

## CONDITIONS OF PURCHASE

### 1. Interpretation

1.1 **Definitions.** In these Conditions, the following definitions apply:

**Business Day:** a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

**Contract:** the contract between Davro and the Supplier for the supply of Goods and/or Services in accordance with these Conditions.

**Davro:** means Davro Steel Limited company number 00471310 registered in England with the following registered office Unit 9, Hayes Trading Estate, Hingley Road, Halesowen, West Midlands, B63 2RR.

**Deliverables:** all documents, content, photographs, products and materials developed by the Supplier or its agents, contractors and employees as part of or in relation to the Services in any form or media, including without limitation drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts).

**Goods:** the goods (or any part of them) set out in the Order.

**Goods Specification:** any specification for the Goods, including any related plans and drawings, that is agreed in writing by Davro and the Supplier.

**Intellectual Property Rights:** patents, copyright and related rights, trade marks, rights in designs, database rights and all other intellectual property rights.

**Order:** Davro's order for the supply of Goods and/or Services.

**Services:** the services, including without limitation any Deliverables, to be provided by the Supplier under the Contract as set out in the Service Specification.

**Service Specification:** the description or specification for Services agreed in writing by Davro and the Supplier.

**Supplier:** the person or firm from whom Davro purchases the Goods and/or Services.

1.2 **Construction.** In these Conditions (a) references to a party includes its successors or permitted assigns; and (b) a reference to any law is a reference to such law as amended or re-enacted (including any subordinate legislation); and (c) a person includes a natural person, corporate or unincorporated body.

### 2. Basis of contract

2.1 The Order constitutes an offer by Davro to purchase Goods and/or Services from the Supplier in accordance with these Conditions. The Order shall be deemed to be accepted on the earlier of (a) the Supplier issuing written acceptance of the Order; or (b) any act by the Supplier consistent with fulfilling the Order; at which point and on which date the Contract shall come into existence ("**Commencement Date**"). All of these Conditions shall apply to the supply of both Goods and Services except where the application to one or the other is specified.

2.2 These Conditions apply to the Contract to the exclusion of any other terms that the Supplier seeks to impose or incorporate (such as conditions of sale), or which are implied by trade, custom, practice or course of dealing. By supplying Goods and/or Services to Davro, the Supplier irrevocably agrees to these conditions notwithstanding any references to the contrary or other terms (such as conditions of sale) in any acknowledgement of order.

### 3. Supply of Goods

3.1 The Supplier shall ensure that the Goods shall: (a) correspond with their description and any applicable Goods Specification; (b) be of satisfactory quality (as per the Sale of Goods Act Page 1

1979) and fit for any purpose held out by the Supplier or made known to the Supplier by Davro, expressly or by implication, and in this respect Davro relies on the Supplier's skill and judgment; (c) be free from defects in design, materials and workmanship and remain so for 12 months after delivery (unless a longer period is agreed); and (d) comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods.

3.2 Davro shall have the right to inspect and test the Goods at any time before delivery. If following such inspection or testing Davro considers that the Goods do not conform or are unlikely to comply with the Supplier's undertakings at clause 3.1, Davro shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance. Notwithstanding any such inspection or testing, the Supplier shall remain fully responsible for the Goods and any such inspection or testing shall not reduce or otherwise affect the Supplier's obligations under the Contract, and Davro shall have the right to conduct further inspections and tests after the Supplier has carried out its remedial actions.

### 4. Delivery of Goods

4.1 The Supplier shall ensure that: (a) the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition; and (b) each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, the Order number (if any), the type and quantity of the Goods (including the code number of the Goods (where applicable)), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered.

4.2 In respect of domestic contracts the Supplier shall deliver the Goods (a) on the date specified in the Order; (b) to Davro's premises at the address set out in the Order or such other location as instructed by Davro before delivery ("**Delivery Location**"); and (c) during Davro's normal hours of business on a Business Day, or as instructed by Davro .

4.3 Where the goods are being supplied from overseas then unless otherwise agreed in the Contract, the Goods shall be delivered in accordance with INCOTERMS 2010 DDP, to the place defined in the Contract or, if no such place has been defined, to Davro 's place of business.

4.4 Delivery of the Goods shall be completed on the completion of unloading of the Goods at the Delivery Location.

4.5 If the Supplier: (a) delivers less than the quantity of Goods ordered, Davro may reject the Goods; or (b) delivers more than the quantity of Goods ordered, Davro may at its sole discretion reject the Goods or the excess Goods; and in either case any rejected Goods shall be returnable at the Supplier's risk and expense. If Davro accepts the delivery, a pro rata adjustment shall be made to the invoice for the Goods.

4.6 The Supplier shall not deliver the Goods in instalments without Davro's prior written consent. Where it is agreed that the Goods are delivered by instalments, they may be invoiced and paid for separately. However, failure by the Supplier to deliver any one instalment on time or at all or any defect in an instalment shall entitle Davro to the remedies set out in clause 6.1.

4.7 Title and risk in the Goods shall pass to Davro on completion of delivery.

### 5. Supply of Services

5.1 The Supplier shall from the Commencement Date or such other date as agreed by the parties and for the duration of this Contract provide the Services to Davro in accordance with the terms of the Contract.

- 5.2 The Supplier shall meet any performance dates for the Services specified in the Order or notified to the Supplier by Davro. In providing the Services, the Supplier shall:
- 5.2.1 perform the Services with the best care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade;
  - 5.2.2 use personnel who are suitably skilled and experienced and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with this Contract;
  - 5.2.3 ensure that the Services and Deliverables will conform with all descriptions and specifications set out in the Service Specification, and that the Deliverables shall be fit for any purpose expressly or impliedly made known to the Supplier by Davro;
  - 5.2.4 provide all equipment, tools and vehicles and such other items as are required to provide the Services;
  - 5.2.5 use the best quality goods, materials, standards and techniques, and ensure that the Deliverables, and all goods and materials supplied and used in the Services or transferred to Davro, will be free from defects in workmanship, installation and design;
  - 5.2.6 comply with all applicable laws and regulations from time to time in force including the Modern Slavery Act 2015, the Bribery Act 2010 and the Data Protection Act 1998. Further the Supplier shall not engage in any activity, practice or conduct outside of the UK (or encourage or procure the same) that would constitute an offence under any such legislation if such activity, practice or conduct were carried out in the UK.
  - 5.2.7 hold all materials, equipment and tools, drawings, specifications and data supplied by Davro to the Supplier ("**Davro Materials**") in safe custody at its own risk, until returned to Davro, and not dispose or use Davro Materials other than in accordance with Davro's written instructions or authorisation.
- 6. Davro remedies**
- 6.1 If the Supplier fails to deliver the Goods and/or perform the Services by the applicable date, Davro shall, without limiting its other rights or remedies, have one or more of the following rights:
- 6.1.1 to terminate the Contract with immediate effect by giving written notice to the Supplier; and
  - 6.1.2 to claim damages for any additional costs, loss or expenses incurred by Davro which are in any way attributable to the Supplier's failure to meet such dates.
- 6.2 If the Supplier has delivered Goods that do not comply with the undertakings set out in clause 3.1, then, without limiting its other rights or remedies, Davro shall have one or more of the following rights, whether or not it has accepted the Goods:
- 6.2.1 to reject the Goods (in whole or in part) whether or not title has passed and to return them to the Supplier at the Supplier's own risk and expense;
  - 6.2.2 to terminate the Contract with immediate effect by giving written notice to the Supplier;
  - 6.2.3 to require the Supplier to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods (if paid);
  - 6.2.4 to refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;
  - 6.2.5 to recover from the Supplier any expenditure incurred by Davro in obtaining substitute goods from a third party; and
  - 6.2.6 to claim damages for any additional costs, loss or expenses incurred by Davro arising from the Supplier's failure to supply Goods in accordance with clause 3.1.
- 6.3 These Conditions shall extend to any substituted or remedial services and/or repaired or replacement goods supplied by the Supplier. Davro's rights under this Contract are in addition to its rights and remedies implied by statute and common law.
- 7. Charges and payment**
- 7.1 **The price for the Goods:** (a) shall be the price set out in the Order, or if no price is quoted, the price set out in the Supplier's published price list in force at the Commencement Date; and (b) shall be inclusive of the costs of packaging, insurance and carriage of the Goods, unless otherwise agreed in writing by Davro. No extra charges shall be effective unless agreed in writing and signed by Davro.
- 7.2 **The charges for the Services:** shall be set out in the Order, and shall be the full and exclusive remuneration of the Supplier in respect of the performance of the Services. Unless otherwise agreed in writing by Davro, the charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.
- 7.3 In respect of Goods, the Supplier shall invoice Davro on or at any time after completion of delivery. In respect of Services, the Supplier shall invoice Davro on completion of the Services. Each invoice shall include such supporting information required by Davro to verify the accuracy of the invoice, including but not limited to the relevant purchase order number.
- 7.4 In consideration of the supply of Goods and/or Services by the Supplier, Davro shall pay the invoiced amounts within **by the** end of the month following the month in which the invoice was properly rendered and received provided such invoice is properly rendered by the Supplier.
- 7.5 All amounts payable by Davro under the Contract are exclusive of valued added tax ("**VAT**"). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to Davro, Davro shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Goods and/or Services at the same time as payment is due for the supply of the Goods and/or Services.
- 7.6 Davro may at any time, without limiting any of its other rights or remedies, set off any liability of the Supplier to Davro against any liability of Davro to the Supplier whether or not either liability arises under the Contract.
- 8. Indemnity**
- 8.1 The Supplier shall keep Davro indemnified against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered incurred by Davro as a result of or in connection with:
- 8.1.1 any claim made against Davro for actual or alleged infringement of a third party's intellectual property rights arising out of, or in connection with, the manufacture, supply or use of the Goods, or receipt, use or supply of the Services, to the extent that the claim is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors;
  - 8.1.2 any claim made against Davro by a third party for death, personal injury or damage to property arising out of, or in connection with, defects in Goods, to the extent that the defects in the Goods are attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors; and
  - 8.1.3 any claim made against Davro by a third party arising out of or in connection with the supply of the Goods or the Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Supplier, its employees, agents or subcontractors.

## 9. Confidentiality

The Supplier shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to it by Davro its employees, agents or subcontractors, and any other confidential information concerning Davro 's business, its products and services which the Supplier may obtain.

## 10. Termination

10.1 Davro may terminate the Contract for convenience in whole or in part by giving Supplier 14 calendar days written notice. In such event Davro shall pay to Supplier the value of the delivered but unpaid Goods and/or Services and proven direct cost reasonably incurred by Supplier for the undelivered Goods and/or Services, however in no event more than the price for the Goods and/or Services agreed under the Contract. No further compensation will be due to Supplier.

10.2 Without limiting its other rights or remedies, Davro may terminate the Contract with immediate effect by giving written notice to the Supplier if:

10.2.1 the Supplier commits a material breach of the terms of the Contract and (if such a breach is remediable) fails to remedy that breach within 10 days of receipt of notice in writing to do so;

10.2.2 the Supplier repeatedly breaches any of the terms of the Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of the Contract;

10.2.3 Davro has genuine concerns as to the financial position of the Supplier;

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

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

## 11. Consequences of termination

On termination of the Contract for any reason, the Supplier shall immediately deliver to Davro all Deliverables whether or not then complete, and return all Davro Materials. If the Supplier fails to do so, then Davro may enter the Supplier's premises and take possession of them. Until they have been returned or delivered, the Supplier shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract.

## 12. Force majeure

12.1 Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under it if such a delay or failure result from an event, circumstances or cause beyond its reasonable control ("**Force Majeure Event**"). The Supplier shall use all reasonable endeavours to mitigate the effect of a Force Majeure Event on the performance of its obligations. If a Force Majeure Event prevents, hinders or delays the Supplier's performance of its obligations for a continuous period of more than 20 Business Days, Davro may terminate the Contract immediately by giving written notice to the Supplier.

## 13. Taxes Duties and Anti-Dumping Measures

Except as provided for under applicable incoterms, any and all taxes, duties, charges, rates, levies which may be assessed, imposed or levied by any authority in the country of destination of the goods contemplated by the present contract shall be for the account of the buyer.

In the event any taxes, duties, charges, rates, levies and anti-dumping measures shall be imposed in the country of destination by any authority over the goods after the issuance of the present contract, the buyer shall bear all this kind of additional duties and responsibility.

## 14. General

14.1 **Assignment and other dealings:** Davro may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract. The Supplier may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of Davro.

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

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

14.4 **Third parties:** A person who is not a party to the Contract shall not have any rights to enforce its terms.

14.5 **Variation:** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by Davro.

14.6 **Law:** The Contract and any dispute arising or matter relating to it shall be governed by and construed in accordance with the laws of England. Each party irrevocably agrees to the jurisdiction of the courts of England.

**Version dated 18th April 2018**