

## **DLR Holdings Ltd – Trading as Tradpak. Terms and Conditions of Sale and Trading**

### **Definitions**

Company	Means DLR Holdings Ltd. Company Number 06927416 registered office Brancepeth Place, Armley Road, Leeds, West Yorkshire, LS12 2EG together with its subsidiary and holding companies and any subsidiaries of such holding companies whether direct or indirect from time to time
Contract	Means the contract for the sale and purchase of Goods covered by and incorporating these conditions.
Customer	Means the person, or persons, firm or company who or which accepts a quotation of the Company for the sale of Goods and orders those Goods from the Company
Goods	Means the subject matter of the contract including (but not limited to) raw materials, waste plastics, finished or semi-finished materials, or articles, machinery, parts, spares, commodities etc. (It includes any instalment of the goods or any parts for them)
Services	Means any services ordered or otherwise purchased under these Conditions
Writing	Includes email, telex, facsimile transmissions and comparable means of communication

For clarity the Customer's attention is drawn to the fact that these conditions apply to services provided by the Company and for the collection of Goods from Customers in the same way as they apply to Goods supplied by the Company to Customers.

### **Basis of the sale**

These Conditions shall govern the Contract to the exclusion of any other terms and conditions subject to which any such quotation is accepted or purported to be accepted, or any such order is made or purported to be made by the Customer. They shall also govern in the absence of any written agreement between the Company and the Customer any subsequent orders placed by the Customer with the Company for the provision by the Company of Goods and services.

The Company's employees or agents are not authorised to make any representations or give any advice or recommendations concerning the Goods unless confirmed by the Company in Writing. In entering into the Contract the Customer acknowledges that it does not rely on, and waives any claim for breach of any such representations advice or recommendations which are not so confirmed.

Any information appearing in brochures, promotional literature, data sheets, advertising, catalogues, or on the Company's web site and drawings and any advice or recommendation given by the Company or its employees or agents to the Customer or its employees or agents as to storage, application or use of the Goods which is not subsequently confirmed in Writing by the Company is followed or acted upon entirely at the Customers own risk and accordingly the Company shall not be liable for any such information, advice or recommendation which is not so confirmed.

Any typographical clerical or other error or omission in any sales literature, quotation, price list, acceptance offer, invoice or other document or information issued by the Company shall be subject to correction without any liability on the part of the Company.

In the event of any conflict between those terms set out in the Customers order or otherwise stipulated by the Customer and these terms and conditions, then these conditions shall prevail.

Any variations to the Contract must be confirmed by the Company in writing.

### **Orders and Specification**

No order submitted by the Customer shall be deemed to be accepted by the Company unless and until confirmed in Writing by the Company's authorised representative.

The Customer shall be responsible to the Company for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Customer and for giving the Company any necessary information relating to the Goods within sufficient time to enable the Company to perform the Contract in accordance with its terms.

The quantity and description of and any specification for the Goods shall be those set out in the Company's quotation (if accepted by the Customer) or the Customer's order (if accepted by the Company)

If the Goods are to be manufactured or any process is to be applied to the Goods by the Company in accordance with a specification submitted by the Customer, the Customer shall indemnify the Company against all loss, damages costs and expenses awarded against or incurred by the Company in connection with, or paid or agreed by the Company in settlement of any claim for infringement of any patent, copyright, design, trademark or other industrial or intellectual property rights of any other industrial or intellectual property rights of any other person which results from the Company's use of the Customers specification.

The Company reserves the right to make any changes to the specifications of the Goods which are required to conform with any applicable safety or other statutory requirements or, where the Goods are to be supplied to the Company's specification, which do not materially affect their quality or performance.

No order which has been accepted by the Company can be cancelled by the Customer except with the agreement in writing of the Company and on the terms that the Customer shall indemnify the Company in full against all loss (including loss of profit) costs (including the cost of labour and materials used), damages, charges and expenses incurred by the Company as a result of cancellation.

### **Price of Goods**

The price of the Goods shall be the Company's quoted price or where no price has been quoted (or quoted price is no longer valid) the price listed in the Company's price list current at the date of acceptance of the order. All prices quoted are valid for 30 days only or until earlier acceptance by the Customer, after which time they may be altered by the Company without giving notice to the Customer.

Except as otherwise stated under the terms of any quotation or in the price list of the Company and unless agreed in writing between the Customer and the Company, all prices are on a ex works basis and where the Company agrees to deliver the Goods to the Customer's premises or such other address as the Customer may direct, the Customer shall be liable for paying the Company's charges for transport, packaging and insurance.

The price is based upon the loading and unloading of any Goods taking a maximum of 1 hour If the loading of the Goods takes in excess of 1 hour and such delay is not due to any factor under the control of the Company, without prejudice to the generality of next paragraph, the Company reserves the right to charge a standard fee for such delay.

The Company reserves the right, by giving notice to the Customer at any time before delivery to increase the price of the Goods to reflect any increase in the cost to the Company which is due to any factor beyond the control of the Company including, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or any other cost of manufacture or delivery, any change in delivery dates, quantities or specifications for the Goods which is requested by the Customer or any delay caused by any instructions of the Customer or failure of the Customer to give the Company adequate information or instructions.

The price of the Goods is exclusive of any applicable value added tax which the Customer shall be liable to pay to the Company.

### **Terms of Payment**

Subject to any special terms agreed in Writing between the Customer and the Company, the Company shall invoice the Customer for the price of the Goods on or at any time after delivery of the Goods unless the Goods are to be collected by the Customer or the Customer wrongfully fails to take delivery of the Goods, in which event the Company shall be entitled to invoice the Customer for the price at any time after the Company has notified the Customer that the Goods are ready for Collection or (as the case may be) the Company has tendered delivery of the Goods.

The Customer shall pay each invoice (without any deduction or set off whatsoever) within 30 days of the date of the Company's invoice or notice being given to the Customer by the Company pursuant to sub clause above, whichever occurs first and the Company shall be entitled to recover the Charges, notwithstanding that the property the Goods has not passed to the Customer. The time of payment shall be of the essence of the Contract. Receipts for payment will be issued only upon request. Payments in cash may be sent by registered post but the Company shall accept no responsibility for the loss of any such remittance.

If the Customer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to:

suspend all or any further deliveries to the Customer made under that or any other contract with the Customer and in such event the Customer shall not be released from its obligations to the Company under that or any other contract or cancel the Contract or any other contract with the Customer and to claim damages from the Customer for breach of contract;

charge the Customer interest (both before and after any judgement) on the amount unpaid, at the rate of 4 per cent per annum above Barclays Bank base rate from time to time accruing daily, until payment in full is made (a part month being treated as a full month for the purpose of charging interest)

### **Delivery**

Delivery of the Goods shall be made by the Company to the Customer's premises or some other place for delivery as notified in Writing by the Customer.

Any dates quoted for delivery of the Goods or any part thereof are approximate only and the Company shall not be liable for any delay in performance howsoever caused. Time for delivery shall not be of the essence unless previously agreed by the Company in Writing. The Goods may be delivered by the Company in advance of the quoted delivery date upon giving reasonable notice to the Customer.

Where the Goods are to be delivered in instalments, each instalment shall constitute a separate contract and failure by the Company to deliver any one or more of the instalment's in accordance with these Conditions or any claim by the Customer in respect of any one or more instalments shall not entitle the Customer to treat the Contract as a whole as repudiated.

If the Company fails to deliver the Goods (or any instalment) for any reason other than any cause beyond the Company's reasonable control or the Customer's fault, and the Company is accordingly liable to the Customer, the Company's liability shall be limited to the additional cost above the Charges, if any, which the Customer would need to incur (in the cheapest available market) to obtain similar Goods to replace those not delivered.

If the Customer fails to take delivery of the Goods or fails to give the Company adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Customer's reasonable control or by reason of the Company's fault) then, without prejudice to any other right or remedy available to the Company, the Company may store the Goods until actual delivery and charge the Customer for the reasonable costs (including insurance) or storage; or sell the Goods at the best price readily available (after deducting all reasonable storage and selling expenses) account to the Customer for the excess over the price under the contract or charge the Customer for any shortfall below the price under the contract.

Where the Company agrees to organise transport of the Goods any claims relating to partial loss in transit must be made in Writing to reach the Company within 7 days of the date of delivery. Claims relating to non-delivery must be made in Writing to reach the Company within 10 days of the date of dispatch.

### **Risk and Property**

Risk of damage to or loss of the Goods shall pass to the Customer;

In the case of Goods to be delivered at the Company's premises at the time when the Company notifies the Customer that Goods are available for collection; or

In the case of Goods to be delivered otherwise than at the Company's premises at the time of delivery or if the customer wrongly fails to take delivery of the Goods the time when the Company has tendered delivery of the Goods.

Notwithstanding delivery and the passing of risk in the Goods or any other provision of these Conditions the property in the Goods shall not pass to the Customer until the Company 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 Company to the Customer for which payment is due.

Until such time as the property in the Goods passes to the Customer the Customer shall hold the Goods on a fiduciary basis as the Company's bailee and shall keep the Goods separate from those of the Customer and third parties and properly stored, protected and insured and identified as the Company's property. Until that time the Customer shall be entitled to resell or use the Goods in the ordinary course of its business but shall account to the Company for the proceeds of sales or otherwise of the Goods whether tangible or intangible, including insurance proceeds and shall keep all such proceeds separate from any monies or property of the customer and third parties and in the case of tangible proceeds properly stored protected and insured

Until such time the property of the Goods passes to the Customer (and provided the Goods are still in existence and have not been resold) the Company shall be entitled at any time to require the Customer to deliver up the Goods for the Company and if the customer fails to do so forthwith to enter upon any premises of the customer or any third party where the Goods are stored and repossess the Goods

If the Goods are incorporated onto other products the property in those other products is, upon such incorporation ipso facto transferred to the Company and the Customer as bailee of them for the Company will store the same for the Company in a proper manner without charge to the Company

The Customer 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 Company but if the Customer does so all moneys owing by the Customer to the Company shall (without any prejudice to any other right or remedy of the Company) forthwith become due and payable.

### **Warranties and Liabilities**

Unless expressly stated by the Company no warranties are provided with the Goods, it is up to the Customer to confirm any warranties that may be applicable in each case.

Any claim by the Customer which is based on any defect in the quality or condition of the Goods or their failure to correspond with specification shall (whether or not delivery is refused by the Customer) be notified in Writing within 7 days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure. If delivery is not refused and the Customer does not notify the Company accordingly the Customer shall not be entitled to reject the Goods and the Company shall have no liability for such defect or failure and the Customer shall be bound to pay the price as if the Goods had been delivered in accordance with the contract.

Where any valid claim in respect of any of the Goods which is based on any defect in the quality or condition of the Goods or their failure to meet specification is notified to the Company in accordance with these conditions the Company shall be entitled to replace the Goods (or the part in question) free of charge or at the Company's sole discretion, refund to the Customer the price of the Goods (or a proportionate part of the price). But the Company shall have no further liability to the customer.

Except in respect of death or personal injury caused by the Company's negligence, the Company shall not be liable to the Customer arising by reason of any representation, or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for any consequential loss or damage (whether for loss of profit or otherwise), costs, expenses or other claims for compensation whatsoever (whether caused by the negligence of the Company, its employees or agents or otherwise) which arise out of or in connection with the Service or supply of the Goods or their use or resale by the Customer except as expressly provided in these conditions.

The Company shall not be liable to the Customer 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 Company's obligations in relation to the Contract, if the delay or failure was due to any cause beyond the Company's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Company's reasonable control:

Act of God, explosion, flood, tempest, fire or accident;

War or threat of war, sabotage, insurrection, civil disturbance or requisition;

Acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;

Import or export regulations or embargoes;

Strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Company or of a third party);

Difficulties in obtaining raw materials, labour, fuel, parts or machinery;

Power failure or breakdown in machinery.

If the Company is prevented from performance of its obligations for a continuous period in excess of three months, the Company may terminate the Contract forthwith on service of a Written notice on the Customer in which case the Company shall be entitled to be paid for all work prior to the date of termination and for any unavoidable commitments entered into by the Company prior to the date of such termination.

### **Indemnity**

The Customer agrees to indemnify and keep indemnified the Company from and against all costs, claims, demands, liabilities, expenses, damages or losses (including without limitation consequential losses and loss of profit, and all interest, penalties and legal and other professional costs and

expenses) arising out of or in connection with the Customer's negligence, default or breach of the Contract.

### **Set Off**

The Customer agrees that the Company is hereby permitted to set off against any sum due to the Customer any sum which the Company may owe to:

any subsidiary of the Customer; or

any parent of the Customer; or

any other Company which has any common shareholder with the Customer - "Connected Companies"

The Customer warrants that it is authorised by each and every one of the Connected Companies to grant to the Company the right set out above.

In so far as any signatory to these terms is also an officer of any one or more of the Connected Companies he or she is deemed to have accepted these terms on behalf of the Customer and each of the Connected Companies of which he or she is an officer.

In so far as the Customer is a shareholder of any one or more of the Connected Companies then the Customer in its capacity as such a shareholder accepts these terms on behalf of such Connected Companies.

The Customer acknowledges the Company's right to set off any sums which the Customer owes to the Company against any sum owed by the Company to the Customer.

### **General**

The Company may perform any of its obligations or exercise any of its rights hereunder by itself or through any other member of its group, provided that any act or omission of any such other member shall be deemed to be the act or omission of the Company.

The Customer shall not be entitled to assign the whole or any part of its rights and/or obligations under the Contract without the prior written consent of the Company.

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 on this provision to the party giving the notice. A notice shall be deemed to have been received, in the case of a facsimile, upon transmission and, in the case of a letter, forty eight hours after posting. In proving service by letter, it shall be sufficient to show that the envelope containing the notice was properly addressed and stamped and duly posted. In proving service by facsimile transmission, it shall be necessary only to produce a report confirming uninterrupted transmission to the recipient.

No waiver by the Customer of any breach of the Contract by the Company shall be considered as a waiver of any subsequent breach of the same or any other provision.

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 provision in question shall not be affected thereby unless such provision goes to the root of the Contract

The Conditions shall constitute the entire agreement in relation to the Contract and no modification or waiver thereof shall be valid unless made in Writing expressly for the purpose and signed by an authorised officer of the Customer and of the Company.

The Contract shall be governed by the laws of England and the Customer agrees to submit to the exclusive jurisdiction of the English courts.

A person who is not a party to this Contract shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to rely upon or enforce any term of this Contract provided that this does not affect any right or remedy which exists or is available apart from the Act.