

## **Damson Technologies Term and Conditions**

### **1. Definitions**

- 1.1 "Company" shall mean Damson its successors and assigns or any person acting on behalf of and with the authority of Damson.
- 1.2 "Client" shall mean the person or entity described as such on the invoices, application for credit, quotation, work authorisation or any other forms to which these terms and conditions apply, and shall mean any person acting on behalf of and with the authority of such person or entity.
- 1.3 "Guarantor" means that person (or persons), or entity, who agrees to be liable for the debts of the Client on a principal debtor basis.
- 1.4 "Goods" shall mean Goods supplied by the Company to the Client (and where the context so permits shall include any supply of Services as hereinafter defined) and are as described on the invoices, quotation, work authorisation or any other forms as provided by the Company to the Client.
- 1.5 "Services" shall mean all services supplied by the Company to the Client and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined above).
- 1.6 "Price" shall mean the cost of the Goods as agreed between the Company and the Client subject to clause 3 of this contract.

### **2. Acceptance**

- 2.1 Any instructions received by the Company from the Client for the supply of Goods and/or the Client's acceptance of Goods supplied by the Company shall constitute acceptance of the terms and conditions contained herein.
- 2.2 Where more than one Client has entered into this agreement, the Clients shall be jointly and severally liable for all payments of the Price.
- 2.3 Upon acceptance of these terms and conditions by the Client the terms and conditions are irrevocable and can only be amended with the written consent of the Company.
- 2.4 The Client undertakes to give the Company at least fourteen (14) days notice of any change in the Client's name, address and/or any other change in the Client's details.

### **3. Price And Payment**

- 3.1 At the Company's sole discretion the Price shall be either; a) as indicated on invoices provided by the Company to the Client in respect of Goods supplied; or b) the Company's quoted Price, including any variation to the quoted Price, (subject to clause 3.2) which shall be binding upon the Company provided that the Client shall accept the Company's quotation in writing within days (5) days.
- 3.2 The Company reserves the right to change the Price in the event of a variation to the Company's quotation.
- 3.3 At the Company's sole discretion a deposit may be required.
- 3.4 Time for payment for the Goods shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due seven (7) days following the date of the invoice.
- 3.5 At the Company's sole discretion; (a) payment shall be due on delivery of the Goods, or (b) payment shall be due before delivery of the Goods, or (c) payment for approved Clients shall be made by instalments in accordance with the Company's payment schedule.
- 3.6 Payment will be made by cash, or by cheque, or by bank cheque, or by direct credit, or by any other method as agreed to between the Client and the Company. A surcharge of two and a half percent (2.5%) of the price shall apply to all payments made by credit

card.

3.7 VAT and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.

#### **4. Delivery Of Goods**

4.1 At the Company's sole discretion delivery of the Goods shall take place when; (a) the Client takes possession of the Goods at the Company's address; or (b) the Client takes possession of the Goods at the Client's address (in the event that the Goods are delivered by the Company or the Company's nominated carrier); or (c) The Client's nominated carrier takes possession of the Goods in which event the carrier shall be deemed to be the Client's agent.

4.2 At the Company's sole discretion the costs of delivery are; (a) included in the Price, or (b) In addition to the Price.

4.3 The Client shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery. In the event that the Client is unable to take delivery of the Goods as arranged then the Company shall be entitled to charge a reasonable fee for redelivery.

4.4 Delivery of the Goods to a third party nominated by the Client is deemed to be delivery to the Client for the purposes of this agreement.

4.5 The Company may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions in these terms and conditions.

4.6 The Client shall take delivery of the Goods tendered notwithstanding that the quantity so delivered shall be either greater or lesser than the quantity purchased provided that; (a) such discrepancy in quantity shall not exceed 5%, and (b) The Price shall be adjusted pro rata to the discrepancy.

4.7 The failure of the Company to deliver shall not entitle either party to treat this contract as repudiated.

4.8 The Company shall not be liable for any loss or damage whatever due to failure by the Company to deliver the Goods (or any of them) promptly or at all.

#### **5. Risk**

5.1 If the Company retains ownership of the Goods nonetheless, all risk for the Goods passes to the Client on delivery.

5.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, the Company is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Company is sufficient evidence of the Company's rights to receive the insurance proceeds without the need for any person dealing with the Company to make further enquiries.

#### **6. Title**

6.1 It is the intention of the Company and agreed by the Client that ownership of the Goods shall not pass until:

a) the Client has paid all amounts owing for the particular Goods; and b) the Client has met all other obligations due by the Client to the Company in respect of all contracts between the Company and the Client.

6.2 Receipt by the Company of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then the Company's ownership or rights in respect of the Goods shall continue.

6.3 It is further agreed that:

(a) where practicable the Goods shall be kept separate and identifiable until the Company shall have received payment and all other obligations of the Client are met; and

(b) until such time as ownership of the Goods shall pass from the Company to the Client the Company may give notice in writing to the Client to return the Goods or any of them to the Company. Upon such notice the rights of the Client to obtain ownership or any other interest in the Goods shall cease; and

- (c) the Company shall have the right of stopping the Goods in transit whether or not delivery has been made; and
- (d) if the Client fails to return the Goods to the Company then the Company or the Company's agent may enter upon and into land and premises owned, occupied or used by the Client, or any premises as the invitee of the Client, where the Goods are situated and take possession of the Goods; and
- (e) the Client is only a bailee of the Goods and until such time as the Company has received payment in full for the Goods then the Client shall hold any proceeds from the sale or disposal of the Goods on trust for the Company; and
- (f) the Client shall not deal with the money of the Company in any way which may be adverse to the Company; and
- (g) the Client shall not charge the Goods in any way nor grant nor otherwise give any interest in the Goods while they remain the property of the Company; and
- (h) the Company can issue proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Client; and
- (i) until such time that ownership in the Goods passes to the Client, if the Goods are converted into other products, the parties agree that the Company will be the owner of the end products.

## **7. Client's Disclaimer**

7.1 The Client hereby disclaims any right to rescind, or cancel the contract or to sue for damages or to claim restitution arising out of any misrepresentation made to the Client by the Company and the Client acknowledges that the Goods are bought relying solely upon the Client's skill and judgment.

## **8. Defects**

8.1 The Client shall inspect the Goods on delivery and shall within ten (10) days notify the Company of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford the Company an opportunity to inspect the Goods within a reasonable time following delivery if the Client believes the Goods are defective in any way. If the Client shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which the Company has agreed in writing that the Client is entitled to reject, the Company's liability is limited to either (at the Company's discretion) replacing the Goods or repairing the Goods.

8.2 No Goods shall be accepted for return except in accordance with 8.1 above.

## **9. Warranty**

9.1 Subject to the conditions of warranty set out in Clause 9.2 the Company warrants that if any defect in any workmanship of the Company becomes apparent and is reported to the Company within three (3) months of the date of delivery (time being of the essence) then the Company will either (at the Company's sole discretion) repair the defect or remedy the workmanship.

9.2 The conditions applicable to the warranty given by Clause 9.1 are:

- a) The warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:
  - i) Failure on the part of the Client to properly maintain any Goods; or
  - ii) Failure on the part of the Client to follow any instructions or guidelines provided by the Company; or
  - iii) Any use of any Goods otherwise than for any application specified on a quote or order form; or
  - iv) The continued use of any Goods after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
  - v) Fair wear and tear, any accident or act of God.
- b) The warranty shall cease and the Company shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without the Company's consent.
- c) In respect of all claims the Company shall not be liable to compensate the Client for any delay in either replacing or repairing the workmanship/Goods or in properly assessing the Client's claim.

9.3 For Goods not manufactured by the Company, the warranty shall be the current warranty provided by the manufacturer of the Goods. The Company shall not be bound by nor responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods.

9.4 In the case of second hand Goods, the Client acknowledges that he has had full opportunity to inspect the same and that he accepts the same with all faults and that no warranty is given by the Company as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. The Company shall not be responsible for any loss or damage to the Goods, or caused by the Goods, or any part thereof however arising.

9.5 To the extent permitted by statute, no warranty is given by the Company as to the quality or suitability of the Goods for any purpose and any implied warranty is expressly excluded. The Company shall not be responsible for any loss or damage to the Goods, or caused by the Goods, or any part thereof however arising.

#### **10. Sale of Goods Act 1893 and Sale of Goods and Supply of Services Act 1980**

10.1 This agreement is subject to the provisions of the Sale of Goods Act 1893 and the Sale of Goods and Supply of Services Act 1980 in all cases except where the Client is contracting within the terms of a trade/business (which cases are specifically excluded).

10.2 Notwithstanding clause 10.1 nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Sale of Goods Act 1893 (in particular sections 12-15), or the Sale of Goods and Supply of Services Act 1980, or any laws or legislation governing the rights of consumers, except to the extent permitted by those Acts laws or legislation.

10.3 In particular where the Client buys Goods as a consumer the provisions of Clauses 8 and 9 above shall be subject to any laws or legislation governing the rights of consumers.

#### **11. Intellectual Property**

11.1 Where the Company has designed, drawn or written Goods for the Client, then the copyright in those designs and drawings shall remain vested in the Company, and shall only be used by the Client at the Company's discretion.

11.2 The Client warrants that all designs or instructions to the Company will not cause the Company to infringe any patent, registered design or trademark in the execution of the Client's order.

#### **12. Default & Consequences Of Default**

12.1 Interest on overdue invoices shall accrue from the date when payment becomes due daily until the date of payment at a rate of 2.5% per calendar month and such interest shall compound monthly at such a rate after as well as before any judgment.

12.2 If the Client defaults in payment of any invoice when due, the Client shall indemnify the Company from and against all costs and disbursements incurred by the Company in pursuing the debt including legal costs on a solicitor and own client basis and the Company's collection agency costs.

12.3 Without prejudice to any other remedies the Company may have, if at any time the Client is in breach of any obligation (including those relating to payment), the Company may suspend or terminate the supply of Goods to the Client and any of its other obligations under the terms and conditions. The Company will not be liable to the Client for any loss or damage the Client suffers because the Company exercised its rights under this clause.

12.4 If any account remains overdue after thirty (30) days then an amount of the greater of €20.00 or 10.00% of the amount overdue (up to a maximum of €200) shall be levied for administration fees which sum shall become immediately due and payable.

12.5 Without prejudice to the Company's other remedies at law the Company shall be entitled to cancel all or any part of any order of the Client which remains unperformed in addition to and without prejudice to any other remedies and all amounts owing to the Company shall, whether or not due for payment, become immediately payable in the event that:

- a) any money payable to the Company becomes overdue, or in the Company's opinion the Client will be unable to meet its payments as they fall due; or
- b) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
- c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

#### **13. Cancellation**

13.1 The Company may cancel these terms and conditions or cancel delivery of Goods at any time before the Goods are delivered by giving written notice. On giving such notice the Company shall repay to the Client any sums paid in respect of the Price. The Company shall not be liable for any loss or damage whatever arising from such cancellation.

13.2 In the event that the Client cancels delivery of Goods the Client shall be liable for any loss incurred by the Company (including, but not limited to, any loss of profits) up to the time of cancellation.

13.3 Cancellation by the Client will also result in the forfeiture of any deposit paid by the Client to the Company.

#### **14. Data Protection Act 1988 & Data Protection Act 2003**

14.1 The Client and the Guarantor/s (if separate to the Client) authorises the Company to:

- a) collect, retain and use any information about the Client, for the purpose of assessing the Client's creditworthiness or marketing products and services to the Client; and
- b) to disclose information about the Client, whether collected by the Company from the Client directly or obtained by the Company from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or of listing (whether before or after judgement) a default by the Client on publicly accessible credit reporting databases.

14.2 Where the Client is an individual the authorities under (clause 15.1) are authorities or consents for the purposes of the Data Protection Act 1988 & Data Protection Act 2003.

14.3 The Client shall have the right to request the Company for a copy of the information about the Client retained by the Company and the right to request the Company to correct any incorrect information about the Client held by the Company.

#### **15. General**

15.1 Each clause of this contract is severable and distinct from the others. If any provision of these terms and conditions is or becomes invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

15.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Ireland and are subject to the jurisdiction of the courts of Ireland.

15.3 The Company shall be under no liability whatever to the Client for any indirect loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by the Company of these terms and conditions.

15.4 In the event of any breach of this contract by the Company the remedies of the Client shall be limited to damages. Under no circumstances shall the liability of the Company exceed the Price of the Goods.

15.5 The Client shall not be entitled to set off against or deduct from the Price any sums owed or claimed to be owed to the Client by the Company.

15.6 The Company may license or sub-contract all or any part of its rights and obligations without the Client's consent.

15.7 The Company reserves the right to review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which the Company notifies the Client of such change. Except where the Company supplies further Goods to the Client and the Client accepts such Goods, the Client shall be under no obligation to accept such changes.

15.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.

15.9 The failure by the Company to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Company's right to subsequently enforce that provision.

