

CMD Ltd Terms & Conditions of Sale

1. DEFINITIONS

The following words shall have the following meanings:

“Buyer” - the person firm or company with whom or with which the Company contracts under these terms and conditions and in the case of a firm or partnership shall include jointly and individually on their own account each member and/or partner therein; “Contract” - the Contract made or to be made between the Company and Buyer subject to these terms and conditions; “Goods” - any article to be supplied by the Company under the Contract; “Sale Terms” - these terms and conditions.

2. CONTRACT

2.1 The placing of any order, written or oral, whether or not any quotation or tender may have been submitted to the Buyer by the Company, placed by the Buyer with any of the Company’s sales-people or other employees or representatives shall constitute an offer by the Buyer. No acceptance of any such offer shall be binding upon the Company and no Contract shall come into existence unless and until the Company shall have formally accepted the Buyer’s offer in writing. Orders are accepted only upon and subject to these Sale Terms. No term (unless expressly agreed in writing by a director of the Company) of any Buyer’s order inconsistent with these Sale Terms shall form part of any Contract

2.2 No variation or addition to the Sale Terms, whether written or oral, shall have effect unless and until agreed in writing by the Company and signed by a director of the Company duly authorised in writing.

3. QUOTATION OR TENDER PRICE

3.1 Unless previously withdrawn, any quotation or tender shall remain open for a period stated therein, or, where no period is stated, for 30 days from the date appearing thereon.

3.2 Any order must be accompanied by sufficient information to enable the Company to provide a quote. The Company may amend any quotation or tender price should circumstances arise which were not known to the Company when, or there has been any increase in cost since, the order was placed. In the event of variation or suspension of work on the Buyer’s instructions or as a result of a lack of instructions, the Company may vary the quotation or tender price accordingly.

3.3 All prices given in price lists, quotations, tenders or acknowledgements of orders are: (a) subject to variation to the Company's prices ruling at the date of despatch; and, (b) exclusive of any taxes or tariffs, which shall be payable by the Buyer in addition.

3.4 Should the Buyer refuse or fail to accept part or full delivery of the Goods in accordance with the specified time of delivery, as more particularly defined in clause 8.2, the Company may claim the full value of its invoice to the Buyer in respect of all Goods ordered and produced, and may also invoice the Buyer the costs of carriage incurred by the Company in returning to its premises those Goods for which the Buyer has refused to accept delivery.

4. SAMPLES

Any samples submitted to the Buyer on a sale or return basis which have not been returned to the Company's premises within one month of the date of receipt by the Buyer shall be deemed to have been accepted by the Buyer and shall be paid for by the Buyer at the Company's prices ruling at the date of despatch.

5. DRAWINGS, ILLUSTRATIONS, DESCRIPTIONS AND CATALOGUES

Drawings, illustrations, descriptions and catalogues issued by the Company and any details contained therein are approximate only and shall not form part of any Contract unless expressly incorporated. The Company therefore reserves the right without notification to the Buyer to alter any such drawings, illustrations, descriptions or catalogues and any details contained therein and to supply the Goods so altered in performance of the Contract.

6. PERFORMANCE, QUALITY AND INSPECTION

6.1 All information given by the Company relating to the performance of the Goods is based upon the Company's experience but the Company shall have no liability to the Buyer, whether in contract tort or otherwise, should it prove to be in any way inaccurate. It shall be the sole responsibility of the Buyer to ensure that the capacity and the performance of the Goods are sufficient and suitable for the purpose or purposes intended.

6.2 The Buyer will ensure that the Goods are carefully inspected upon delivery by the Company. Any: (a) defects in the Goods; or (b) variants in the Goods from specifications (if any) contained within the Contract, which may reasonably be expected to be apparent upon such an inspection shall be notified to the Company forthwith, and in any event within five working days (being days other than Saturdays, Sundays,



and days when trading banks in London are generally not open for business) from the date when the Goods were delivered by the Company to the Buyer.

7. FORCE MAJEURE AND SUSPENSION

If any factor beyond the Company's control including but not without limitation shortage of raw materials, components or services, acts of God, war, national emergency laws or regulations of any territory, industrial dispute, civil commotion, fire, tempest and/or flood or other disaster natural or otherwise affects the Company, or any supplier to the Company, with the result that the Company is unable to perform or is delayed in performing all or any of its obligation under the Contract then performance by the Company of its said obligation may be wholly or partially suspended until the factor causing the failure to perform or the delay in performance has ceased. Any such delay shall be added to any time stipulated for delivery.

8. DELIVERY

8.1 All costs of delivery and insurance shall be met by the Buyer, unless otherwise stated by the Company in writing. Special delivery services will be charged as a further cost.

8.2 Time of delivery shall not be of the essence. The Buyer shall nevertheless be bound to take delivery within the time stipulated but in any event within six months of the date the Contract was entered. The Company shall not be liable for any failure to meet any delivery date given nor for any loss, financial or otherwise, resulting directly or indirectly therefrom.

8.3 Any claim for damage in transit or shortage on delivery shall be made in writing by the Buyer within seven days of delivery, or in the case of non-delivery, within 7 days of receipt by the Buyer of the Company's invoice. In the event of justifiable claims the Company shall at its discretion replace or repair Goods lost or damaged in transit but beyond this the Company accepts no liability whatsoever for loss of or damage to Goods.

8.4 Subject to Paragraph 8.3 above risk of loss of or damage to Goods shall pass to the Buyer upon delivery.

9. CANCELLATION/AMENDMENTS

9.1 The Buyer may request a change to the delivery date provided for in the Contract ("the Original Date"), provided that (a) the Goods have not already been despatched for delivery, and (b) that the Buyer gives the Company prior written notice of the proposed new delivery date or dates ("the New Date") which is a period no less than the original delivery period. The Company shall reasonably consider accepting the New



Date but otherwise the Company may in its absolute discretion decide whether or not to accept the New Date.

9.2 Should the Buyer wish to amend or cancel any order or part of an order placed with the Company, it may do so within five (5) working days from receipt by the Company of the order from the Buyer ("Cancellation Period"). The Company shall notify the Buyer of any non-cancellable costs necessarily incurred by the Company during the Cancellation Period which would be chargeable to the Buyer upon amendment or cancellation. Following such notification, the Buyer may choose to accept liability for such charges, and the amendment or cancellation shall be implemented. If the Buyer chooses not to accept liability for such charges, the amendment or cancellation shall not be implemented. Should the Buyer seek to cancel any order or part of an order outside the Cancellation Period, the Buyer shall be liable to make payment forthwith to the Company of a sum in compensation which is equal to the cost of all materials purchased and work in progress by the Company and any loss of the Company's gross profit which is attributable to the cancellation."

9.3 Should the Buyer have placed an order for bespoke goods (i.e. made to the Buyer's own individual and unique specification) then no Cancellation Period shall apply and section 9.2 shall apply to any cancellation from the date the Buyer has placed the order with the Company.

10. WARRANTY

This warranty is to the exclusion of, and hereby supersedes, all other warranties and representations, with the exception of any warranties required and or implied by English Law.

CMD Limited ("CMD") trading as itself, "DPG" , or "POWERPLAN" , or "FORM FITTINGS" warrants that, for the period of twelve (12) calendar months from the original date of delivery to the Buyer ("Warranty Period") its products will be free from defects in material and workmanship and agrees, at its option, to repair or replace those parts which are confirmed as defective by CMD, subject to the following terms and conditions:-

Coverage Limitation

1. This warranty is only valid and exercisable by the original purchaser of new products from CMD who has paid the full contract price for the product(s).
2. This warranty is not transferable.
3. If notified of a defect within the Warranty Period, CMD shall, at its sole option, either repair or replace all non-consumable parts found to be defective, under the guidelines herein, free of charge. CMD's entire liability for any defective product shall in no event exceed the purchase price of the product. CMD reserves

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the right to determine whether the part is a consumable or a non-consumable part and whether the product or part is defective.

4. This warranty does not entitle the Buyer to upgrade to newer models or to product enhancements.

5. CMD shall not be liable for any cost or expense incurred which does not arise from a defect covered by this warranty. CMD shall be entitled to charge for any labour costs such as inspection, normal servicing, reinstalling, transportation charges or any other expense incurred or service requested which is not covered under the terms of this warranty.

6. In the event that the product required for replacement is no longer in production and/or is obsolete, CMD will attempt to repair the product with similar or like parts of equal value.

7. Following authorisation by CMD, products and parts purchased on a supply only basis which are claimed to be defective should be returned by the Buyer at their own cost to CMD for inspection. If found to be defective under the terms of this warranty, either repair or replacement will be made and returned to Buyer at CMD's cost.

Warranty Conditions

The above limited warranty is subject to the following conditions:

1. CMD warrants products to be free from defects in material or workmanship only under normal operation and/or in accordance with the manufacturer's specification/operation manual.
2. The warranty covers the product as supplied and shall not be applicable for any modifications, incorrect installations or deviation from the specification made by the Buyer or by any third party.
3. Defects warranted by CMD are limited to those defects that occur during normal operation of the product in accordance with the manufacturer's specification/operation manual.
4. The warranty does not extend to damage caused by:
 - Fair wear and tear
 - Liquid Spillage, acid or other chemical contaminants causing fouling, blockages or damage to the Products themselves;
 - Non-compliance with the manufacturer's recommendations and parameters stated in the installation and operation manual supplied with the product;
 - Insect or vermin infestation;
 - Attempted installation or repair by anyone other than a certified CMD Technician;
 - Faulty installation, repair or servicing by any third party including but not limited to: - shortfalls in installation practices; connection of electrical supplies not of the specified voltage or frequency; poor commissioning techniques; lack of adequate scheduled or preventative maintenance;
 - Changes in the normal settings of the product;

- Damage due to alteration by the Buyer, installer or end user;
- Operation of the products outside of the relevant manufacturer's specification;
- Damage to parts and/or products due to abuse, misuse, accident, improper maintenance, mishandling or use in violation of manufacturer's specifications or user instructions as furnished by CMD;
- Damage due to improper packaging or re-packing by a third party;
- Damage occasioned by any third party or caused by conditions beyond CMD's reasonable control including, but not limited to Acts of God, Government restrictions (including the denial or cancellation of any export or other necessary license), vandalism, wars, acts of terrorism, insurrections.

5. Warranties can only be honoured if the product was purchased as new direct from CMD and the products are installed within the United Kingdom.

6. Any replacement parts furnished at no cost to the Buyer in fulfilment of this warranty are warranted only for the unexpired portion of the original Warranty Period. Any service or repair provided outside the scope of this limited warranty shall be at CMD rates and terms then in effect.

7. Under no circumstances is CMD obligated or responsible, under its terms of warranty, for any additional component built in, bundled or otherwise attached to the original CMD product. In addition, CMD is not liable for warranty on any unit that has been damaged as a direct or indirect result of Buyer's "Value Added Feature" or other building or service feature.

8. NORMAL "WEAR AND TEAR" IS NOT COVERED BY THIS WARRANTY. FURTHER, CMD HEREBY RESERVES THE RIGHT TO DETERMINE "WEAR AND TEAR" ON ANY AND ALL PRODUCTS.

9. CMD is not responsible for damages of any kind including, but not limited to, direct or indirect damages, lost profits, lost savings, or any special incidental, exemplary or consequential damages whether for breach of contract, tort or otherwise, or whether arising out of the use of or inability to use the product, even if CMD or any dealer, distributor or authorized service provider/partner has been advised of the possibility of such damages, or any claim by any other party.

10. This Warranty does not affect the Buyer's legal rights if he purchases as a Consumer as defined in the Consumer Protection Act 2015, namely "an individual acting for purposes that are wholly or mainly outside that individual's trade, business, craft or profession." To Obtain Warranty Service, please contact the CMD Sales Department at Tel No: - 01709 829511 Monday through Friday United Kingdom working time (9.00 a.m. to 5:00 p.m.) to determine the nature of the problem. PLEASE BE ADVISED THAT CMD IS NOT LIABLE FOR ANY DAMAGE CAUSED BY ANY THIRD PARTY WHO MAY HAVE BEEN EMPLOYED BY THE PURCHASER TO INSTALL, OR MAINTAIN THE PRODUCT. TAMPERING OR REMOVING THE SERIAL NUMBER ON THE PRODUCT WILL VOID THIS WARRANTY IN ITS ENTIRETY.



NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, CMD AND/OR THE COMPANY'S ENTIRE AND AGGREGATE LIABILITY TO THE BUYER, WHETHER PURSUANT TO ANY PROVISION OF THESE TERMS, ANY INDEMNITY, OR OTHERWISE IN CONTRACT, TORT OR OTHERWISE HOWSOEVER, SHALL BE AN AMOUNT EQUAL TO THE AMOUNTS ACTUALLY PAID BY THE BUYER TO CMD AND/OR THE COMPANY FOR THE GOODS WHICH ARE THE SUBJECT OF THE CLAIM FOR LIABILITY.

11. INTELLECTUAL PROPERTY

11.1 All intellectual property and other proprietary rights in the Goods (including without limitation, patents, know how, rights in inventions, copyrights, trademarks, service marks, trade and business names, design rights, designs, trade secrets and all confidential and technical information ("Intellectual Property Rights")) are the sole property of the Company and shall remain vested in the Company.

11.2 The sale of Goods to the Buyer shall not be construed as a license, transfer or sale of any Intellectual Property Rights by the Company to the Buyer.

11.3 The Buyer acknowledges that the Goods incorporate the valuable trade secrets of the Company. The Buyer agrees not to copy or incorporate any features of design or construction peculiar to the Goods supplied by the Company into any of the Buyer's or a third party's product, unless specifically agreed to by the Company in writing. Except as otherwise permitted by applicable law, the Buyer shall not mechanically optically or otherwise analyse or deconstruct the Goods or their packaging, or otherwise seek to extract from the Goods or packaging any information about their composition or physical attributes. The Buyer shall use the Goods only as intended in the ordinary course of its business and in strict accordance with the Company's instructions.

11.4 The Buyer shall indemnify the Company in respect of damages, penalties, costs and other expenses for which it may become liable as a result of work carried out at the Buyer's request which results in an infringement of any intellectual property rights of a third party.

12. REPUDIATION OF THE CONTRACT

If the Buyer shall commit any breach of any of its obligations under the Contract and/or any other contract with the Company or if any distress or execution should be levied upon the Buyer or any of its property or assets, or if the Buyer shall commit or be subject to any act of insolvency (which shall be deemed to mean and include the passing of a resolution or the presentation of a petition for the winding-up of the Buyer, other than for the purpose of and followed by amalgamation or reconstruction, the appointment of a receiver and/or manager or an administrator or administrative receiver over the whole or any part of the



Buyer's undertaking and assets, the making by the Buyer of any composition with or the calling by the Buyer of any meeting of its creditors generally) or bankruptcy (which shall be deemed to mean and include the presentation of a petition in respect of a bankruptcy order or an application for an interim order in connection with and proposals for a voluntary arrangement to the Buyer's affairs), the Company shall be entitled to treat such event as a repudiation of the order or Contract by the Buyer, or at the Company's option, the undelivered part thereof, and the Company shall at any time thereafter be entitled to determine the order or Contract without prejudice to any of its rights to recover any money due thereunder or any damages for breach of contract including damages for such repudiation.

13. PAYMENT

13.1 The Company's payment terms to established credit account customers, are payment 30 days from date of invoice. Credit accounts may be established at the Company's option upon receipt of satisfactory references from a reputable bank and two trade references.

13.2 In the event that the Buyer should fail to pay the price due under the Contract on the due date then the Company may charge interest on the sum outstanding at 4% above the Bank of England's Base Rate from time to time, from the date payment was due until the time of payment in full. In addition, the Buyer shall pay all the Company's costs, expenses and outgoings incurred in obtaining payment of such monies from the Buyer.

13.3 All invoice queries must be notified to the Company within 7 days of invoice date.

13.4 Should the Buyer's invoice query lead to a credit note being raised by the Company, the net amount of the queried invoice and subsequent credit note is due either when the original invoice was due, or upon receipt of the credit note, whichever is the later.

14. RISK AND TITLE

14.1 The risk in the Goods shall pass from the Company to the Buyer upon delivery of such Goods to the Buyer. Notwithstanding delivery and the passing of risk in the Goods, title and property in the Goods, including full legal and beneficial ownership, shall not pass to the Buyer until the Company has received in cash or cleared funds payment in full for all Goods delivered to the Buyer under this and all other contracts between the Company and the Buyer. Until such payment has been made the Buyer is required to store the Goods in a manner which makes it clear that they are the property of the Company. If the Buyer should convert the Goods, or incorporate them, into any new product or products the Company is entitled to the ownership of such new product or products notwithstanding the fact that any conversion or incorporation





CMD Ltd, An IDEAL Company.



shall be effected by the Buyer solely as agent for the Company and the Company shall have the full legal and beneficial ownership of any such new product or products.

14.2 Subject to the foregoing, the Buyer shall be free to sell the Goods and any such new product or products in the ordinary course of its business on the basis that the proceeds of sale shall be the property of the Company, and the Buyer shall account therefor to the Company on demand; provided that the Buyer shall have no authority to enter into any contract for sale on behalf of the Company, and any contract for sale shall accordingly be concluded in the name of the Buyer. The Company may at any time revoke the Buyer's said power of sale by written notice to the Buyer if the Buyer shall for seven days or more be in default in the payment of any sum whatsoever due to the Company (whether in respect of the goods or any other goods supplied by the Company, whether or not under the Contract, or for any other reason whatsoever), or if any bill of exchange, cheque or other negotiable instrument drawn or accepted by the Buyer in favour of the Company shall on presentation for payment be dishonoured, or if the Company in good faith shall have doubts as to the solvency of the Buyer. The Buyer's said power of sale shall automatically cease if any of the events referred to in paragraph 12 above shall occur.

14.3 Upon determination of the Buyer's power of sale as above the Buyer shall place the Goods and any such new product or products at the disposal of the Company, and the Company shall be entitled, using only such force as may be necessary, to enter upon any premises of the Buyer for the purpose of removing the Goods and any such new product or products from the premises (including severance from the realty where necessary).

14.4 Where payment may be made by means of any bill of exchange, cheque or other negotiable instrument, the Company shall be deemed not to have received payment for the purposes of this condition unless and until the bill of exchange, cheque or other negotiable instrument shall have been honoured on presentation for payment, notwithstanding that the Company may have negotiated it and received value therefor.

15. PACKING MATERIALS

All returnable cases, containers and other packing materials will be charged for, but credit will be allowed against any future order of the Buyer accepted by the Company if these are returned in condition satisfactory to the Company to the Company's works carriage paid within thirty days following delivery of the relevant Goods; in no circumstances will any cash payment be made in respect thereof.

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16. AVAILABILITY

All Goods quoted from stock are quoted subject to being unsold when the Buyer's order is accepted.

17. STORAGE

In the event that the Buyer shall be unable to accept delivery of/collect the Goods within seven days following notification that they are ready for despatch/collection, the Buyer shall forthwith upon such notification arrange for the goods to be at once removed and stored at its own risk and expense. If at the expiry of seven days following such notification the Goods shall not have been removed as aforesaid, the Company shall be entitled without further reference to the Buyer to store the Goods upon any of its own premises or arrange for their storage with a third party, in which event any costs (including VAT thereon) so incurred by the Company (including but not limited to storage, carriage and insurance) shall be borne by the Buyer.

18. CREDITWORTHINESS

At its sole and exclusive discretion, the Company reserves the right, without prior notice to the Buyer, to reduce or withdraw the limit of the Buyer's credit account, should it consider the same to be necessary.

19. DELIVERY BY INSTALMENTS

Where delivery is agreed to be made by instalments, each instalment shall be deemed to be a separate and distinct contract, and

19.1 no default by the Company in respect of any one or more instalment shall entitle the Buyer to reject or withhold payment in respect of any other instalment or instalments.

19.2 The Company shall be entitled to suspend or cancel delivery or require payment in advance on any instalment while payment is overdue on any previous one.

20. DISPUTES AND SET-OFF

Any liability of the Company under the Contract shall be subject to and conditional upon the due performance and observance by the Buyer of all its obligations under these conditions, and, subject to these conditions, the Buyer shall not be entitled to withhold or delay payment or exercise any right of set-off whatsoever and howsoever arising which might otherwise be available to it.

21. EMPLOYEES

These conditions are stipulated by the Company on behalf of the Company and on behalf of all its employees and agents and apply for their benefit as for that of the Company, and the Buyer shall not sue or make any claim against any employee or agent of the Company in respect of any alleged negligence and/or other default on the part of the Company and/or any such person in relation to the Contract.

22. COMPLIANCE WITH REGULATIONS

It shall be the responsibility of the Buyer to ensure that all requirements applicable to the Contract, whether statutory, regulatory, municipal and/or otherwise howsoever, are duly complied with. It shall be a condition precedent to the performance by the Company of its obligations under the Contract that all necessary licences, permits and consents shall have been obtained by the Buyer.

23. WAIVER

No failure or delay on the part of the Company to exercise any of its rights under the Contract shall operate as a waiver thereof, nor shall any single or partial exercise of any such right preclude any other or further exercise thereof. Any waiver by the Company of any breach by the Buyer of any of its obligations under the Contract shall not affect the rights of the Company in the event of any further or additional breach or breaches.

24. ASSIGNMENT

The Contract is personal to the Buyer, who shall not assign or in any way part with the benefit thereof without the Company's prior written consent.

25. SEVERABILITY

Each and every obligation contained in these conditions shall be treated as a separate obligation and shall be severally enforceable as such notwithstanding the non-enforceability of any other such obligation.

26. CLAUSE HEADINGS

The clause headings in these conditions are for convenience only and shall not in any way affect the interpretation of the Contract.



27. FURTHER CONTRACTS

If after the Contract a further contract is howsoever entered into between the Company and the Buyer for the supply of goods, such contract shall be deemed to be entered into subject to these conditions. Any such contract shall be deemed to be separate and distinct from any other such contract and from the Contract, and no default by the Company in respect of any one or more such contracts shall entitle the Buyer to withhold payment under any other such contract or under the Contract.

28. NOTICES

Any notice required to be given in writing under the Contract shall be given, where possible, by email or facsimile transmission and otherwise by first class post addressed to the registered office of the party for which it is intended, or to such other address as may be notified in writing in accordance herewith for the purpose, and shall be deemed to have been received, in the case of an email or facsimile transmission and, in the case of a letter, twenty-four hours after posting. In providing service by letter, it shall be sufficient to show that the envelope containing the notice was properly addressed and stamped and duly posted.

29. THIRD PARTY CLAIMS

The Buyer shall indemnify the Company in full against any liability whatsoever which it may suffer or incur resulting from any claim made against the Company by any third party, including without limitation any employee or agent of the Buyer or any subsequent buyer or hirer or other bailee of the Goods or any of them, arising or arisen directly or indirectly out of the performance and/or any non-performance and/or breach of the Contract and/or otherwise out of or connected with the manufacture and/or supply of the Goods or any of them.

30. DISPUTE RESOLUTION

30.1 Disputes as to the fitness for purpose of Goods supplied to the Buyer at any time arising between the parties that cannot be resolved informally by the parties may be referred to an expert in accordance with the remaining provisions of this clause, if both parties agree to the same in writing.

30.2 The expert shall have appropriate qualifications and practical experience to resolve the particular dispute and be agreed by the parties or in the event of failure to agree shall be appointed by the President for the time being of the Institute of Electrical Engineers.



30.3 The parties shall promptly furnish to the expert all information relating to the particular dispute reasonably requested by him, imposing appropriate obligations of confidence.

30.4 The expert shall be required by the parties to use all reasonable endeavours to render his decision within 30 days following the receipt of the information requested or if this is not possible so soon thereafter as may reasonably be practicable and the parties shall co-operate fully with the expert to achieve this objective.

30.5 The parties shall share equally the fees and expenses of the expert. The decision of the expert shall be final and binding upon each of the parties.

30.6 For the avoidance of doubt, the provisions of this clause provide for a form of advanced dispute resolution and is not a reference to arbitration.

31. GOVERNING LAW

The construction, validity and performance of the Contract shall be governed in all respects by English Law.

OCTOBER 2019 - CMD LTD, Sycamore Road, Rotherham, South Yorkshire, S65 1EN TEL: +44 (0) 1709 829511.

