



**TERMS AND CONDITIONS OF SALE ("CONDITIONS")**

**1. DEFINITIONS**

- 1.1. "Supplier" means DK Advanced Technologies, LLC.
- 1.2. "Customer" means any person, firm, company, incorporated or unincorporated association, which orders or buys Goods from Supplier.
- 1.3. "Contract of Sale" and "Order" means an individual legally binding agreement between Supplier and Customer created when the Supplier presents an offer in the form of a quotation which is accepted by the Customer signing the quotation and making an initial deposit.
- 1.4. "Goods" means the physical tangible products that are the subject of the Contract.
- 1.5. "Invoice" means the invoice given or dispatched to Customer detailing the Goods and the Price.
- 1.6. "Price" means the total price to be paid by Customer to Supplier for the Goods as specified on the Invoice which shall include Sales Tax where applicable and/or other taxes, duties and appropriate other charges.

**2. ACCEPTANCE OF ORDERS**

- 2.1. The Conditions set out herein cannot be altered, added to or substituted by other Conditions unless expressly accepted in writing by a person authorized to do so on Supplier's behalf.
- 2.2. An Order is placed by Customer by its entry into a Contract of Sale with Supplier as defined by Section 1.3.

**3. DELIVERY OF GOODS**

- 3.1. Unless otherwise agreed with Customer, Supplier shall affect delivery of Goods through a carrier nominated by Supplier at Customer's expense.
- 3.2. Risk of Loss shall pass to Customer when the Goods are delivered to the named place in Suppliers documentation.
- 3.3. Customer has an affirmative obligation to identify any damages prior to acceptance of the delivery by signing the Bill of Lading. Failure to follow these procedures constitutes a waiver of any claim against the Supplier premised upon such alleged damage.
- 3.4. Upon arrival of shipment, Customer must inspect the packaging of the equipment. If ANY damage is discovered, a descriptive note is to be added to the transportation company's Bill of Lading. Where practical, photographs should be taken prior to any movement from the conveyance, or as soon thereafter as possible. Customer must immediately contact Supplier for instructions prior to acceptance of the shipment. If the Supplier cannot be reached, Customer may sign the Bill of Lading that has been properly noted with the damage described.
- 3.5. Further, within 7 days of delivery (time being of the essence) Customer shall give notice in writing to Supplier of any alleged shortages in the Goods and/or of any damage to or defect in the Goods or of any other matter or thing by reason whereof Customer alleges that the Goods are not in accordance with the Contract. If Customer shall fail to give such notice or reject the Goods upon delivery, then the Goods shall be conclusively presumed to be in accordance with the Contract in all respects and Customer shall not thereafter be entitled to reject the Goods or to claim from Supplier in respect of any shortage, damage or other defect in the Goods.
- 3.6. Supplier reserves the right to make deliveries by installments in all cases. Where Goods are delivered by installment, Customer shall not be entitled to treat defective delivery in respect of one or more installments as a repudiation of the whole of the Contract nor to defer payment for any previous installment.

**4. PROPERTY IN THE GOODS**

- 4.1. Where payment in full is made by Customer prior to delivery, the Customer's receipt of such goods at the point of destination constitutes the passage of ownership in the Goods from Supplier to Customer.
- 4.2. While the Supplier has no obligation to deliver any Goods until payment in full is received and cleared, the Supplier may, in its sole discretion, deliver goods prior thereto.
  - 4.2.1. Under such circumstance, Customer shall hold the Goods as Supplier's fiduciary agent and custodian and shall keep the Goods separate from its property and from the property of any third parties and properly stored, protected and insured and identified as the property of Supplier.
  - 4.2.2. While Risk of Loss passes to such Customer upon receipt of goods at the point of delivery, ownership does not pass to customer unless or until payment in full is paid by Customer to Supplier and the funds clear.
  - 4.2.3. Prior to the passage of ownership to Customer, Customer must keep the Goods free from any and all liens, charges and encumbrances. In the event Customer fails to strictly abide by any agreement between Supplier and Customer under which shipment was made prior to payment in full, then Supplier may require the Goods to be returned to it by Customer upon three days' notice. In that event, the shipping costs shall be by Customer's expense and FOB shall be point of destination. If Customer fails to ship the equipment within three days, Supplier may retake possession of the equipment and, at its sole discretion, arrange for transport at Customer's expense.
  - 4.2.4. If Customer sells or otherwise disposes of or processes the Goods (or any part thereof), then it shall receive and hold as trustee for Supplier the proceeds of such sale, disposal or process or other monies derived from or representing the Goods (or any part thereof) (including insurance proceeds) and shall keep such proceeds or other monies separate from any monies or property of Customer and/or third parties and shall, as soon as possible after receiving the same, pay over such monies to Supplier.
  - 4.2.5. Supplier shall be entitled to sue for the Price plus legal fees once payment is due notwithstanding that property in the Goods has not passed to Customer.

**5. PRICE AND PAYMENT**

- 5.1. A deposit is required to be paid in cash or cleared funds prior to any performance obligation of Supplier. The deposit amount will normally be 40% the total due as set forth on the Invoice issued by Supplier to Customer following Customer's execution of the quotation. Supplier reserves the right, in its sole discretion, to require a deposit of a different amount.
- 5.2. Upon payment of the deposit, Supplier will begin work. In the event that Customer thereafter cancels the Contract of Sale, the Customer will forego up to one-half of the deposit, the remainder of the deposit will be returned to Customer within a reasonable time thereafter. At the Supplier's sole discretion, the Supplier may choose to release additional deposit funds in the event work performed in furtherance of the Contract of Sale has not progressed prior to cancellation.



- 5.3. Price shall be paid in full in cash or cleared funds within 30 days of notice to Customer by Supplier that the Goods are complete ("Due Date"). No delivery will be required until payment in full of the Price is received in cash or cleared funds. Time for payment shall be "of the essence".
  - 5.4. Cancellation by Customer as set forth in Section 5.2 does not apply to any Cancellation occurring after the notice of completion set forth in Section 5.3
  - 5.5. If the Price is not paid in full by the Due Date, Supplier may:
    - 5.5.1. cancel or suspend any further deliveries to Customer (under any Contract);
    - 5.5.2. appropriate any payments made by Customer to such of the Goods under this or any other Contract as Supplier may think fit; and
    - 5.5.3. charge Customer interest on the outstanding amount at a rate of 3% per annum until paid in full. This shall constitute prejudgment interest only.
  - 5.6. Customer shall reimburse Supplier (on a full indemnity basis) for all costs and expenses incurred by Supplier in connection with the recovery of 1) the Goods where payment in full is not received and/or 2) any money due to Supplier under the Contract.
  - 5.7. Payment made by Customer to Supplier shall be applied by Supplier to Invoices, and to Goods listed in Invoices, in such order or manner as Supplier shall, at its entire discretion, think fit.
  - 5.8. Except with the express agreement in writing of Supplier, no deduction shall be made by Customer from any payment for Goods for or on account of any matter or thing whatsoever including, but not limited to any set-off, compensation, counter-claim or present or future taxes.
- 6. LIMITED WARRANTY**
- 6.1. **SCOPE OF WARRANTY.** Except as otherwise noted herein, Supplier warrants that the Goods are free of defects in material and workmanship and shall reasonably conform to specifications quoted by Supplier for a period of ONE YEAR FROM THE SHIPMENT DATE. This limited warranty extends only to the original Buyer and is not transferable.
  - 6.2. **ORIGINAL EQUIPMENT MANUFACTURER (OEM) WARRANTY.** Goods manufactured by other than Supplier are excluded from this Limited Warranty. Notwithstanding any other provision of this Limited Warranty, goods manufactured by other than the Supplier, the OEM, are sold exclusively under such warranty as the OEM provides to Supplier. As an accommodation to Buyer, Supplier will assign to Buyer all transferrable rights it may have arising out of the warranties given to Supplier by the OEM, to the extent permissible or enforceable by the Supplier. In no event, shall Supplier be responsible to Buyer for warranties on purchased equipment or materials that are more extensive than the warranty provided to Supplier by the OEM.
  - 6.3. **WARRANTY EXCLUSIONS.** This warranty does not extend to any Goods that are: (1) subjected to misuse, abuse, neglect, accident, improper repair, improper installation or abnormal operation; (2) altered or repaired by persons not authorized by Supplier; (3) damaged during shipment; (4) consumable parts; (5) normal wear and tear; or (6) not manufactured by Supplier. (d) Supplier makes no other representations or warranties whatsoever, either express or implied, in fact or in law, except as states in this limited warranty. Seller disclaims all implied warranties of merchantability and of fitness for any particular purpose.
  - 6.4. **BUYER REMEDIES.** Supplier's only liability with respect to the Goods shall be, at Supplier's option: to repair or to replace those Goods that do not meet the limited warranty stated herein; to refund some, or all, of the purchase price of those Goods; or to allow credit for some or all of those Goods. The place of repair shall be decided by agreement between Supplier and Buyer. Any field repair services performed by Supplier's personnel at Buyer's site shall be performed in a good, workmanlike manner in accordance with industry standards. The repair labor and parts costs are warranted for a period of ninety (90) days after completion of the service provided. Buyer shall be responsible for all expenses, other than on-site labor and parts, that Supplier incurs in execution of repair. Repair services at the factory shall be performed in a good, workmanlike manner in accordance with industry standards. The repair labor and parts costs are warranted for a period of ninety (90) days after completion of the service provided. Buyer shall be responsible for packaging, suitable for the entire transportation, and the transportation costs to the factory, FOB destination. Supplier shall be responsible for return transportation costs in Buyers packaging. Supplier's total liability arising in any way from the Goods sold shall not in any case exceed the purchase price paid by the Buyer for those Goods.
- 7. LIMITATION OF LIABILITY**
- 7.1. Except in respect of death or personal injury caused by Supplier's negligence, Supplier shall not be liable to Customer by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law (including delict), or under the express terms of the Contract, for loss of profit or for any indirect, special or consequential loss or damage, costs, expenses or other claims for compensation whatsoever (whether caused by the negligence of Supplier, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods (including any delay in supplying or any failure to supply the Goods in accordance with the Contract or at all) or their use by Customer, and the entire liability of Supplier under or in connection with the Contract shall not exceed the Price of the Goods, except as expressly provided otherwise in these Conditions.
- 8. FORCE MAJEURE**
- 8.1. Supplier shall not be responsible for any delay or failure to fulfill any of its obligations under the Contract nor be liable for any loss or damage suffered or incurred by Customer by reason of any delay in delivery of the Goods or any part thereof caused directly or indirectly by any of act of God, war, government or parliamentary restriction, import or export regulation, strike, lockout, trade dispute, fire, theft, flooding, breakdown of plant or premises, late or non-delivery of any supplies or any other cause whatsoever beyond the control of Supplier.
- 9. INTELLECTUAL PROPERTY AND CONFIDENTIALITY**
- 9.1. Manuals, drawings and descriptive documents and other specifications published by Supplier are an approximate guide. The Goods may differ based upon the Customer's specifications. Manuals, drawings, specifications, designs, operating parameters or any documents prepared by Supplier remain the exclusive property and trade secret and proprietary information of Supplier.
  - 9.2. All Manuals, drawings and descriptive documents and other specifications published by Supplier are confidential, whether marked confidential or not and as such these drawings and technical documents may not be used by the Customer or reproduced, transmitted, or



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communicated to a third party without Seller's written consent. The Customer will be liable to Supplier for any damages suffered by Supplier in the event of a violation of this provision.

**10. NO IMPLIED LICENSE**

10.1. The sale of Goods and Supplier's transmittal or inclusion of Manuals, descriptive documents, drawings or any other technical documents, does not expressly or impliedly give to Customer any right or license to analyze or manufacture such Goods or portions thereof.

**11. TERMINATION**

11.1. In the event of Customer committing any breach of any term or provision of the Contract (including, for the avoidance of doubt, these Conditions), going into liquidation, having a Receiver, Administrator, Judicial Factor or other similar officer appointed over the whole or any part of its assets, becoming bankrupt or apparently insolvent or granting any trust deed or entering into any composition or similar arrangement with its creditors, or if any circumstances arise which, in the sole opinion of Supplier, render any of the foregoing likely to occur then Supplier shall be entitled, without notice and without any liability whatsoever, to terminate the Contract forthwith and to enter Customer's premises for the protection, removal, realization and disposal of any of the Goods in which property shall not have passed to Customer in accordance with these Conditions. Supplier shall also be entitled to cancel all Contracts or any part thereof remaining unfulfilled between Supplier and Customer and to sell to any other party or otherwise dispose of and deal with the Goods.

11.2. Termination of the Contract shall not discharge any pre-existing liability of Customer to Supplier and on such termination, Supplier shall be entitled to recover from Customer such loss or damage as Supplier has suffered by reason of such termination.

**12. GENERAL**

12.1. No failure of or delay by Supplier to exercise any right, power, remedy or privilege shall operate as a waiver of the same.

12.2. If any provision of these Conditions shall be held to be illegal or unenforceable, in whole or in part, under any enactment or rule of law, such term or provision or part shall to that extent be deemed not to form part of these Conditions but the validity and enforceability of the remainder of these Conditions shall not be affected.

12.3. Any dispute arising out of the transaction involving Supplier and any Customer shall be subject to the laws of the State of New York and no other jurisdiction and any legal action commenced by either party against the other relating in any way to any transaction governed or alleged to be governed by these Conditions, shall be commenced in the Supreme Court of the State of New York in Washington County and New York law shall apply.

12.4. Any notices or other communications required or permitted to be given by Supplier to Customer, or vice versa, under these Conditions shall be in writing and sent, in the case of notices to Supplier, to the address given in these Conditions (or such other address as may be intimated to Customer from time to time) and, in the case of notices to Customers, to Customer's last known address. Notices and other communications shall be sent by first class mail, facsimile transmission, electronic mail (in which case, the above reference to address refers to e-mail address) or delivered by hand and shall be deemed to have been received, in the case of first class mail, 72 hours after posting, by facsimile transmission or electronic mail, on the completion of the transmission and by delivery by hand, at the time of delivery.

12.5. Supplier shall be entitled, in its discretion, to alter these Conditions or any of them at any time or from time-to-time and these Conditions as so altered shall apply to Contracts entered into thereafter.