinafter provided DC/DC Power shall not be liable to the Customer for any damage or for any direct or consequential loss incurred by the Customer in consequence of any negligence on the part of DC/DC Power or negligence or wilful default on the part of its servants or agents in or in connection with the supply of any Goods or in the carrying out of any work (which expression shall, without prejudice to its generality, include all work done or in connection with the design, manufacture, testing, erection, installation, repair or servicing of any Goods) or in the preparation or provision of any information or advice.

#### **9. RETENTION OF TITLE**

The following provisions shall apply to all contracts relating to Goods which under the Contract DC/DC Power agrees to supply to the Customer. No termination of the Contract shall prejudice limit or extinguish DC/DC Power's rights under this paragraph.

- 9.2 The Customer is hereby licensed to sell on the Goods and any products incorporating any of them. The Customer shall, immediately upon receipt of the products of sale, and whether or not payment has become due under clause 5 hereof, remit to DC/DC Power the full purchase price of the Goods sold on less any part thereof which has already been paid and until such amount has been so remitted shall hold such amount as trustee and agent for DC/DC Power.
- 9.3 The Customer shall maintain all appropriate insurance in respect of the Goods from the date or dates on which the risk therein passes to it. In the event of any loss or damage occurring while the Goods remain the property of DC/DC Power the Customer shall immediately on receipt of the insurance monies remit to DC/DC Power the full replacement purchase price of the Goods lost or damaged less any part thereof which has already been paid and until such amount has been so remitted shall hold such amount as trustee and agent for DC/DC Power. For the avoidance of doubt the provisions of this sub-clause do not affect DC/DC Power's obligations under sub-clause 5.2
- 9.4 The licence granted under sub-clause 9.2 above shall be terminable forthwith at any time upon notice by DC/DC Power to the Customer.

#### **10. RISK IN THE GOODS AND OTHER GOODS**

- 10.1 Unless otherwise agreed in writing by DC/DC Power, the risk in the Goods will pass to the Customer on the Relevant Date or, if delivery is postponed at the Customer's request, when the Goods are ready for despatch.
- 10.2 If the Customer delivers goods or materials to DC/DC Power its servants or agents such goods shall be at the risk of the Customer who agrees to fully insure the same.

#### **11. INSTALLATION AND OTHER SERVICES**



[www.dcdcpower.co.uk](http://www.dcdcpower.co.uk)

DC/DC Power is a trading division of  
Devon & Cornwall DC Power Ltd.

Varley Farm, Prieford, Devon, EX31 4DX U.K.

phone +44 (0)1271 323833 fax +44 (0)1271 323877

Registered in the U.K. 4407349 VAT registration GB 794320910



- 11.1 If under the contract the installation, testing or servicing of the Goods is to be carried out by or under the supervision of DC/DC Power, the Customer warrants that it will make all necessary preparations to the site by such date as may be specified in the contract or reasonably required by DC/DC Power and that it will provide suitable protection of the Goods from the time of delivery and all information and facilities required to enable DC/DC Power to perform its obligations.
- 11.2 DC/DC Power will indemnify the Customer in respect of any direct damage to property (but not indirect loss, economic loss or loss of profits) caused in the course of installation, testing, servicing or repair by the negligence of DC/DC Power or the negligence or wilful default of its servants or agents. Provided that DC/DC Power's liability hereunder shall not exceed the sum of £2,000,000.00 (Two Million Pounds) for any event or connected series of events and shall not exceed in aggregate the sum of £3,000,000.00 (Two Million Pounds).
- 11.3 Where DC/DC Power deems that specialist services are necessary DC/DC Power reserves the right to employ third parties in connection with the installation of the Goods or the performance of any other Services required under the Contract.
- 11.4 Any persons provided by the Customer to assist in the performance of the erection or other work shall be deemed to be an employee of the customer and the Customer shall indemnify DC/DC Power against all and any claim, demand, costs, charges and expenses in respect of claims arising in respect of such persons or due to the act or default of such persons where the same is due to the negligence of DC/DC Power or its agents.
- 11.5 The Customer will indemnify DC/DC Power against any claim arising out of any instruction given by the Customer save where the claim arises to the negligence of DC/DC Power or its agents.
- 11.6 Unless otherwise agreed in writing by DC/DC Power the Customer will provide, free of charge, all electric, power, lighting, water, lubricating oil, compressed air and such other services as may be normally available on the Customer's site for the satisfactory completion of the Services. The Customer warrants that any equipment or facilities which it permits DC/DC Power or DC/DC Power's servants or agent to use are in a safe condition and in good working order. The Customer agrees to indemnify DC/DC Power against any loss, claim, damage, expense or liability it may incur as a result of a breach of the foregoing warranty by the Customer.

## **12. SAFETY**

- 12.1 The Customer warrants that it will at all times:
- 12.1.1 Provide a safe environment for DC/DC Power's employees, agents or sub- contractors.
- 12.1.2 Comply with all statutory or other regulations and codes of practice in connection with providing a safe environment and procure that its servants, agents and visitors on site so comply.
- 12.1.3 Notify DC/DC Power prior to commencement of the Services of any dangers on site.
- The Customer will indemnify DC/DC Power in respect of any loss incurred due to the Customer's breach of such warranties.
- 12.2 The Customer warrants that it will pass on to its staff, agents, contractors, etc, all information as to the use and safe handling of the Goods which have been provided by DC/DC Power.
- 12.3 The Customer warrants that neither it nor its servants or agents will require DC/DC Power, its servants or agents to carry out any Services which are or may become dangerous. In event the DC/DC Power deems that the Services or the site will endanger its servants, agents or any third party the DC/DC Power shall be entitled to cease work immediately and, save where such danger has arisen due to the act or default of DC/DC Power its servants or agents, the Customer will pay DC/DC Power for any loss it may incur as a result of such stoppage.

- 12.4 The Customer will ensure that for safety reasons any employee or agent of DC/DC Power is at all times accompanied on site by a responsible employee of the customer.
- 12.5.1 The Customer warrants that unless otherwise agreed in writing and without prejudice to the generality of the foregoing provisions of this clause 13 all Third Party Contractors or other agents of the customer shall specifically conform to the latest issues of any relevant standards, codes or guide-lines:
- 12.5.2 All health and safety provisions (including all EC directives; all statutes and codes of practice; the Electricity at Work Regulations 1969/89; COSSH Regulations; The current edition and amendment of BS7671 Requirements for electrical installations IEE wiring regulations the Regulations for Electrical Engineers; The Electricity Council engineering recommendations (e.g.: G59, G37 and G5/3); the National Fire Protection Associate standards.
- 12.5.3 In the absence of any relevant standard, statute, code, or guide-line then the Customer shall notify the Company prior to the commencement of the Contract to which standard the relevant Third Party Contractor or other agent is working.
- 12.5.4 The Customer warrants that at the commencement of the Contract all Third Party Contractors will hold valid certification to ISO 9000.

### **13. LOAD TESTING AND IMPACT TESTING**

In the event that the Customer requests that DC/DC Power carry out load testing and/or impact testing of the Customer's equipment or building fabric as part of the Services, DC/DC Power agrees that this will be carried out to DC/DC Power's specifications. The Customer hereby acknowledges that it is aware that such testing may cause damage to the Customer's equipment and hereby agrees to indemnify and keep DC/DC Power indemnified against any liability it may incur due to such testing save where such liability arises due to the gross negligence of DC/DC Power its servants or agents. In the event that liability arises due to the gross negligence of DC/DC Power the liability of DC/DC Power in respect thereof shall not exceed the sums specified in sub-clause 11.2 of these Conditions.

### **14. DRAWINGS, DATA AND CONFIDENTIAL INFORMATION**

- 14.1 All plans, drawings, designs, information technology, electronically stored and transmitted information or other information supplied by or on behalf of DC/DC Power are supplied upon the express condition that the Customer will not without the prior written consent of DC/DC Power:
- 14.1.1 give away, lend, exhibit, sell or take extracts or copies thereof;
- 14.1.2 use them in any way except for the purpose of the Contract.
- 14.2 Copyright and all other intellectual property rights in the same shall vest in and remain the property of DC/DC Power.

### **15. GENERAL**

- 15.1 These conditions and the contract are governed by English Law and the parties agree to submit to the jurisdiction of the English Courts in the event of any dispute.
- 15.2 The headings in these Conditions are inserted for convenience only. They are not to affect their interpretation or construction.
- 15.3 If any provision of these Conditions becomes illegal or void for any reason, the validity of the remaining provisions shall not be affected.

- 15.4 Failure by DC/DC Power to enforce strict compliance with any of these Conditions by DC/DC Power will not constitute a waiver of any of the Conditions.

-----ends-----